

Reply Report

Proposed Otago Regional Policy Statement 2021

11: EIT – Energy, Infrastructure and Transport

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1. Introduction

1. This report forms part of a suite of reply reports that have been prepared to sit alongside and explain the “marked up” version of the final recommendations on the proposed Otago Regional Policy Statement (pORPS). The approach to the whole suite is set out in the first report in this series, *Reply Report – Chapter 1: Introduction and General Themes*. Appended to the suite of reports is a consolidated version of the pORPS containing all final recommendations from the reporting officers.
2. This report should also be read and considered in conjunction with the previous evidence provided by Otago Regional Council (ORC) in relation to this topic, which has included:
 - a. The section 42A hearing report, Chapter 11: EIT – Energy, Infrastructure and Transport, prepared by Peter Stafford, dated 4 May 2022;
 - b. Brief of supplementary evidence of Marcus Hayden Langman, Energy, Infrastructure and Transport, dated 11 October 2022; and
 - c. Opening statement of Marcus Hayden Langman, Energy Infrastructure and Transport, dated 13 March 2022.
3. In addition, I have considered the evidence filed in relation to submissions, legal submissions, the matters raised at the hearing, which was held on 13-17 March 2023, and further correspondence from submitters to the Panel.
4. The key matters addressed in this report are:
 - a. Release of the proposed National Policy Statement on Renewable Electricity Generation (Proposed NPSREG) and proposed National Policy Statement on Electricity Transmission (Proposed NPSET);
 - b. Definition of Regionally Significant Infrastructure;
 - c. Whether to provide for bespoke effects management for REG, the National Grid, or electricity distribution;
 - d. Structure of EIT-INF-P13 and the application of the effects management regime;
 - e. Application of EIT-INF-P5 relating to non-renewable energy generation activities;
 - f. Reverse sensitivity effects on infrastructure;
 - g. Consideration of provisions related to commercial port activities.
5. I have addressed other minor miscellaneous matters recommended for change at the end of this report.
6. The following provisions are discussed in this reply report:¹
 - EIT-INF – Infrastructure:
 - Policies EIT-INF-P13, EIT-INF-P15

¹ Based on the amended structure recommended in my brief of supplementary evidence (11 October 2023)

- EIT-EN – Energy:
 - Objective EIT-EN-O3
 - Policies EIT-EN-P9, EIT-EN-P5
 - Method EIT-EN-M2
 - EIT-EN-PR1
- EIT-TRAN – Transport:
 - Policies EIT-TRAN-P21, EIT-TRAN-P23
 - Method EIT-TRAN-M8

7. 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:²

- EIT-INF – Infrastructure:
 - Objective EIT-INF-O4, EIT-INF-O5
 - Policies EIT-INF-P10, EIT-INF-P11, EIT-INF-P12, EIT-INF-P13A, EIT-INF-P14, EIT-INF-P17
 - Methods EIT-INF-M4, EIT-INF-M5, EIT-INF-M6
 - EIT-INF-E2, EIT-INF-PR2, EIT-INF-AER5, EIT-INF-AER6, EIT-ING-AER7, EIT-INF-AER8
- EIT-EN – Energy:
 - Objectives EIT-EN-O1, EIT-EN-O2A, EIT-EN-O2, EIT-INF-O6
 - Policies EIT-EN-P1, EIT-EN-P2, EIT-EN-P3, EIT-EN-P4, EIT-EN-P6, EIT-EN-P7, EIT-EN-P8, EIT-INF-P16, EIT-EN-P10
 - Methods EIT-EN-M1, EIT-EN-M3
 - EIT-EN-E1, EIT-EN-AER1, EIT-EN-AER2, EIT-EN-AER3, EIT-EN-AER4
- EIT-TRAN – Transport:
 - Objectives EIT-TRAN-O7, EIT-TRAN-O8, EIT-TRAN-O9, EIT-TRAN-O10
 - Policies EIT-TRAN-P18, EIT-TRAN-P19, EIT-TRAN-P20, EIT-TRAN-P22
 - Methods EIT-TRAN-M7, EIT-TRAN-M9
 - EIT-TRAN-E3, EIT-TRAN-PR3, EIT-TRAN-AER-9, EIT-TRAN-AER10, EIT-TRAN-AER11, EIT-TRAN-AER-12, EIT-TRAN-AER13, EIT-TRAN-AER14

8. 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 Based on the amended structure recommended in my brief of supplementary evidence (11 October 2023)

2. Procedural and jurisdictional issues

2.1. Proposed NPSREG and Proposed NPSET

9. On 20 April 2023, the Minister for the Environment released the following draft national policy statements (NPSs) for consultation:
- a. Proposed National Policy Statement on Renewable Electricity Generation (Proposed NPSREG)³; and
 - b. Proposed National Policy Statement on Electricity Transmission (Proposed NPSET)⁴.
10. The discussion documents also propose amending the National Environmental Standard for Electricity Transmission Activities (NESETA) and introducing a new National Environmental Standard for Renewable Electricity Generation (NESREG).⁵ Submissions close on consultation for the proposed NPSREG and proposed NPSET on 1 June 2023.
11. I understand that as the proposed NPSs are still in draft format, there remains an obligation for decision-makers to give effect to the current NPSs that are in force. However, in my view, there are important components of the draft NPSs that are not the subject of the current NPSs, in particular, the reconciling of s6(c) matters with electricity transmission (i.e the National Grid) and renewable electricity generation (REG) infrastructure.
12. Both NPSs, in a similar manner to the pORPS, propose an effects management hierarchy where adverse effects on areas with significant environmental values are managed according to the effects management hierarchy specified in the NPSs. The example below from Clause 3.6 of the proposed NPSREG is the same as that for the proposed NPSET (Clause 3.8), and would be required to be set out in regional policy statements, regional plans and district plans:

- (1) *Allow REG activities in areas with significant environmental values only if:*
 - (a) *there is an operational or functional need for the REG assets to be located in that area; and*
 - (b) *the REG activities are nationally or regionally significant; and*
 - (c) *the effects management hierarchy is applied.*
- (2) *The effects management hierarchy is as follows:*
 - (a) *adverse effects are avoided where practicable; then*

³ <https://www.mbie.govt.nz/dmsdocument/26314-proposed-national-policy-statement-for-renewable-electricity-generation>

⁴ <https://www.mbie.govt.nz/dmsdocument/26315-proposed-national-policy-statement-for-electricity-transmission>

⁵ <https://www.mbie.govt.nz/dmsdocument/26387-strengthening-national-direction-on-renewable-energy-generation-and-electricity-transmission-consultation-doc-pdf>

- (b) *where adverse effects cannot be avoided, they are minimised where practicable; then*
- (c) *where adverse effects cannot be minimised, they are remedied where practicable; then*
- (d) *where more than minor residual adverse effects cannot be avoided, minimised, or remedied, offsetting is provided where practicable then*
- (e) *if offsetting of more than minor adverse effects is not practicable, compensation is provided; then*
- (f) *Option 2A (same rule for all) if compensation is not appropriate to address any residual adverse effects:*
 - (i) *the REG activities must be avoided if the residual adverse effects are significant; but*
 - (ii) *if the residual adverse effects are not significant, the REG activities must be enabled if the national significance and benefits of the REG activities outweigh the residual adverse effects.*
- (f) *Option 2B (special rule for significant natural areas) if compensation is not appropriate to address any residual adverse effects:*
 - (i) *in the case of REG activities with adverse effects on a significant natural area:*
 - (A) *the REG activities must be avoided if the residual adverse effects are significant; but*
 - (B) *if the residual adverse effects are not significant, the REG activities must be enabled if the national significance and benefits of the REG activities outweigh the residual adverse effects; and*
 - (ii) *in all other areas with significant environment values, the REG activities must be enabled if the national significance and benefits of the REG activities outweigh the residual adverse effects.”*

13. Areas with significant environmental values are defined in the draft NPSs as set out below:

Areas with significant environmental values means any or all of the following:

- (a) *areas with natural character in the coastal environment:*
- (b) *outstanding natural features and landscapes, both within and outside the coastal environment:*
- (c) *areas with historic heritage, including sites of significance to Māori and wahi tapu:*

