

Proposed Regional Policy Statement for Otago

Section 41C Report

**[following the hearing of
submitters]**

Introduction

The purpose of this Section 41C Report (following the hearing of submitters) is to assist the Hearing Commissioners in their deliberations by clarifying and providing further information on a range of matters raised by submitters during the hearing process. It does not address all matters raised in writing or by those submitting in person.

This Section 41C Report has been made at the request of the Hearing Commissioners.

Submitters on the Proposed Regional Policy Statement (RPS) were heard in Dunedin, Alexandra, Queenstown and Oamaru, between Monday 9 November 2015 and Thursday 26 November 2015.

This report should be read in conjunction with the following documents:

- Proposed Regional Policy Statement (23 May 2015)
- Summary of Decisions Requested (submissions and further submissions) (30 October 2015)
- Section 32 Evaluation Report: Consideration of alternatives, benefits and costs (23 May 2015)
- Section 42A Report on decisions requested by submitters (30 October 2015)

Abbreviations

Local authority	Regional, city and district councils
NPS	National Policy Statement
NZCPS	New Zealand Coastal Policy Statement 2010
RMA	Resource Management Act 1991
RPS	Regional Policy Statement for Otago

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1. Legal requirements

1.1. Contents of regional policy statements

Some submitters were unclear as to whether the Proposed RPS was compliant with the requirements set out under Section 62 RMA regarding the contents of regional policy statements.

Page 12 of the Proposed RPS illustrates how the required elements relating to issues, objectives, policies and reasons have been placed. Part C: Implementation details local authority roles and responsibilities, methods for giving effect to the Proposed RPS and other information.

There is no legal requirement to lay out a regional policy statement in the order of the matters listed under Section 62.

There is opportunity to clarify where the elements sit, and how they link to each other, to better assist understanding of the Proposed RPS.

1.2. Giving effect to national policy documents

Some submitters asserted that the Proposed RPS does not give effect to higher order planning documents, as required under Section 62(3) RMA.

Compliance with the relevant documents is assessed below.

1.2.1. National Policy Statement for Freshwater Management 2014

The majority of policies in the NPS Freshwater Management specify implementation through regional plans.

Policy C2 specifically requires the RPS to provide for the integrated management of the effects of the use and development of:

- Land on fresh water, including encouraging the co-ordination and sequencing of regional and /or urban growth, land use and development and the provision of infrastructure; and
- Land and fresh water on coastal water.

The Proposed RPS meets this requirement, notably through:

- Objective 2.1 and Policies 2.1.1 – 2.1.3;
- Objective 2.3 and Policies 2.3.1 – 2.3.4;
- Objective 3.1 and Policy 3.1.1;
- Objective 3.4 and Policy 3.4.1;
- Objective 3.5 and Policy 3.5.2;
- Objective 3.6 and Policy 3.6.3;
- Objective 3.7 and Policies 3.7.1 and 3.7.2;

- Objective 3.8 and Policy 3.8.1;
- Objective 4.3 and Policy 4.3.2;
- Objective 4.4 and Policies 4.4.1 and 4.4.3;
- Objective 4.5 and Policies 4.5.1, 4.5.2, 4.5.4, and 4.5.5.

1.2.2. National Policy Statement for Renewable Energy 2008

The National Policy Statement on Renewable Energy Generation has a number of directions.

1.2.2.1 Policies E1 – E4

These policies require regional policy statements (and regional and district plans) to include objectives, policies and methods to provide for the development, operation, maintenance and upgrading of:

- New and existing renewable electricity generation activities using solar, biomass, tidal, wave and ocean current energy resources;
- New and existing hydro-electricity generation activities;
- New and existing wind energy generation activities; new and existing electricity generation activities using geothermal;
- Small and community scale distributed renewable generation from any renewable energy source (in giving effect to the above).

The Proposed RPS achieves this, notably through:

- Objective 3.4 and its policy suite and methods;
- Objective 3.5 and its policy suite and methods;
- Objective 3.6 and its policy suite and methods.

1.2.2.2 Policy G1

Policy G1 requires regional policy statements (and regional and district plans) to include objectives, policies and methods to provide for activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation by existing and prospective generators.

The Proposed RPS does not use these terms specifically, however they are inherent within the suite of three objectives, policies and methods above.

1.2.3. National Policy Statement on Electricity Transmission 2008

This NPS generally provides direction to decision makers for making plans.

Policy 14 requires regional councils must include objectives, policies and methods to facilitate long term planning for investment in transmission infrastructure and its integration with land uses in the regional policy statement.