(d) *significant natural areas*

14. Two options are proposed in both proposed NPSs for when the effects management regime is exhausted following avoidance, minimisation, remediation, offsetting and compensation, and residual effects remain. The first option notes that if the residual adverse effects on any areas of significant environmental values are significant, that the activity must be avoided, but that if the residual adverse effects are not significant, the activities are to be enabled if the national significance and benefits of the activities outweigh the residual adverse effects.
15. The second option provides that if residual adverse effects in relation to SNAs are significant, the activity is to be avoided, but that for other areas of significant environmental value, if the national significance and benefits of the activities outweigh the residual adverse effects, then the activities are to be enabled.
16. In relation to areas that are not areas of significant environmental values (for example amenity landscapes), adverse effects are to be avoided, remedied or mitigated to the extent practicable.
17. The proposed NPSs also helpfully explain the relationship between the proposed NPSs and the National Policy Statement for Freshwater Management 2020 (NPSFM)⁶, and the New Zealand Coastal Policy Statement 2010 (NZCPS): if there is a conflict between the documents, the proposed NPSs state that the NPSFM and NZCPS prevail.⁷ There is no provision under the proposed NPSs that allows an RPS, regional plan, or district plan to be more restrictive than the proposed NPSs.
18. In my view, the proposed NPSs provide clear government direction regarding the enablement of and, where appropriate, restriction on, where electricity transmission assets and REG assets can be located in relation to the effects arising from the assets. Both proposed NPSs draw a clear distinction between trading off between matters of national importance (or significance), and instead provide clear bottom lines about how the matters are to be reconciled, by providing a clear and unambiguous direction about the acceptable levels of effects, while at the same time providing for development of electricity transmission and REG in appropriate locations.
19. The proposed NPSs propose that changes are made to RPSs, regional plans and district plans to implement the effects management hierarchy without using the Schedule 1 process.⁸ There is little point, therefore, to seek to predetermine the outcome of the NPSs, given that the changes can be made directly to the planning instruments.

⁶ This only relates to the Proposed NPSREG in relation to hydro-electricity generation

⁷ Clause 1.4 in both the proposed NPSREG and proposed NPSET

⁸ Proposed NPSREG Clause 1.5, Proposed NPSET Clause 1.5

3. Definition of regionally significant infrastructure

3.1. Introduction

20. The definition of Regionally significant infrastructure was discussed in section 11.6.4.4 of the s42A report, with the analysis in paragraphs [533] to [549].

21. The recommended version of this provision currently reads:⁹

Regionally significant infrastructure

means:

- (1) roads classified as being of regional importance in accordance with the ~~One Network Road Classification~~ One Network Framework,^{10 11}
- (2) electricity sub-transmission infrastructure,
- (3) renewable electricity generation facilities that connect with the local distribution network but not including renewable electricity generation facilities designed and operated principally for supplying a single premise or facility,
- (4) telecommunication and radiocommunication networks¹² facilities as respectively defined in section 5 of the Telecommunications Act 2001 and in section 2 of the Radiocommunications Act 1989,¹³
- (5) facilities for public transport, including terminals and stations,
- (6) the following airports: Dunedin, Queenstown, ~~Wanaka~~ Wānaka,¹⁴ Alexandra, Balclutha, Cromwell, ~~Ōamaru~~ Ōamaru,¹⁵ Taieri.
- (7) navigation *infrastructure* associated with airports and commercial ports which are nationally or regionally significant,
- (8) defence facilities for defence purposes in accordance with the Defence Act 1990,¹⁶
- (9) community drinking water abstraction, supply treatment and distribution *infrastructure* that provides no fewer than 25 households with drinking water for not less than 90 days each calendar year, and community water supply abstraction, treatment and distribution *infrastructure* (excluding delivery systems or infrastructure primarily deployed for the delivery of water for irrigation of land or rural agricultural drinking-water supplies)

⁹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

¹⁰ <https://www.nzta.govt.nz/roads-and-rail/road-efficiency-group/projects/onrc> (accessed 26 May 2021)
<https://www.nzta.govt.nz/planning-and-investment/planning/one-network-framework> (Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00139.007 DCC)

¹¹ 00139.007 DCC

¹² 00310.002 Chorus, Spark and Vodafone

¹³ 00230.011 Forest and Bird

¹⁴ 00226.024 Kāi Tahu ki Otago

¹⁵ 00226.024 Kāi Tahu ki Otago

¹⁶ 00230.011 Forest and Bird

- (10) community stormwater *infrastructure*,
- (11) *wastewater* and sewage collection, treatment and disposal *infrastructure* serving no fewer than 25 households, ~~and~~
- (11A) oil terminals, bulk fuel storage and supply infrastructure, and ancillary pipelines at Port Chalmers and Dunedin, and¹⁷
- (12) Otago Regional Council's hazard mitigation works including flood protection infrastructure and drainage schemes.
- ~~(13) For the avoidance of doubt, any Any infrastructure identified as nationally significant infrastructure is also regionally significant infrastructure.¹⁸~~

3.2. Submissions and evidence

22. Evidence has been put forward in support of requests seeking addition of particular types of infrastructure to, or amendments to, the definitions of regionally significant infrastructure (RSI), or nationally significant infrastructure (NSI). The following matters are those where additions alter my recommendations. These include:
- a. Significant electricity distribution infrastructure (SEDI) (RSI);¹⁹
 - b. Municipal landfills (RSI);²⁰
 - c. Established community scale irrigation and stockwater infrastructure (RSI);²¹
 - d. Ski area infrastructure (RSI)²²;
 - e. The expression of facilities for public transport (RSI);²³ and
 - f. Changes to how airports might be included within the definition of regionally significant infrastructure (RSI).²⁴
23. Where an addition sought by a submitter is not addressed above, no change is recommended, and I rely on the reasoning in the s42A report.
24. The evidence presented also recognises the need to carefully consider the additions to the definitions, given that the framework for RSI and NSI is somewhat more lenient for these classes of infrastructure, when compared to infrastructure that is of a general nature.²⁵ Ms McIntyre for Kāi Tahu ki Otago argues that the definition should not be

¹⁷ 00510.009 The Fuel Companies

¹⁸ 00311.003 Trustpower, 00301.007 Port Otago

¹⁹ Megan Justice for Aurora, Network Waitaki, PowerNet, para [7.1]-[7.15]

²⁰ Craig Barr for QLDC, para [3.1]-[3.13]

²¹ Elizabeth Soal for Waitaki Irrigators Collective, para [28]-[47]

²² Ben Farrell for Fish and Game, Wayfare, Trojan Holdings, para [51]-[55]

²³ Sandra McIntyre for Kāi Tahu ki Otago, para [122]

²⁴ Matt Bonis for CIAL) para [21]-[59]

²⁵ For example Craig Barr for QLDC, para [3.8]; Sandra McIntyre for Kāi Tahu ki Otago, para [116]-[122]; Rebuttal evidence of Lynette Wharfe for Horticulture NZ, para [59]-[75]; Murray Brass for DOC, para [192]-[196]

broadened out to provide a broad exemption for infrastructure from the management of adverse effects, and that limiting the scope of regionally significant infrastructure is particularly important. In particular, Ms McIntyre supports a limit to the approach as it relates to facilities for public transport, so that only more substantial transport infrastructure activities are captured in the definition of RSI.²⁶

25. Ms Wharfe for Horticulture opposes the addition of significant distribution infrastructure (SEDI) into the definition of RSI.²⁷ In its further submission, Sustainable Tarras opposed the additions sought by CIAL in relation to the additions for airports to RSI and filed legal submissions,²⁸ but did not provide expert evidence.

3.3. Analysis

26. I have carefully considered the requests for additions to “regionally significant infrastructure”. I am also aware of the request from the distribution networks recognising the Environment Court’s consent order on the Queenstown Lakes District Plan,²⁹ which records the addition of significant electricity distribution infrastructure (SEDI) into the definition of regionally significant infrastructure in that plan. Given the decision relates to a lower order planning document, I do not consider it to be a deciding factor on determining the content of the pORPS. To this extent, any inclusion of SEDI in the EIT chapter needs to stand on its own merits.
27. Having considered the submissions on the RPS, evidence given at the hearing, and taking into account the s42A report and supplementary evidence, I consider there are some key qualitative matters that can be considered that would qualify the infrastructure for inclusion into the definition of RSI. These are:
- a. The infrastructure serves a regional or national benefit;
 - b. There will often be operational or functional constraints in terms of the location of the infrastructure;
 - c. The infrastructure may include lifeline utilities;
 - d. The infrastructure is at a scale that could result in the potential for significant adverse effects on significant environmental values;
 - e. The infrastructure is generally of a physical nature, being ‘hard infrastructure’ and does not support living, social or commercial activities; and
 - f. Similar activities are provided for in the definition of RSI in adjacent regions, in particular where there are cross boundary issues where different management regimes may give rise to difficulties with implementation.