The Proposed RPS achieves this, primarily through the suite of three objectives, policies and methods above.

1.2.4. New Zealand Coastal Policy Statement 2010

1.2.4.1 NZCPS Policy 7(1)(a) Future activities

Some submitters asserted that the Proposed RPS does not give effect to Policy 7(1)(a) and the need to provide for future activities in the coastal environment.

This is addressed through the general provisions relating to future activities, notably:

- Objective 2.1 and Policies 2.1.3, 2.1.7 and 2.1.8 (coastal resources and values);
- Objective 2.2 and Policies 2.2.1 - 2.2.4, 2.2.7 - 2.2.11 (highly valued resources);
- Objective 3.1 and Policy 3.1.1 (environmental constraints);
- Objective 3.2 and policy suite (natural hazards);
- Objective 3.4 and policy suite (infrastructure);
- Objective 3.5 and policy suite (infrastructure of national and regional significance);
- Objective 3.7 and policy suite (urban areas);
- Objective 4.1 and Policy 4.1.1 (public access);
- Objective 4.2 and policy suite (historic heritage);
- Objective 4.5 and policy suite (adverse effects).

While there is an opportunity to provide more explicit reference to how future activities within the coastal environment will be managed within Otago, nevertheless the Proposed RPS does provide guidance.

1.2.4.2 NZCPS Policy 7(1)(b) Identify / map

Some submitters asserted that the Proposed RPS does not give effect to Policy 7(1)(b) and the need to identify areas of the coastal environment from inappropriate subdivision, use and development. The case of *Opoutere Ratepayers and Residents Association v Waikato Regional Council 2015 NZEnvC 105* was cited, which required that Opoutere beach and spit be included in Waikato's Regional Policy Statement as an Outstanding Natural Feature and Landscape.

In that decision, the following paragraphs are particularly relevant to the assertion that the RPS must map areas of outstanding natural features and landscapes:

- [para 71] '... We agree... that *identify* has a wider meaning than *map* and that mapping is a way of identifying something, but it is not the only way in which something can be identified. An area could be identified by words for example. Expressed another way; mapping is a subset of identifying.'
- [para 102] 'We are not persuaded by either argument. Sub-paragraphs (a) and (b) are both part of Policy 7(1), which in our view means that both equally apply to regional policy statements and plans, rather than to regional policy statements or plans. However, we do not read this as

requiring both documents to duplicate the provisions of the other. Neither does it mean that it is not legally possible to include provisions in the RPS to give strong direction.In the end it may come down to a matter of timing in terms of the documents that can give effect to the NZCPS and, as in this case, better protection to a known area of ecological significance.'

- [para 104] 'We conclude that in this case ... we find that the proposed RPS is required to identify the site in order to give effect to the NZCPS and has not done so.'
- [para 124'] '... we were provided with no evidence about the timeframe for the review of the Coastal Plan, or indeed the timetable for the review of the Regional Plan. This means that for a period of time there would be a potential interregnum where the entire area of ecological significance might be potentially at a greater risk than it need to be....On the evidence we have before us, particularly the avian values present at this nationally ecologically significant site require the highest level of protection that is able to be given to it as soon as possible and in a way that holistically manages all of the area ... identified as being significant.'

The facts of the Opoitere case are different to that for Otago:

- ORC and the coastal territorial authorities (Waitaki, Dunedin and Clutha) are undertaking a joint study of the coastal environment;
- The results of the Dunedin City study have already been incorporated within the recently notified Dunedin City proposed Second Generation Plan;
- Waitaki and Clutha Districts will be changing their District Plans soon, to incorporate this new information;
- ORC is developing a Coastal Strategy in the 2016/17 and 2017/18 years. The review of the Regional Plan: Coast for Otago is scheduled to commence the following year, 2018/19 and is planned to be undertaken with Environment Southland;
- Information held on these valued areas can already be used when considering any resource consent application;
- A study is currently being undertaken of possible areas for marine protection.

Again, while the suite of provisions for managing activities in the coastal environment could be clarified to give more specific identification of areas where activities may be inappropriate, the Proposed RPS does provide guidance on this matter. There is no requirement or need to map such areas as the coastal local and regional authorities are already doing this through regional and district planning processes.

1.2.4.3 Other coastal strategic planning matters

Some submitters considered that additional provisions were required to address all aspects of resource management in the coastal environment, including additional material on coastal processes, resources or values that are under threat or at significant risk from adverse cumulative effects (Policy 7(2) NZCPS).

The Proposed RPS deals with these matters in general terms. There is an opportunity to extend the range of provisions in the Proposed RPS, in particular in relation to:

- Management of the intertidal zone;
- Aquaculture;
- Marine biodiversity;
- Coastal values and threats.

A Coastal Strategy, to be undertaken by ORC, could be added to Method 7: Strategies and Plans (non-RMA). This Strategy will provide further detail on Otago's strategic approach to coastal management, across all relevant legislation and local authority statutory responsibilities.

1.2.4.4 Summary

The Proposed RPS gives general effect to the NZCPS. There is opportunity to more clearly describe how this is being done.

1.3. Definitions

Some submitters commented on the use of various words, and the need for consistency in use of words which are already defined in the RMA or other legislation.

Generally, the Proposed RPS relies on the definitions provided in the RMA, or the ordinary plain English understanding of the word. Some additional definitions have been provided in the Glossary, to assist in understanding.

Appendix 1 of this report describes the source of those words defined in the Proposed RPS.

Definitions already found in relevant legislation should be used, unless there is a clear need to modify the definition to give effect to a direction.

2. Layout

Some submitters found the layout of the Proposed RPS difficult to follow, which meant that they found it harder to understand. Concerns raised by submitters included:

- Need to be more user friendly;
- Need for a more comprehensive overview of required provisions;
- Need for better cross referencing;

- Need to find key information by resource;
- Confusion as different styles are used for the same material;
- Repetition of material.

There is opportunity to improve the layout of the Proposed RPS.

Suggestions to improve follow:

- RPS at a glance [page ii]: Amend headings and content of each box to more clearly reflect required content. For example, under Part B, Chapter 2, this could read:

Outcome 2: Otago has high quality natural resources and ecosystems	
•	Issues
•	Explanations and reasons for adopting
•	Objectives
•	Policies

- Contents [pages iii – v]: Amend index to provide a more comprehensive picture of the structure, with simplified policy titles. For example, under Part B, Chapter 2, the contents could read:

Outcome 2: Otago has high quality natural resources and ecosystems	23
Objective 2.1	26
The values of Otago's natural and physical resources are recognised, maintained and enhanced	
Policy 2.1.1 Freshwater	27
Policy 2.1.2 Beds of rivers and lakes, wetlands, and their margins	28
Policy 2.1.3 Coastal water	28
Policy 2.1.4 Air	29
Policy 2.1.5 Soil	29
Policy 2.1.6 Biodiversity	30
Policy 2.1.7 Natural features, landscapes and seascapes	30
Policy 2.1.8 Natural character in the coastal environment	31

- How to read the RPS [page 12]: could be amended to provide a snapshot of an objective, with its issues, explanation and reasons for

adopting, together with the policies and methods, to clearly show where to find the required elements of the RPS.

- For each outcome: the chapter overview could be replaced with a repeat of the relevant contents [above], to provide an overview of the objectives and policies which are intended to deliver on the outcome.
- For each objective: the issue and need, previously positioned at the chapter overview, could be used as an introduction to the policies. The policy title could be simplified, and more detail could be added to the method reference. For example, for Objective 2.1:

Objective 2.1

The values of Otago's natural and physical resources are recognised, maintained and enhanced

Issues

- Degradation of values ...
- Knowledge
- Cumulative effects

Principal reasons and explanation

We need to know about

Policy 2.1.1 Freshwater

Recognise freshwater values

Method 1: Kai Tahu Relationships

1.1, 1.2, 1.3, 1.4

Method 3: Regional Plans

3.1, 3.2, 3.3

- A keyword index could be added at the end of the document. For example, keywords could include air, biodiversity, freshwater, coastal environment etc.
- A resource index, with links to the relevant objectives and policies, could be added at the end of the document. However, this could be too repetitive, and, for a particular matter, risks losing integration within the wider context of the Proposed RPS. An example is provided below:

Air

Objective 2.1 26

The values of Otago's natural and physical resources are recognised, maintained and enhanced		
Policy 2.1.4	Air	29
Objective 2.3		39
Natural resource systems and their interdependencies are recognised		
Policy 2.3.1	Among resources	40
Policy 2.3.2	Within a resource	40
Policy 2.3.5	Airshed management	41
Objective 3.7		64
Urban areas are well designed, sustainable and reflect local character		
Policy 3.7.1	Good urban design principles	65
Policy 3.7.2	Low impact design	65
Policy 3.7.3	Warmer buildings	66
Objective 3.8		67
Urban growth is well designed and integrates effectively with adjoining urban and rural environments		
Policy 3.8.1	Urban growth	67
Objective 4.5		87
Adverse effects of using and enjoying Otago's natural and built environment are minimised		
Policy 4.5.3	Domestic fuel burners	89
Policy 4.5.9	Offsetting: air	91

- As noted at the beginning of the hearing, opportunity remains to improve consistency in use of language and terms throughout the document, to improve clarity and certainty of intent.