²⁶ Sandra McIntyre for Kāi Tahu ki Otago, para [122]

²⁷ Rebuttal evidence of Lynette Wharfe for Horticulture NZ, para [59]-[75]

²⁸ <https://www.orc.govt.nz/media/14009/sustainable-tarras-morgan-slyfield.pdf>

²⁹ <https://www.orc.govt.nz/media/14169/2023-nzenvc69-topic-17-rsi-20-april-2023.pdf>

28. Given the slightly more relaxed approach to effects enabled by the EIT chapter for NSI and RSI, in particular through EIT-INF-P13, I consider that care needs to be taken when considering additions to the definition.
29. Turning to the individual requests, I consider that the following activities should be included in the definition of regionally significant infrastructure for the reasons set out in evidence and as outlined below:
- a. Municipal landfills;
 - b. SEDI;
 - c. Established community-scale stockwater and irrigation infrastructure; and
 - d. Ski area infrastructure.
30. I consider that amendments should be made to the following inclusions in the definition of RSI:
- a. Changes to how airports might be included within the definition of regionally significant infrastructure;
 - b. The expression of facilities for public transport.
31. For the reasons set out in evidence and in the S42A report, I do not consider that any other additions to RSI or NSI are warranted. I set out discussion around the recommended additions to the definitions below.

3.3.1. Municipal landfills

32. I consider that amendment proposed by Mr Barr³⁰ to include municipal landfills is appropriate, and is consistent with the broad matters for consideration set out in paragraph 27, in particular serving a benefit to the wider community's need. The amended wording is consistent with the concept of municipal landfills, and as indicated in Mr Barr's evidence, does not unnecessarily capture other commercial activities and operations.³¹

3.3.2. SEDI

33. I consider the addition of SEDI to the definition of RSI to be a sensible addition. In particular, I have considered the evidence of Ms Justice,³² Mr Zweis,³³ and Ms Dowd³⁴ which outlines some of the practical challenges to the network in light of growth and increased demand for electricity. I have also considered the evidence of Ms Wharfe, who opposes the inclusion of SEDI from the definition of regionally significant infrastructure, in favour of bespoke provisions for SEDI which provide an easier consenting pathway.

³⁰ Craig Barr for QLDC, para [3.13]

³¹ Ibid at para [3.11]

³² Megan Justice for Aurora, Network Waitaki, PowerNet, para [7.5]-[7.15]

³³ Mark Zwies for PowerNet, para [10.7]-[11.3]

³⁴ Joanne Dowd for Aurora, para [11.1]-[11.14]

34. Having reviewed Ms Wharfe’s evidence, and the legal submissions of Horticulture NZ,³⁵ it appears that one of the key issues is the need for clear expression regarding reverse sensitivity provisions for RSI, to ensure that they are not too limiting on members of Horticulture NZ. I address this matter later in my evidence. However, I consider that due to the technical nature of constraints on SEDI, including its need to locate in sensitive environments that warrants a somewhat more flexible approach, I am satisfied that it should be included in RSI.

3.3.3. Established community-scale stockwater and irrigation infrastructure

35. Ms Soal for Waitaki Irrigators presented evidence³⁶ on the inclusion of established community-scale stockwater and irrigation infrastructure, noting that in the Waitaki District this is also used to supply Oamaru with drinking water, although it is primarily for irrigation purposes. She also noted the inclusion of this class of infrastructure as being regionally significant infrastructure in the adjacent Canterbury Regional Policy Statement.

36. I was involved in the development of the Canterbury RPS, and there remains a distinction with other activities in that class of infrastructure for Canterbury RPS by the inclusion of the word “established”. That is, the infrastructure is RSI only if it is existing, and new irrigation and stockwater infrastructure would not be classified as RSI. I consider that fits comfortably with the planning framework that has been developed for Otago, which enables operation and maintenance of RSI under EIT-INF-P11, but that new irrigation and stockwater infrastructure would not benefit from the more flexible approach for RSI under EIT-INF-P13.

37. Given the cross-boundary issues as the key determining factor, I consider that it is appropriate to include established community-scale stockwater and irrigation infrastructure as RSI.

3.3.4. Ski area infrastructure

38. Mr Farrell,³⁷ Mr Anderson,³⁸ and Mr Norris³⁹ gave evidence, supported by legal submissions from Ms Baker-Galloway,⁴⁰ regarding the inclusion of ski area infrastructure in the definition of RSI. In particular, it was noted that ski area infrastructure had been introduced into the definition of ‘specified infrastructure’ in the amendments to the NPSFM in February 2023, and also noted was the significant contribution to the regional economy from tourism generated by the skifields.

39. I consider that there are a number of factors that require careful consideration in relation to ski areas, which warrants their inclusion as RSI, although this matter is finely balanced. While the application of ‘specified infrastructure’ in the NPSFM is relatively limited (it

³⁵ Legal submissions for Horticulture NZ, para [15]-[17]

³⁶ Elizabeth Soal for Waitaki Irrigators, para [28]-[47]

³⁷ Ben Farrell for Fish and Game, Wayfare, Trojan Holdings, para [51]-[55]

³⁸ Paul Anderson for Trojan Holdings, Wayfare, para [4]-[14]

³⁹ Paul Norris Wayfare, para [63]-[74]

⁴⁰ <https://www.orc.govt.nz/media/14008/real-nz-trojan-wayfare-legal-submissions.pdf>

relates to effects on natural inland wetlands only), there are other factors that qualify the consideration of ski area infrastructure. In particular, the benefit to the region as outlined in Mr Norris' evidence, the fact that ski areas have a functional and operational need to locate in sensitive environments, and in addition to this, that given climate change considerations, there is a likely need to extend existing skifield infrastructure or develop new skifields, in order to utilise snow coverage at higher altitudes, or develop snow-making facilities. While a definition of ski area infrastructure was put forward by the submitters, I consider that the more constrained definition as outlined in the NPSFM is more appropriate, and targets the 'hard infrastructure' aspects of the skifields. I note that the definition as recommended does not include the skifield itself, or commercial activities associated with it.

40. As such, I consider that it is appropriate to include ski area infrastructure as RSI, along with an additional definition as set out in the NPSFM.

3.3.5. Public transport

41. Ms McIntyre for Kāi Tahu ki Otago presented evidence regarding the way that public transport facilities are referenced in the RSI definition.⁴¹ Ms McIntyre recommended that a portion of the definition be deleted, and that "rail lines" also be inserted into the definition.

42. While I agree with Ms McIntyre's deletions in relation to public transport facilities, I do not agree to the insertion of "rail lines" as she has recommended. That is because the rail network is identified as NSI, and as a result, is also automatically identified as RSI.

3.3.6. Airports

43. Mr Bonis for CIAL provided evidence regarding amending the provision for airports and aerodromes as part of the definition of RSI,⁴² supported by legal submissions from Ms Appleyard. As I outlined in my discussion with the hearing panel, the amendments as proposed could potentially capture all parts of what are commonly termed airports, which might include ancillary commercial activities associated with the airport. For example, a range of commercial activities occur within the designated airport area at Christchurch, and include supermarkets, retailers, restaurants, hotels, and even a Bunnings Warehouse. While these activities may be examples of activities that may appear at airports and within a designation, I do not consider them, of themselves, to be infrastructure activities.

44. Airports are defined under the RMA and are relatively limited. There is no definition of aerodrome under the RMA. In addition, I note that the definition of NSI under the NPSUD includes any airport, but not its ancillary commercial activities. The implication of including the change sought by Mr Bonis would be that any commercial activity located within an airport designation would benefit from the more flexible approach prescribed

⁴¹ Sandra McIntyre for Kāi Tahu ki Otago, para [122]

⁴² Matt Bonis for CIAL, para [20]-[60]

for RSI in Policy EIT-INF-P13. In my view, that is not appropriate, and any commercial activities should be subject to the same tests under the pORPS (for example, landscape controls under the NFL chapter) that would be prescribed for an activity sitting outside of any designation. I acknowledge that further legal submissions have been filed by Ms Appleyard⁴³ in relation to an appeal under the Public Works Act,⁴⁴ however from a planning point of view, that case was not a case under the RMA for the purpose of defining what constitutes regionally significant infrastructure.

45. Sustainable Tarras also filed legal submissions, addressing the exclusion of commercial activities.⁴⁵ I consider the legal submissions summarise my concerns expressed at the hearing.
46. Notwithstanding this, I do support the drafting proposed by Ms Appleyard, with amendment to exclude ancillary commercial activities and to remove reference to aerodromes (which are not a defined term in the RMA or in the pORPS). This is consistent with the approach taken for other classes of infrastructure (including ports, which exclude commercial activities), and the approach for infrastructure in the NPSUD and NSI definition.