3. Principles

Some submitters challenged some of the principles underpinning the Proposed RPS. These principles were generally described in the Section 32 Evaluation Report.

The following is a broad list which guided development of the Proposed RPS:

- Outcomes base, relating to values and describing what we want for now and the future;

- Fundamental importance of the natural environment in sustaining life;
- Recognition of the principles of the Treaty of Waitangi;
- Effects based, setting bottom-lines and protecting highly valued resources;
- Using science within a values framework;
- Enabling efficient and effective resource use;
- Regional direction, while enabling innovation and local solutions;
- Risk reduction where appropriate, including from natural hazards and to local authority investment in infrastructure;
- Common language (criteria) for describing resources;
- Issues as things that get in the way of achieving what we want, rather than barriers or the gap between where we are now and where we want to be;
- 'Pick no winners';
- User responsibility for managing effects of resource use;
- Minimum necessary regulation;
- No duplication or gaps in exercise of statutory roles and responsibilities;
- Consistent cross boundary management.

The principles underpinning the RPS could be articulated in the Chairman's Foreword or the introductory overview.

4. Values

Some submitters were unsure what was meant by 'values' and confused by the variety of ways in which 'value' was used in the Proposed RPS.

'Values' describe what is important, or considered to have worth. The Concise Oxford Dictionary describes a value as:

- 'worth, desirability, utility, qualities on which these depend'

A value may relate to a use or an attribute. Each culture has its own set of values, which determine what that culture considers to be important. Communities and individuals also have their own values, which may vary to greater or lesser degrees amongst cultures, communities and individuals. Sometimes values are complementary, sometimes achieving one value is at the cost of another value. The natural environment also has intrinsic value. Values describe community norms.

The management of the effects of activities on what has value lies at the heart of resource management.

The Proposed RPS describes aspects of what has value, at a high level. This provides a common language about values relating to a particular resource or matter. In making regional and district plans, these values can be described in more detail.

During the resource consent process, these values can be described at the highest level of detail, in relation to a particular place and under particular circumstances.

The process for providing more locally relevant detail of what is valued is inferred through identification of particular matters in regional and district plans, and through development of rules, including identification of limits, standards, terms and conditions for various activities.

Within the Proposed RPS, 'value' is used as a noun, a verb and an adjective, which can be confusing. Wording could be clarified by using alternatives to 'value' for when it is used as a verb or adjective.

5. Regionally significant issues

5.1. Use

Some submitters are concerned that there is not a specific list of regionally significant issues at the front end of the document, and that they are used in a different way to planning documents prepared by other local authorities. In early plan making, the objective described the inverse of the issue i.e. the issue resolved. The plan was designed to solve a whole lot of problems. As a consequence, they are unsure how the Proposed RPS deals with issues, or how they relate to decision making or reporting on progress towards achieving desired outcomes.

The Proposed RPS is based on the premise that people want to do things, or get somewhere. They identify an end state, or outcome, they want to achieve, and then work out how to achieve it. The things that get in the way of achieving that end state, or risk getting in the way, are treated as the issues. This approach enables people to do what they want to, tempered by appropriate regard for the environment and the community in which the activity is to be undertaken.

5.2. Issues

5.2.1.1 Wording

Some submitters requested changes to the wording of issues to clarify and improve certainty.

Such requests can be addressed by clarifying the text.

5.2.1.2 Additional issues

Some submitters requested additional regionally significant issues be included in the RPS.

Additional issues that warrant consideration for inclusion include:

- Degradation of water quality
- Over-allocation of water resources
- Degradation of wetlands
- Threats to biodiversity

- Coastal threats

These could be added under the appropriate objective.

5.2.1.3 Issues section

Some submitters requested a specific section on regionally significant issues.

While it is possible to add an issues section, possibly as an index at the end of the RPS, this would repeat material already presented in the context of the objective and its policy suite. To place such a summary at the beginning of the document would be contrary to the principles underpinning the use of issues in the Proposed RPS, described above.