3.4. Final recommendation

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

Regionally significant infrastructure

- (1) roads classified as being of regional importance in accordance with the ~~One Network Road Classification~~ One Network Framework,⁴⁶
- (2) electricity sub-transmission infrastructure,
- (2A) significant electricity distribution infrastructure,⁴⁷
- (3) renewable electricity generation facilities that connect with the local distribution network but not including renewable electricity generation facilities designed and operated principally for supplying a single premise or facility,
- (4) telecommunication and radiocommunication ~~facilities,~~ networks,⁴⁸
- (5) ~~facilities for public transport, including terminals and stations,~~⁴⁹

⁴³ <https://www.orc.govt.nz/media/14155/cial-supplementary-submissions-eit-hearing.pdf>

⁴⁴ McElroy v Auckland International Airport [2009] NZCA 621

⁴⁵ Legal submissions for Sustainable Tarras, para [15]-[23]

⁴⁶ 00139.007 DCC

⁴⁷ 00315.010 Aurora Energy, 00320.001 Network Waitaki, 00511.001 PowerNet

⁴⁸ 00310.002 Chorus, Spark and Vodafone

⁴⁹ 00226.034 Kāi Tahu ki Otago

- (6) the following airports: Dunedin, Queenstown, ~~Wanaka~~ Wānaka,⁵⁰ Alexandra, Balclutha, Cromwell, ~~Ōamaru~~ Ōamaru,⁵¹ ~~Taieri~~, Taiari,⁵² and any other airport (but not its ancillary commercial activities) used for regular air transport services by aeroplanes capable of carrying more than 30 passengers.⁵³
- (7) navigation *infrastructure* associated with airports and commercial ports which are nationally or regionally significant,
- (8) defence facilities for defence purposes in accordance with the Defence Act 1990,⁵⁴
- (8A) established community-scale irrigation and stockwater infrastructure,⁵⁵
- (9) community drinking water abstraction, supply treatment and distribution *infrastructure* that provides no fewer than 25 households with drinking water for not less than 90 days each calendar year, and community water supply abstraction, treatment and distribution *infrastructure* (excluding delivery systems or infrastructure primarily deployed for the delivery of water for irrigation of land or rural agricultural drinking-water supplies)
- (10) community stormwater *infrastructure*,
- (11) *wastewater* and sewage collection, treatment and disposal *infrastructure* serving no fewer than 25 households, ~~and~~
- (11A) oil terminals, bulk fuel storage and supply infrastructure, and ancillary pipelines at Port Chalmers and Dunedin,⁵⁶
- (12) Otago Regional Council's hazard mitigation works including flood protection *infrastructure* and drainage schemes;
- (12A) landfills and associated solid waste sorting and transfer facilities which are designated by, or are owned or operated by a local authority,⁵⁷
- (12B) ski area infrastructure; and⁵⁸
- (13) any infrastructure identified as nationally significant infrastructure.⁵⁹

⁵⁰ 00226.024 Kāi Tahu ki Otago

⁵¹ 00226.024 Kāi Tahu ki Otago

⁵² 00226.024 Kāi Tahu ki Otago

⁵³ 00307.001 CIAL

⁵⁴ 00230.011 Forest and Bird

⁵⁵ 00213.002 Waitaki Irrigators

⁵⁶ 00510.009 The Fuel Companies

⁵⁷ 00138.106 QLDC

⁵⁸ 00206.015 Trojan and 00411.022 Wayfare

⁵⁹ 00311.003 Trustpower, 00301.007 Port Otago

Ski area
infrastructure⁶⁰

has the same meaning as in the clause 3.21(1) of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)

infrastructure necessary for the operation of a ski area and includes: transport mechanisms (such as aerial and surface lifts, roads, and tracks); facilities for the loading or unloading of passengers or goods; facilities or systems for water, sewerage, electricity, and gas; communications networks; and snowmaking and snow safety systems

4. Whether to provide for bespoke effects management for REG, the National Grid, or electricity distribution

4.1. Introduction

48. The key provision that currently manages the effects of all RSI and NSI, including REG and the National Grid, as well as other infrastructure, is EIT-INF-P13. The bespoke effects management regimes proposed for REG, the National Grid, and distribution companies seek alternative effects management to this policy.

4.2. Submissions and evidence

49. My supplementary s42A report recommended introducing new provisions for electricity distribution networks, including SEDI. As noted above, the distribution network providers seek that SEDI is included as RSI. In addition to this, Ms Justice for Aurora, Network Waitaki, and PowerNet supports provision for an alternative effects management hierarchy for the National Grid and distribution networks to that set out in EIT-INF-P13.⁶¹ These matters are also addressed in the rebuttal evidence of Mr Barr for QLDC, who supports the framework under EIT-INF-P13, subject to the reference to areas of high recreational or amenity value being amended to highly valued natural features and landscapes.⁶² While Transpower initially sought a separate carve-out provision for the National Grid, Ms McLeod has set out in her evidence her preference for amendment of EIT-INF-P13 and P13A.⁶³

50. In a similar manner, the Renewable Electricity Generators seek substantial changes to the way that REG is provided for in the chapter, removing this from the application of EIT-INF-P13 and applying bespoke provisions in the Energy chapter that are set out in

⁶⁰ 00206.015 Trojan and 00411.022 Wayfare

⁶¹ Megan Justice for Aurora, Network Waitaki and PowerNet, para [13.22]-[13.23] and Appendix C

⁶² Rebuttal evidence of Craig Barr for QLDC, para [2.3]-[2.13]

⁶³ Ainsley McLeod for Transpower, para [8.31]-[8.45] and Attachment A

evidence.⁶⁴ Other submitters have provided further submissions on the proposal put forward, with witnesses opposing the exclusions.⁶⁵

51. One of the key aspects highlighted by witnesses is that the generators' proposed EIT-EN-P5 limits the consideration of areas to avoid only to those that are scheduled in plans. This is particularly important in terms of indigenous biodiversity, where knowledge of significant natural areas is uncertain, changes over time, or is unknown because the area has not been studied, but the area exists. This is recognised in ECO-P3(3) which provides for a precautionary approach where SNAs have not been identified or mapped. It is my opinion that one of the key issues is ensuring that the final drafting of provisions appropriately recognises and provides for those matters in s6 (whether they have been formally identified and scheduled in plans or not), while at the same time ensuring that the provisions give effect to the relevant national policy statements.

4.3. Analysis

52. In my view, the release of the proposed NPSET and NPSREG, (although is not required to be given effect to), supports the approach taken in EIT-INF-P13. In particular, the options proposed for those NPSs provide for avoidance of the activity if residual adverse effects are significant, after the effects management hierarchy has been applied. One of the key differences between the proposed NPSET⁶⁶ and current NPSET, is that the proposed NPSET does not address the wider range of environments that can be affected by electricity transmission, such as areas of high recreational value, and it applies a different test for areas that do not have significant environmental values.⁶⁷ These are mirrored in the proposed NPSREG.⁶⁸ The key aspect is that if significant residual adverse effects remain on significant environmental values, following the application of the effects management hierarchy, the activity is to be avoided.
53. As such, the approach in the proposed NPSET and NPSREG is inconsistent with the approach sought by the Generators, Transpower and Distribution Companies. All seek that effects are managed following an effects management hierarchy, but that the provisions are not "bookended" with an "avoid the activity" approach if significant residual adverse effects remain after application of the effects management hierarchy.⁶⁹
54. Evidence was provided at the hearing of the need to provide for significant REG capacity to support New Zealand's climate change targets. That is not disputed. However, no

⁶⁴ Claire Hunter for Contact Energy, para [11.1]-[11.29] and Appendix 2; Stephanie Styles for Manawa, para [10.9]-[10.24] and Appendix 4; Susan Ruston for Meridian, para [36]-[52], [89]-[114] and Annexure 1

⁶⁵ Rebuttal evidence of Craig Barr for QLDC, para [2.14]-[2.19]; Rebuttal evidence of Sandra McIntyre for Kāi Tahu ki Otago, para [33]-[38]; Rebuttal evidence of Ben Farrell for Fish and Game, Wayfare, Trojan Holdings, para [55]-[60]

⁶⁶ At clause 3.6(1)

⁶⁷ At Clause 3.7

⁶⁸ At Clause 3.6 and 3.7 respectively

⁶⁹ Susan Ruston for Meridian, Annexure 1 Proposed Policy EIT-EN-P5; Stephanie Styles for Manawa, Appendix 4 Proposed Policy EIT-EN-P5; Claire Hunter for Contact Energy, Appendix 2 at Proposed Policy EIT-EN-P5; Megan Justice for Aurora, PowerNet, Network Waitaki, Appendix C Proposed Policy EIT-EN-PXX; Ainsley McLeod for Transpower, Attachment A Proposed Policy EIT-INF-P13

information was provided regarding consented, but unbuilt REG capacity in New Zealand. In my view, providing a clear framework about areas to be avoided for construction of REG, as well as transmission and distribution networks, will ensure that areas without significant environmental values or constraints are developed first.