6. Order of outcomes

6.1. Sequence or priority?

Some submitters have requested the Proposed RPS be made more enabling, possibly by changing the order of the chapters on Outcomes 2 and 4. This would place the fourth outcome (People are able to use and enjoy Otago's natural and built environment) towards the front of the document. There is an assumption that the order of outcomes places a priority on the environment over people's use and enjoyment of the natural and built environment.

The purpose of the RMA, set out in Section 5, is set out below:

1. *The purpose of the Act is to promote the sustainable management of natural and physical resources.*
2. *In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –*
 - a. *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - b. *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - c. *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

The importance of continued prosperity and wellbeing is described at the very beginning of the Proposed RPS, in the Overview section on page 3.

The proposed order of outcomes follows from the assumptions that:

- In order for people to be able to use and enjoy the environment, now and for the future, then the foundations of communities in which they live should be resilient and provide for their health and safety;

- In order to maintain sound foundations for the community and to enable community wellbeing, then the natural environment must be sustained in good condition.
- The first three outcomes describe the values and end states of what is needed in Otago for people to be able to achieve continued prosperity and wellbeing.

The RPS Framework, on page 10, shows an outcomes diagram which illustrates that all four outcomes are interconnected. There is no priority between outcomes. For integrated resource management, all must be considered in relation to decision making for a particular proposal, whether plan or activity. The order in which they are set out follows a sequence for making decisions, not a prioritisation of outcomes.

The material in Outcome 4 provides a diverse range of direction on matters relating to use and enjoyment. It does not provide comprehensive direction, but rather selects matters where direction is needed to ensure consistency in resource management across the region. Regional and district plans will pick up these directions, and add further direction, as appropriate to the plan and local community. As a consequence, re-ordering would break the sequence for making decisions.

6.2. Enabling activities

Some submitters requested use of more enabling wording, as they consider the Proposed RPS focussed too much on protection, and not enough on enabling.

In developing the document, a number of attempts were made to rephrase the provisions using the model of 'enable, unless'. This wording has guided the development of Dunedin's Second Generation Plan.

There are two drafting challenges:

- First, the RMA controls land use in a different way to resource allocation and discharge. Land uses are enabled, unless a plan restricts. The reverse is the case for resource allocation and discharge: you cannot take or discharge unless the regional plan enables. The RPS guides land use as well as resource allocation and discharges.
- Second, when starting with 'enable, unless' most of the policy detail reads of what you cannot do, rather than what you can do. There is a risk of double negatives and consequent difficulty in achieving consistent and easy understanding.

Submitters did not provide good examples of how this could be done.

7. Adverse effects management

A number of submitters raised concerns about the use of 'avoid' and other variations of how adverse effects are to be managed. Submitters presented a broad range of evidence on this matter.

The Section 42A Report addresses this matter briefly on pages 6-7 (level of direction).

7.1. Use of 'avoid'

In essence, the RMA does not prevent application of a more stringent approach than that of 'avoid, remedy, or mitigate' adverse effects, as set out in Section 5(2) RMA. Applying a more stringent approach is appropriate when:

- The more stringent approach is prescribed in a higher order document, such as an NPS or the NZCPS, as Section 62 RMA requires that the RPS give effect to an NPS or NZCPS;
- The local authority chooses to give priority to avoiding adverse effects on particular natural or physical resources, rather than remedying or mitigating. This can be the case when these resources are regarded as significant or particularly vulnerable to specific adverse effects.

If the RPS gives priority to 'avoid' then 'avoid' must be implemented through regional and district plans. It is a strong directive.

However, the use of 'avoid' in the RPS does not necessarily translate to a requirement to prohibit an activity under a regional or district plan:

- The Supreme Court ruled in King Salmon that some activities with minor or transitory effects would not fall foul of the absolute requirement to avoid adverse effects;
- While the RPS may require avoidance of adverse effects on a particular value or resource, it does not automatically prohibit the activity. Rather, the specifically identified effects of the activity are prohibited;
- When the activity is not automatically prohibited, the avoidance requirement will more likely be given effect in the lower order document through objectives, policies and specific standards, terms and conditions in the rules.

There is less certainty as to how the King Salmon case applies to resource consent decision making, as the King Salmon case related to a proposed plan change. Under Section 104, a resource consent decision is 'subject to Part 2' of the Act and the listed matters to which decision-makers must have regard, but these do not explicitly state a hierarchy.

7.2. Terms in Proposed RPS

The words 'avoid', 'remedy' and 'mitigate' are used in various ways in the Proposed RPS, as set out in Table 1, below: .

Table 1: Use of the words, avoid, remedy and mitigate in the Proposed RPS

Grouping	Category	Wording	Policies
Avoid only (Mitigation not	1	<ul style="list-style-type: none"> • Avoid an activity 	3.8.2

allowed)	2	<ul style="list-style-type: none"> Avoid adverse effects on a value or resource - not significant 	1.2.5; 2.1.1; 2.1.2; 2.1.3; 2.1.5; 2.1.6; 2.2.11; 3.8.3; 3.9.5
	3	<ul style="list-style-type: none"> Avoid adverse effects on a significant/important value or resource 	3.9.2
	4	<ul style="list-style-type: none"> Avoid significant adverse effects on a value or resource - not significant 	4.5.1
Avoid, remedy or mitigate - hierarchy	5	<ul style="list-style-type: none"> Avoid adverse effects on a significant/important value or resource Avoid significant adverse effects on other values Remedy where adverse effects cannot be avoided Mitigate where adverse effects cannot be remedied 	2.2.2; 4.2.3
	6	<ul style="list-style-type: none"> Avoid adverse effects on a significant/important value or resource Avoid remedy or mitigate other adverse effects on other values or resources 	2.2.4; 2.2.6
	7	<ul style="list-style-type: none"> Avoid significant adverse effects on a significant/important value or resource Avoid adverse effects on other significant/important values or resources Avoid remedy or mitigate other adverse effects on other values or resource 	1.2.5; 2.2.9
	8	<ul style="list-style-type: none"> Avoid significant adverse effects on a significant/important value or resource Avoid remedy or mitigate other adverse effects on a significant value or resource 	1.2.3; 2.2.13; 2.2.15; 3.4.4; 3.5.3
	9	<ul style="list-style-type: none"> Avoid significant adverse effects on a significant/important value or resource in the following circumstances Avoid remedy or mitigate other adverse effects on a significant value or resource 	3.5.2; 4.5.6
Avoid, remedy or mitigate - no hierarchy	10	<ul style="list-style-type: none"> Avoid remedy or mitigate adverse effects on a value or resource - not significant 	3.6.2, 3.6.3, 3.6.4, 3.6.5
Mitigate No requirement to avoid or remedy	11	<ul style="list-style-type: none"> Mitigate adverse effects 	2.1.1; 2.1.2; 3.7.2; 4.4.3

In addition to the various ways in which the terms avoid, remedy and mitigate are used in the provisions of the Proposed RPS, a number of other terms are applied to address the management of adverse effects that may occur as a result of the use or development of a natural and physical resource. Table 2 provides an overview of how alternative wording options are used throughout the provisions of the RPS.

Table 2: Use of alternative terminology in the Proposed RPS to manage adverse effects

Wording	Policy
Prevent an activity	2.1.1; 2.1.2; 2.1.3; 2.1.5; 2.1.6
Reduce an activity/effect	2.1.1; 2.1.2; 2.1.3; 2.1.5; 2.1.6 3.7.1; 3.7.2;

<i>Minimise adverse effects</i>	3.8.1; 3.9.2; 4.3.1; 4.3.2; 4.5.4; 4.5.6
<i>Restrict an activity</i>	3.4.4; 3.5.3; 3.6.3; 3.6.5; 3.9.2; 4.3.1; 4.3.2; 4.3.5; 4.3.6
<i>Give preference to reducing certain effects</i>	3.2.10; 4.4.3
<i>Give preference to certain carrying out/avoiding activities</i>	3.5.2; 3.6.1

Overall, there appears to be scope to improve the clarity, consistency and practicality of the Proposed RPS. Note, however, that the NZCPS gives particular directions for the coastal environment.

Examples of where changes could be made (referring back to the categories in Table 1, above) include:

- Applying greater consistency in the use of terms for managing matters of national importance and significant natural resources;
- Applying greater consistency in the use of the terms 'avoid, remedy and mitigate' where these represent a hierarchy;
- Provide more guidance on how management of such a hierarchy is to be achieved;
- Providing greater guidance within the policy framework for:
 - Assessing the significance of effects for particular matters;
 - Assessing the significance of values/ resources, including within the relevant schedules.