55. I retain the position that REG, electricity transmission, and electricity distribution are not exceptions to the general approach to RSI and NSI, and therefore no separate effects management regime is warranted. The proposed approach, in my view, properly gives effect to the current NPSREG and NPSET (as set out in the s42A report), and is not inconsistent with the approach taken in the proposed NPSREG and proposed NPSET. In particular, I note there is no direction in the current NPSs that specific provisions in terms of effects management need to be provided as standalone provisions. What remains important, in my view, is that the substance of the NPSs is incorporated into the ORPS as a whole.

4.4. Final recommendation

56. I do not recommend any further amendments.

5. Structure of EIT-INF-P13 and the application of the effects management regime

5.1. Introduction

57. Proposed policy EIT-INF-P13 is the key policy that relates to the development of new infrastructure, whether it is proposed to be at a local level, or nationally or regionally significant, and regardless of the type of infrastructure proposed.
58. EIT-INF-P13 was discussed in section 11.6.11 of the s42A report, with the analysis in paragraphs [718] to [742]. This policy was also discussed in my brief of supplementary evidence (11 October 2022).
59. The recommended version of this provision currently reads:⁷⁰

EIT-INF-P13 – Locating and managing effects of infrastructure, *nationally significant infrastructure and regionally significant infrastructure*⁷¹ outside the coastal environment⁷²

⁷⁰ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁷¹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

⁷² Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.107 DOC, 00301.042 Port Otago, 00226.241 Kāi Tahu ki Otago, 00223.108 Ngāi Tahu ki Murihiku, 00301.040 Port Otago

When providing for new *infrastructure, nationally significant infrastructure and regionally significant infrastructure*⁷³ outside the coastal environment

- (1) avoid, as the first priority, locating *infrastructure* in all of the following:
 - (a) *significant natural areas*,
 - (b) outstanding natural features and landscapes,
 - (c) *natural wetlands*,
 - (d) *outstanding water bodies*,
 - (e) areas of high or outstanding natural character,
 - (f) areas or places of *significant special*⁷⁴ or outstanding *historic heritage*,
 - (g)⁷⁵ ~~wāhi tūpuna wāhi tapu, wāhi taoka,~~⁷⁶ and areas with protected customary rights, and
 - (h) areas of high recreational and high amenity value, and
- (2) if it is not *possible demonstrably practicable*⁷⁷ to avoid locating in the areas listed in (1) above because of the *functional needs*⁷⁸ or *operational needs* of the *infrastructure, nationally significant infrastructure and regionally significant infrastructure*⁷⁹ manage adverse effects as follows:
 - (a) for *nationally significant infrastructure*⁸⁰ or *regionally significant infrastructure*:
 - (i) in *significant natural areas*, in accordance with ECO-P4,
 - (ii) in *natural wetlands*, in accordance with the relevant provisions in the NESF,
 - (iii) in *outstanding water bodies*, in accordance with LF-FW-P12⁸¹,
 - (iiia) in relation to wāhi tūpuna, in accordance with HCV-WT-P2,⁸²
 - (iv) in other areas listed in EIT-INF-P13(1) above, minimise the adverse effects of the infrastructure on the values that contribute to the area's importance,

⁷³ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

⁷⁴ Clause 16(2), Schedule 1, RMA.

⁷⁵ Clause 16(2), Schedule 1, RMA

⁷⁶ 00226.241 Kāi Tahu ki Otago

⁷⁷ 00321.057 New Zealand Infrastructure Commission, 00313.020 Queenstown Airport

⁷⁸ Clause 16(2), Schedule 1, RMA

⁷⁹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

⁸⁰ Clause 16(2), Schedule 1, RMA

⁸¹ Clause 16(2), Schedule 1, RMA

⁸² 00226.241 Kāi Tahu ki Otago

- (b) for all *infrastructure* that is not *nationally significant infrastructure*⁸³ or *regionally significant infrastructure*,⁸⁴ avoid adverse effects on the values that contribute to the area's outstanding nature or significance.

5.2. Submissions and evidence

60. Nearly all submitters seek amendment to, or exclusion from, this policy, including through the provision of bespoke provisions for effects management for particular types of infrastructure.⁸⁵ Many of the infrastructure providers adduced evidence that a more flexible approach was necessary because of the regional and national importance of providing for their activity, including the need to achieve climate targets.

5.3. Analysis

61. A key issue to consider in relation to EIT-INF-P13 is that, if making any changes, decision-makers are still required to recognise and provide for those matters that are set out in s6 of the RMA, while at the same time recognising that some infrastructure is of regional or national importance. This includes ensuring that in some circumstances, areas are protected from inappropriate subdivision, use and development;⁸⁶ and that other areas (such as significant indigenous vegetation and significant habitats of indigenous fauna, protected customary rights, or the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga) are protected or provided for in their own right. In essence, I consider that deferral to the relevant policies provides a tailored effects management regime depending on the resource.
62. As outlined above, no changes are recommended to provide bespoke provisions for certain classes of infrastructure. I consider that it is appropriate that all RSI and NSI are treated in the same manner in terms of their effects, notwithstanding that there is a NPS for REG and electricity transmission.
63. One of the matters raised by submitters and addressed at the hearing was the inclusion of areas of “high recreational value” alongside high amenity value in EIT-INF-P13(1)(h).⁸⁷ This provision stems from Policy 7 of the NPSET, which seeks that planning and development of the transmission system should avoid adverse effects on areas of high recreational value or amenity. While Manawa Energy sought that reference to both high recreational value and amenity be deleted in relation to EIT-INF-P13, I consider there is merit in deleting the reference to areas of high recreational value for two reasons. Firstly, this is not a class of landscape management that is, as far as I am aware, addressed in any district plans in the region (nor am I aware of any other areas in New Zealand). Secondly,

⁸³ Clause 16(2), Schedule 1, RMA

⁸⁴ Clause 16(2), Schedule 1, RMA

⁸⁵ For example: Claire Hunter for Contact Energy, para [11.1]-[11.29]; Megan Justice for Aurora, Network Waitaki, PowerNet, para [13.22]-[13.23]; Stephanie Styles for Manawa Energy, para [10.4]-[10.14]; Ainsley McLeod (Transpower), para [8.31]-[8.39]; Sandra McIntyre for Kāi Tahu ki Otago, para [124]-[125]

⁸⁶ S6(a), (b), (f)

⁸⁷ Stephanie Styles for Manawa Energy, Appendix 2 page [49]

the definition of amenity values⁸⁸ includes areas that contribute people’s appreciation of its recreational attributes. As such, I consider that areas of high recreational value, if they were to be identified, could be identified as amenity landscapes, which fall under s7(c) landscapes. I therefore consider the reference to be redundant and it can be removed, while still giving effect to the NPSET. Mr Barr for QLDC recommended that the terminology “areas with high amenity value” be replaced with “highly valued natural features and landscapes”⁸⁹, given that this is the terminology used in the proposed ORPS, and will still give effect to the relevant NPSs. I concur with Mr Barr’s assessment as set out in his evidence.

64. For completeness, I note that Ms Fenemor has recommended an amendment to clause (1)(f) and I agree with her reasoning.

5.4. Final recommendation

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

EIT-INF-P13 – Locating and managing effects of infrastructure, nationally significant infrastructure and regionally significant infrastructure⁹⁰ outside the coastal environment⁹¹

When providing for new *infrastructure, nationally significant infrastructure and regionally significant infrastructure⁹²* outside the coastal environment

- (1) avoid, as the first priority, locating *infrastructure* in all of the following:
- (a) *significant natural areas,*
 - (b) *outstanding natural features and landscapes,*
 - (c) *natural wetlands,*
 - (d) *outstanding water bodies,*
 - (e) *areas of high or outstanding natural character,*
 - (f) *areas or places of significant or outstanding⁹³ historic heritage,*
 - (g) ⁹⁴ *wāhi tūpuna⁹⁵* and areas with protected customary rights, and

⁸⁸ s2 RMA

⁸⁹ Craig Barr (QLDC) at [5.24]-[5.33]

⁹⁰ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

⁹¹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.107 DOC, 00301.042 Port Otago, 00226.241 Kāi Tahu ki Otago, 00223.108 Ngāi Tahu ki Murihiku, 00301.040 Port Otago

⁹² Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

⁹³ Clause 16(2), Schedule 1, RMA

⁹⁴ Clause 16(2), Schedule 1, RMA

⁹⁵ 00226.241 Kāi Tahu ki Otago

- (h) ~~areas of high recreational and~~⁹⁶ ~~high amenity value~~ highly valued natural features and landscapes⁹⁷, and
- (2) if it is not possible demonstrably practicable⁹⁸ to avoid locating in the areas listed in (1) above because of the functional needs⁹⁹ or operational needs of the infrastructure, nationally significant infrastructure and regionally significant infrastructure¹⁰⁰ manage adverse effects as follows:
- (a) for nationally significant infrastructure¹⁰¹ or regionally significant infrastructure:
- (i) in significant natural areas, in accordance with ECO-P4,
 - (ii) in natural wetlands, in accordance with the relevant provisions in the NESF,
 - (iii) in outstanding water bodies, in accordance with ~~LF-P12~~ LF-FW-P9 and LF-FW-P13(1) and (2),¹⁰²
 - (iiia) in relation to wāhi tūpuna, in accordance with HCV-WT-P2,¹⁰³
 - (iv) in other areas listed in EIT-INF-P13(1) above, minimise the adverse effects of the infrastructure on the values that contribute to the area's importance, and
- (b) for all infrastructure that is not nationally significant infrastructure¹⁰⁴ or regionally significant infrastructure,¹⁰⁵ avoid adverse effects on the values that contribute to the area's outstanding nature or significance.

6. Application of EIT-INF-P5 relating to non-renewable energy generation activities

6.1. Introduction

66. EIT-EN-P5 was discussed in section 11.5.12 of the s42A report, with the analysis in paragraphs [250] to [257].
67. The recommended version of this provision currently reads:¹⁰⁶

⁹⁶ 00311.047 Trustpower

⁹⁷ 00138.119 QLDC

⁹⁸ 00321.057 New Zealand Infrastructure Commission, 00313.020 Queenstown Airport

⁹⁹ Clause 16(2), Schedule 1, RMA

¹⁰⁰ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00313.020 Queenstown Airport

¹⁰¹ Clause 16(2), Schedule 1, RMA

¹⁰² Clause 16(2), Schedule 1, RMA

¹⁰³ 00226.241 Kāi Tahu ki Otago

¹⁰⁴ Clause 16(2), Schedule 1, RMA

¹⁰⁵ Clause 16(2), Schedule 1, RMA

¹⁰⁶ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

EIT-EN-P5 – Non-renewable energy generation

Avoid the development of non-renewable energy generation activities in Otago and facilitate the replacement of non-renewable energy sources, including the use of fossil fuels, in energy generation.

6.2. Submissions and evidence

68. A number of submitters raise concerns regarding the approach in EIT-EN-P5 to avoiding development of non-renewable energy generation activities, generally with the concern that the policy captures small-scale generators that might be required for lifeline services, or where alternatives are not available for industrial processes. These include the distribution companies, who give examples of diesel generators in substations that can be switched on if power is cut, and evidence from Ravensdown¹⁰⁷ and Fonterra¹⁰⁸ who seek to replace “avoid” with “restrict” for similar reasons. Mr Barr for QLDC notes that while QLDC’s submission opposed the policy, he considers the wording appropriate. Mr Taylor for DCC considers that more flexibility is required where power resilience is required for a range of activities.¹⁰⁹ Mr Farrell for Wayfare and Trojan seeks that the ‘avoid’ approach should be subject to a test of practicality.

6.3. Analysis

69. Having considered the wording of the policy, I acknowledge that the wording is very tight and directive, and given the examples provided by the submitters in evidence and at the hearing, that there are likely to be necessary exceptions. I do not consider the alternatives provided by Ravensdown, DCC or Wayfare and Trojan to be sufficiently tight, however, I consider that there is an alternative which provides some leeway where no other options exist, by including the words “unless no other renewable energy options exist”. This still provides a pathway for new non-renewable energy generation, but the circumstances are very restricted.

6.4. Final recommendation

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

EIT-EN-P5 – Non-renewable energy generation

Avoid the development of non-renewable energy generation activities in Otago, unless no other renewable energy alternatives exist,¹¹⁰ and facilitate the replacement of non-renewable energy sources, including the use of fossil fuels, in energy generation.

¹⁰⁷ Carmen Taylor for Ravensdown, para [7.1]-[7.11]

¹⁰⁸ Susannah Tait for Fonterra, para [11.1]-[11.3]

¹⁰⁹ James Taylor for DCC, para [59]-[64]

¹¹⁰ 00121.072 Ravensdown, 00239.118 Federated Farmers, 00411.061 Wayfare

7. Reverse sensitivity effects on infrastructure

7.1. Introduction

71. EIT-INF-P15 was discussed in section 11.6.13 of the s42A report, with the analysis in paragraphs [776] to [779]. I recommended changes to Policy EIT-INF-P15 in response to a submission from Queenstown Airport.
72. The recommended version of this provision currently reads:¹¹¹

EIT-INF-P15 – Protecting *nationally significant infrastructure*¹¹² ~~or~~ and¹¹³ *regionally significant infrastructure*

~~Seek to avoid the establishment of activities that may result in reverse sensitivity effects on nationally or regionally significant infrastructure, and/or where they may compromise the functional or operational needs of nationally or regionally significant infrastructure.~~

Protect the efficient and effective operation of *nationally significant infrastructure* and *regionally significant infrastructure* by:

- (1) avoiding activities that may give rise to an adverse effect on the *functional needs* or *operational needs* of *nationally significant infrastructure* or *regionally significant infrastructure*,
- (2) avoiding activities that may result in reverse sensitivity effects on *nationally significant infrastructure* or *regionally significant infrastructure*, and
- (3) avoiding activities and development that foreclose an opportunity to adapt, upgrade or develop *nationally significant infrastructure* or *regionally significant infrastructure* to meet future demand.¹¹⁴

7.2. Submissions and evidence

73. I recommended changes to Policy EIT-INF-P15 in response to a submission from Queenstown Airport. Ms Wharfe for Horticulture NZ discusses the matter of reverse sensitivity, and how it is provided for in the pORPS,¹¹⁵ in particular in relation to EIT-INF-P15. She considers that the wording is tighter than that provided for under the NPSET, and offers alternative wording. She also suggests that the introductory wording to the chapeau read “Recognising and providing for the efficient...” rather than “Protecting the efficient...”.
74. Ms McIntyre raises concerns regarding reverse sensitivity and the amendments proposed by Queenstown Airport, in particular the avoidance of activities that could impact the

¹¹¹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

¹¹² Clause 16(2), Schedule 1, RMA

¹¹³ Clause 16(2), Schedule 1, RMA

¹¹⁴ 00313.022 Queenstown Airport

¹¹⁵ Lynette Wharfe for Horticulture NZ, para [220]-[235]

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adaptation, upgrade or development of new RSI and NSI, which she considers could create an uncertain ‘sterilisation’ of areas where there may be the possibility of infrastructure being developed in the future.¹¹⁶

75. QLDC seeks to replace “protecting” with an alternative or to rename the policy so that it refers to reverse sensitivity. In addition, Mr Barr is concerned that the addition of clause (3) in the policy could stifle residential expansion promulgated by a local authority to give effect to the NPSUD, and that the level of protection is disproportionate given that the majority of NSI and RSI operators are requiring authorities and can designate for future development.¹¹⁷
76. In addition to EIT-INF-P15, EIT-TRAN-P21 also addresses reverse sensitivity effects in relation to the transport system. DCC seeks amendments to the reverse sensitivity provisions in EIT-TRAN-P21, by seeking to remove the use of avoid, and replacing it with “mitigate” or “minimise as far as practicable”. No evidence was provided to support this change.