8. Overlapping functions: land use and water

8.1. Legislative context

The resource management functions of regional and city councils are set out in sections 30 and 31. Those functions overlap to some extent, especially with regard to the control of land uses:

- City and district councils are responsible for "the control of any actual or potential effects of the use, development, or protection of land..." and
- Regional councils are responsible for: "The control of the use of land for the purpose of:
 - Soil conservation;
 - The maintenance and enhancement of the quality of water in water bodies and coastal water;

- The maintenance of the quantity of water in water bodies and coastal water;
- The maintenance and enhancement of ecosystems in water bodies and coastal water;
- The avoidance or mitigation of natural hazards;
- The prevention or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances;"

Under RMA S62, the RPS is required to specifically address some of those overlaps by

- "stating the local authority responsible ... for the control of the use of land (i) to avoid or mitigate natural hazards or any group of hazards; and (ii) to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and (iii) to maintain indigenous biological diversity".

Policy C2 of the NPSFM (2014) requires regional councils

- "making or changing regional policy statements to the extent needed to provide for the integrated management of the effects of the use and development of: (a) land on fresh water ...; and b) land and fresh water on coastal water".

The RPS must therefore give direction as to how land use controls and their effects on fresh and coastal water will be managed and integrated with freshwater management.

8.2. Controlling the effects of land use on freshwater

Land use / land cover and freshwater are deeply interconnected in a catchment, with the former being a determinant of catchment hydrology, and water quality. They are addressed through the Triennial Agreement between the regional council and the city and district councils.

The table below highlights some of the effects of land uses on water, and the RMA tools that could assist in managing them.

Table 3: RMA tools available for managing land use effects on water

Effect of land use on water	Relevant RMA tool
<p><i>Extension of impervious surfaces from urbanisation results in:</i></p> <ul style="list-style-type: none"> • <i>Flushing flows and increased variability of flows</i> • <i>Increased risks of erosion and property damage downstream of the development</i> • <i>Potential change in overland flow paths</i> • <i>Flushing of stormwater</i> 	<p><i>Control of subdivision and development</i></p> <p><i>Discharge rules can control some of those impacts, namely:</i></p> <ul style="list-style-type: none"> • <i>Contamination risks</i> • <i>Effects of flushing flows, especially on erosion of river banks</i>

Effect of land use on water	Relevant RMA tool
<p>contaminants in rivers during rainfall</p> <ul style="list-style-type: none"> • Potential decrease in aquifer recharge 	
<p>Shrinking of riparian margins from development and vegetation clearance results in:</p> <ul style="list-style-type: none"> • Habitat degradation in-stream and in the riparian margins • Increased risks of erosion and sediment run-off to water • Degradation of rivers' and lakes' natural character • Increased tensions between the natural functioning of rivers and lakes and human activities 	<p>Controls on vegetation clearance</p> <p>Control of subdivision and development:</p> <ul style="list-style-type: none"> • Esplanade reserves and strips • Building setbacks <p>Discharge rules can control some of those impacts, namely sediment run-offs to water</p>
<p>Changes in land cover from land use changes, including extension of forestry, or vegetation clearance can result in changes to:</p> <ul style="list-style-type: none"> • Catchment yield • Flow variability 	<p>Controls on vegetation clearance</p> <p>Controls on specific land uses (e.g. forestry)</p>

As shown in the table above, control of the effects of land use on water cannot be solely managed through discharge rules. Land use rules are also needed.

Even though regional councils can adopt land use rules to control the effects of land use on water, regional plans cannot control subdivisions, or the 'development of land'. Consequently, some effects on water will need to be controlled through land use controls in district plans.

This may require stronger direction in the Proposed RPS, to ensure that:

- District plans will control the effects of land use and development on water; and
- Land use controls in the district plan will integrate effectively with water management at a catchment level.

Additional methods may also be required to set out how the regional council will work with city and district councils on this matter.

9. Hazardous substances, waste and contaminated land

9.1. Waste management

The RMA does not define waste disposal as an activity in itself (with the exception of "the dumping and incineration of waste or other matter" from ships, aircrafts or offshore installations in the coastal marine area). Under the RMA, waste disposal is either:

- A discharge of contaminant to land, water, or air; or
- A land use, or the adverse effect of land use or land development.

Waste management is relevant to resource management, mostly in relation to:

- The consenting of the development of waste disposal facilities;
- The control of the effects of waste disposal on the environment, including
 - The potential contamination of land, water or air
 - The potential for nuisance effects (mostly odour) and
- The possible protection of waste disposal facilities from adverse effects from other activities and from potential reverse sensitivity effects.