7.3. Analysis

77. Policy EIT-INF-P15 is about more than just reverse sensitivity effects, it also addresses direct effects (for example, earthworks near a transmission tower). As such, I consider that the title is appropriate. However, I do consider that the points raised in relation to the inflexible nature of the policy mean that it is too directive.
78. In relation to proposed clause (3), I note that Kāi Tahu ki Otago does not appear to be a submitter or further submitter on this provision, however there is scope under other further submissions (for example Horticulture NZ)¹¹⁸ to amend the provision. I consider the amendments to clause (1) and (2) to incorporate the concept of “avoiding activities to the extent reasonably possible” gives effect to the current NPSET. In addition to this, it also aligns with Policy 7 of the proposed NPSREG and proposed NPSET which both seek that reverse sensitivity effects on REG and electricity transmission are avoided or mitigated where practicable. I do not agree with the change sought by Ms Wharfe warrants changes to the introduction of the chapeau from “protect” to “recognising and providing” for the efficient and effective operation of NSI and RSI. It is my opinion, that when read as a whole, the three clauses seek to protect the efficient and effective operation of NSI and RSI, and that therefore existing wording is correct.
79. I do not agree with Mr Barr that protecting existing infrastructure and possible future extensions to it would be inconsistent with the NPSUD. There are many examples of regionally significant infrastructure where the investment made in an area (for example, a wastewater treatment plant, or an airport) means that it is impractical to move that asset if future development cannot occur due to reverse sensitivity issues. I do consider that applying EIT-INF-P15 to the development of new infrastructure (which is

¹¹⁶ Sandra McIntyre for Kāi Tahu ki Otago, para [127]

¹¹⁷ Craig Barr for QLDC), para [5.41]-[5.44]

¹¹⁸ FS00236.100 Horticulture NZ

undetermined) is overly protective, and as such, I consider that the wording should be amended so that it applies to adaptation, upgrades, or extensions to existing infrastructure.

80. In relation to EIT-TRAN-P21, the transport system is wider than just NSI and RSI, so I consider it is appropriate to include separate provision in EIT-TRAN-P21 for all of the transport system as sought by DCC. Although no evidence was provided on the changes to the policy sought by DCC, I do consider that if amendments are made to EIT-INF-P15, the approach for reverse sensitivity should be consistent in EIT-TRAN-P21, and I consider there is scope to make those changes under DCC's submission.
81. For completeness, in relation to reverse sensitivity, I note that the drafting of EIT-EN-P7 is specific to REG activities only, and gives effect to the NPSREG. No changes are recommended to that policy.

7.4. Final recommendation

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

EIT-INF-P15 – Protecting nationally significant infrastructure¹¹⁹ ~~or~~ and¹²⁰ regionally significant infrastructure

~~Seek to avoid the establishment of activities that may result in reverse sensitivity effects on nationally or regionally significant infrastructure, and/or where they may compromise the functional or operational needs of nationally or regionally significant infrastructure.~~

Protect the efficient and effective operation of nationally significant infrastructure and regionally significant infrastructure by:

- (1) avoiding activities, to the extent reasonably possible,¹²¹ that may give rise to an adverse effect on the functional needs or operational needs of nationally significant infrastructure or regionally significant infrastructure,
- (2) avoiding activities, to the extent reasonably possible,¹²² that may result in reverse sensitivity effects on nationally significant infrastructure or regionally significant infrastructure, and
- (3) avoiding activities and development that foreclose an opportunity to adapt, upgrade or extend¹²³ existing nationally significant infrastructure or regionally significant infrastructure to meet future demand.¹²⁴

EIT-TRAN-P21 – Operation of the transport system

¹¹⁹ Clause 16(2), Schedule 1, RMA

¹²⁰ Clause 16(2), Schedule 1, RMA

¹²¹ 00236.079 Horticulture NZ

¹²² 00236.079 Horticulture NZ

¹²³ FS00236.100 Horticulture NZ

¹²⁴ 00313.022 Queenstown Airport

The efficient and effective operation of the transport system is maintained by:

- (1) avoiding or mitigating¹²⁵ adverse *effects* of activities on the functioning of the transport system,
- (2) avoiding the impacts of incompatible activities, to the extent reasonably possible¹²⁶, including those that may result in *reverse sensitivity effects*,
- (3) avoiding development that forecloses an opportunity to adapt, upgrade or develop the transport system to meet future transport demand,
- (4) promoting the development and use of transport hubs that enable an efficient transfer of goods for transport and distribution across different freight and people transport modes,
- (5) promoting methods that provide more efficient use of, or reduce reliance on, private motor vehicles, including ridesharing, park and ride facilities, bus hubs, bicycle facilities,¹²⁷ demand management and alternative transport modes, and
- (6) encouraging a shift to using renewable energy sources.

8. Consideration of provisions related to commercial port activities

8.1. Submissions and evidence

83. Mr Brass for DOC outlines concern regarding the reference to limits in EIT-INF-O10 and Policy EIT-TRAN-P23.¹²⁸ In particular, EIT-TRAN-P23 references the CE chapter in relation to CE-P3 to CE-P12 as if all of those policies are limits. He recommends that the reference to limits be deleted, and replaced with development being consistent with the provisions in CE-P3 to CE-P12.
84. Ms O’Callahan for Port Otago also supports removal of the reference to “limits” in EIT-TRAN-O10 and EIT-TRAN-P23.¹²⁹ She provides two drafting options depending on the outcome of the Supreme Court decision regarding Port Otago’s appeal on the ORPS 2019, which is yet to be decided at the time of the preparation of my evidence. Ms O’Callahan proposes a new addition to EIT-TRAN-P23 that seeks to permit [allow] activities that are contrary to other policies in the pORPS where they are essential for the efficient and safe operation of the ports, or essential for connections to other transport modes, or have a minor or temporary adverse effect on protected values. Her preference is also that reference to the CE chapter be removed from EIT-TRAN-P23.

¹²⁵ 00139.183 DCC

¹²⁶ 00139.183 DCC

¹²⁷ 00139.183 DCC

¹²⁸ Murray Brass for DOC, para [204]-[207]

¹²⁹ Mary O’Callaghan for Port Otago, para [52]-[62]

85. Ms Taylor for Ravensdown identifies a consequential amendment involving redundant wording in EIT-TRAN-M8 which resulted from the changes outlined in my supplementary evidence.

8.2. Analysis

86. Having considered the evidence of Mr Brass and Ms O’Callahan, I agree with Mr Brass that the references in EIT-TRAN-P23 are not all strictly limits. To this extent, I agree with the changes sought by Mr Brass, however I consider that the wording should be expressed as “in accordance with” rather than “where this is consistent with”. This wording will ensure that the policies are strictly adhered to, with the exception of the addition that I have set out below in relation to Ms O’Callahan’s evidence.

87. Ms O’Callahan supports deletion of reference to the CE chapter in its entirety. I do not support this change, as it is necessary that the Port operates in accordance with the provisions in the CE chapter.

88. Ms O’Callahan has set out suggested new drafting for inclusion of a new subclause (4). I generally agree with the drafting proposed by Ms Callahan, with the exception that the provision should refer to “allowing” development (rather than “permitting”) as this could result in a direction that directs that activities are permitted under lower order planning documents, rather than requiring a consent process. In addition, I understand the wording in King Salmon to refer to “transitory effects” rather than “temporary effects”. Changes are also required to ensure that clause (c) as proposed is conjunctive to both clause (a) and (b).

89. In relation to the proposed change sought by Ms Taylor, I agree that the consequential change should be made to EIT-TRAN-M8.

8.3. Final recommendation

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

EIT-TRAN-P23 – Commercial port activities

Recognise the national and regional significance of ~~the commercial port activities associated with the ports at Port Chalmers and Dunedin (respectively)~~¹³⁰ by:

- (1) ~~within environmental limits as set out in Policies CE-P3 to CE-P12~~, providing for the efficient and safe operation of ~~these the~~¹³¹ ports and efficient connections with other transport modes where this is in accordance with the provisions in CE-P3 to CE-P12¹³²
- (2) ~~within the environmental limits set out in Policies CE-P3 to CE-P12~~, providing for the development of the ports’ capacity for national and international

¹³⁰ Clause 16(2), Schedule 1, RMA

¹³¹ Clause 16(2), Schedule 1, RMA

¹³² 00137.121 DOC

shipping in and adjacent to existing port activities where this is in accordance with the provisions in CE-P3 to CE-P12,¹³³ ~~and~~

- (3) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes, and
- (3A) only allowing activities that are contrary to other policies in this policy statement where the activities have a minor or transitory adverse effect on protected values and:
 - (a) are essential for the efficient and safe operation of the ports, or
 - (b) are essential for effective connections with other transport modes.¹³⁴

EIT-TRAN-M8 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* to:

- (1) ...
- (6) include policies and methods that provide for *commercial port* activities ~~associated with the operations at Otago Harbour and the ports at Port Chalmers and Dunedin~~¹³⁵ and avoid encroachment of activities which give rise to reverse sensitivity effects.¹³⁶

9. Other changes

9.1. Submissions and evidence

91. Ms Wharfe considers that there is no need to refer to both the National Grid and electricity transmission in the EIT chapter, as the definition in the NPSET is the same for both.¹³⁷ Her preference is that the term electricity transmission is deleted in favour of the term “National Grid”. This is supported in the evidence of Ms McLeod.¹³⁸
92. Mr Freeland seeks recognition of subdivision in EIT-EN-O3 and considers that the term “development” is unclear. He also seeks deletion of the second part of the objective, which relates to minimising the contribution Otago makes to total greenhouse gas emissions.¹³⁹
93. Mr Barr for QLDC seeks amendments to policy EIT-EN-P9 as a result of amendments that were made in response to DCC’s submission.¹⁴⁰ He seeks deletion of clause (1) which requires development of new housing to be durably constructed and energy efficient on

¹³³ 00137.121 DOC

¹³⁴ 00301.044 Port Otago

¹³⁵ Clause 16(2), Schedule 1, RMA

¹³⁶ 00510.047 The Oil Companies

¹³⁷ Lynette Wharfe for Horticulture NZ, para [236]-[248]

¹³⁸ Ainsley McLeod for Transpower, para [6.10]-[6.13]

¹³⁹ Paul Freeland for DCC, para [55]-[58]

¹⁴⁰ Craig Barr for QLDC, para [4.12]-[4.16]

the basis that these matters are addressed under the Building Act. He also seeks redrafting of the policy to a more simple format.

94. Ms McIntyre provided evidence on the need to better recognise climate change in the EIT chapter.¹⁴¹ In particular, she recommended an amendment to EIT-INF-P12 and EIT-INF-P14 to provide that development of infrastructure is resilient to future effects of sea-level rise and climate change.

9.2. Analysis

95. The changes sought by the submitters regarding the National Grid provide clarity of expression and I recommend accepting those amendments.
96. In relation to the changes sought by Mr Freeland for DCC, I agree that subdivision should be included as it is a matter that is addressed in the lower order policies and methods, and provides clarity as to the outcome sought by the objective.
97. I support the deletion of clause (1) of policy EIT-EN-P9 for the reasons set out in Mr Barr's evidence.
98. I agree with Ms McIntyre's amendments to better incorporate climate change matters into EIT-INF-12 and EIT-INF-P14. I consider the changes better implement the outcomes sought by Objective EIT-INF-O4 which seeks that infrastructure is resilient. This is particularly the case where infrastructure is potentially impacted by sea-level rise, which could result in environmental damage if opportunities were not utilised to ensure resilience, as well as social and economic impacts from the loss of infrastructure.

9.3. Final recommendation

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

EIT-INF-O6 – Long-term planning for ~~electricity transmission~~ the National Grid¹⁴² and distribution¹⁴³ infrastructure

Long-term investment in, and planning for, electricity transmission and distribution¹⁴⁴ infrastructure and its integration with *land* use, is sustained.¹⁴⁵

EIT-INF-P12 – Upgrades and development

Provide for upgrades to existing, and development of new¹⁴⁶ infrastructure, nationally or regionally significant infrastructure¹⁴⁷ while ensuring that:

¹⁴¹ Sandra McIntyre (Kāi Tahu) at [128]

¹⁴² 00236.080 Horticulture NZ

¹⁴³ 00315.045 Aurora Energy

¹⁴⁴ 00315.045 Aurora Energy

¹⁴⁵ Moved from EIT-INF – Clause 16(2), Schedule 1, RMA.

¹⁴⁶ 00139.164 DCC

¹⁴⁷ Clause 16(2), Schedule 1, RMA

- (1) ~~infrastructure it~~¹⁴⁸ is designed and located, as far as practicable, to maintain functionality during and after *natural hazard* events,
- (1A) it is resilient to the current and future *effects* of sea level rise and *climate change*,¹⁴⁹
- (2) it is, as far as practicable, co-ordinated with long-term *land* use planning, and
- (3) ~~increases efficiency in~~¹⁵⁰ the its¹⁵¹ delivery, operation or use of the *infrastructure is efficient*.¹⁵²

EIT-INF-P14 – Decision making considerations

When considering proposals to develop or upgrade *infrastructure*:

- (1) require consideration of alternative sites, methods and designs if adverse *effects* are potentially significant or irreversible, ~~and~~
- (1A) require consideration of the current and future *effects* of sea level rise and *climate change*,¹⁵³ and
- (2) utilise the opportunity of substantial upgrades of *infrastructure* to reduce adverse *effects* that result from the existing *infrastructure*, including on *sensitive activities*.

EIT-INF-P16 – Providing for ~~electricity transmission and~~¹⁵⁴ the *National Grid*

Maintain a secure and sustainable electricity supply in Otago by:

- (1A) applying EIT-INF-P13,¹⁵⁵
- (1) providing for development of, and upgrades to, the ~~electricity transmission network~~ *National Grid*¹⁵⁶ and requiring, as far as practicable, its integration with *land* use,
- (2) considering the requirements of and constraints on the *functional needs*¹⁵⁷ or *operational needs* of the ~~electricity transmission network~~ *National Grid*¹⁵⁸,
- (3) providing for the efficient and effective development, operation, maintenance, and upgrading of the *National Grid*,

¹⁴⁸ 00315.048 Aurora Energy

¹⁴⁹ 00226.006 Kāi Tahu ki Otago

¹⁵⁰ 00315.048 Aurora Energy

¹⁵¹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.048 Aurora Energy (re Clause 1 amendment)

¹⁵² 00315.048 Aurora Energy

¹⁵³ 00226.006 Kāi Tahu ki Otago

¹⁵⁴ [00236.080 Horticulture NZ](#)

¹⁵⁵ Clause 16(2), Schedule 1, RMA

¹⁵⁶ [00236.080 Horticulture NZ](#)

¹⁵⁷ Clause 16(2), Schedule 1, RMA

¹⁵⁸ [00236.080 Horticulture NZ](#)

- (4) enabling the reasonable operation, maintenance and minor upgrade requirements of established ~~electricity transmission~~ *National Grid*¹⁵⁹ assets, and
- (5) minimising the adverse *effects* of the ~~electricity transmission network~~ *National Grid*¹⁶⁰ on urban amenity, and avoiding adverse *effects* on town centres, areas of significance to mana whenua such as wāhi tūpuna,¹⁶¹ areas of high amenity or recreational value and existing *sensitive activities*.

EIT-EN-M2 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* to:

- (1) ...
- (3) manage the adverse *effects* of developing or upgrading *renewable electricity generation activities* and ~~electricity transmission~~ *National Grid*¹⁶² infrastructure, including identifying activities that qualify as minor upgrades,¹⁶³ that:

EIT-EN-PR1 – Principal reasons

...

In relation to the *National Grid* and *significant electricity distribution infrastructure*¹⁶⁴ (which are both a subset of infrastructure), specific provision is made which recognises some of the operational and functional constraints for conveying electricity¹⁶⁵, as well as addressing matters that are required to be given effect to by the NPSET.¹⁶⁶

EIT-EN-O3 – Energy use

Subdivision and development¹⁶⁷ is located and designed to facilitate the efficient use of energy and to reduce demand if possible, minimising the contribution that Otago makes to total *greenhouse gas* emissions.

EIT-EN-P9 – Energy conservation and efficiency

¹⁵⁹ [00236.080 Horticulture NZ](#)

¹⁶⁰ [00236.080 Horticulture NZ](#)

¹⁶¹ 00226.243 Kāi Tahu ki Otago

¹⁶² [00236.080 Horticulture NZ](#)

¹⁶³ 00139.164 DCC, 00305.043 Waka Kotahi

¹⁶⁴ Clause 10(2)(b)(i)

¹⁶⁵ Clause 10(2)(b)(i)

¹⁶⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from moving some policies from EIT-INF to EIT-EN.

¹⁶⁷ 00139.144 DCC

Development supports energy conservation and efficiency by ~~is designed, including through roading, lot size, dimensions, layout, and orientation so that energy use is efficient, energy waste is minimised, and solar gain is optimised~~ designing subdivisions to maximise solar access, and locating subdivision development to minimise, as far as practicable, transportation costs, car dependency and *greenhouse gas* emissions.¹⁶⁸

¹⁶⁸ 00139.154 DCC