The development of waste disposal facilities, and their protection from other activities, is a responsibility of city and district councils under Section 31 of the RMA. As for any activity that results in a discharge, the management of the adverse effects from waste disposal can fall under the city and district councils' responsibility (Section 31(b)), as well as the discharge responsibility of the regional council (Section 30(c),(d)(iv) and (f)).

Further direction could be provided in the Proposed RPS, to clarify how land uses and discharges are to be managed by the different authorities.

9.2. Hazardous substances

Some submitters were concerned that hazardous substances were conflated with waste management, with the risk of these substances, which are used in many ways, were being viewed in terms of waste management only. The Hazardous Substances and New Organisms Act 1996 controls the use of these substances.

Hazardous substances are addressed in the Proposed RPS because when waste contains hazardous substances, the roles and functions for preventing or mitigating adverse effects from disposal are to be defined in the RPS (Section 62(i)(ii) RMA). These are defined under the Roles and Responsibilities (page 93, Proposed PRPS).

9.3. Contaminated land

Some submitters were concerned that for some necessary activities, it is impossible to avoid creation of contaminated land.

Land on which hazardous substances have been discharged has the potential to qualify as "contaminated land" under the RMA. Regional councils are responsible for identifying and monitoring contaminated land, while district councils are in charge of *"the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land"*.

Contaminated land is created by discharges, or as a result of land use. The review of the use of 'avoid', as suggested earlier in this report, should address these concerns.

The same tension in roles and responsibilities as for the management of adverse effects from waste disposal applies, as described above.

10. Transition provisions

The city council and some district councils were concerned that where the Proposed RPS identifies schedules of criteria, including for defining heritage and significant indigenous biodiversity, they would immediately have to re-assess these matters, even though the criteria were similar, at considerable cost to the ratepayer.

To alleviate this concern, a new 'transition' method could be introduced dealing with how such provisions are to be given effect. Such a method could clarify that:

- the new schedules could be given effect when the next relevant plan change is undertaken;
- when the plan change or review is undertaken, it would be sufficient to merge the RPS criteria with the district plan criteria, so that all of the RPS criteria are reflected in any new schedule;
- when a resource consent is considered, both RPS and district plan criteria must be considered.

This should ensure that no unnecessary costs are incurred by the councils in aligning the criteria, and that resource consent applications make use of the more standardised criteria.

11. Consultation with iwi

Some submitters were concerned that they were not adequately consulted prior to notification of the Proposed RPS.

The Section 32 Evaluation Report identifies consultation undertaken in preparing the Proposed RPS (page 66, some ORC Reports and Appendices 1 and 2, summarising issues raised by those consulted. In addition to work with Kai Tahu Ki Otago Ltd and Te Ao Marama Inc, one workshop was held with Maori landowners, on 11 December 2014. The Consultation Draft was presented at that meeting.

The requirements for consultation of clause 3(1)(d) and (2), Schedule 1 RMA were met.

12. Additional information from submitters

The Hearing Commissioners requested additional information from submitters and these information responses have been tabled as evidence.

Further information is still to be provided by:

- Aurora Energy (76, 1016)
- Heritage New Zealand (120)

- Horticulture New Zealand (124).

13. Appendix 1: Source of definitions

Refer to Part 1.3 (page 5) of this report.

Definitions in the RPS Glossary		Origin
1990 mean sea level (Otago Datum)	The fixed level for basing subsequent level measurements on, in this case Otago Metric Datum is the Dunedin Vertical Datum (DVD 1958) plus 100 metres.	Derived from the Regional Plan: Water for Otago
Cascading hazards	Where the occurrence of one natural hazard is likely to trigger another natural hazard event e.g. an earthquake triggering a landslide which dams a river causing flooding.	Drafted for RPS
Climate change	A change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods.	Resource Management Act definition
Crime prevention through environmental design (CPTED)	CPTED is a set of principles that can be applied to the design and development of buildings and other public areas. It seeks to use effective design to reduce the incidence and fear of crime.	Ministry of Justice National Guidelines for Crime Prevention through Environmental Design in New Zealand.
Cumulative effects	In regard to assessing natural hazard consequence, cumulative effects include: a) The repeat of the same type of event, or different types of events, on the same area and/or people; and b) The effects of an event on many areas and/or people.	Drafted for RPS.
Customary	In accordance with custom or habitual practice; usual; habitual. Customs, or customary uses, may include those involving uninterrupted use and occupation. Note that the word 'customary' in this plan is used in accordance with its dictionary definition, and is not limited to its legal definition.	Drafted for RPS.
Ecosystem	A system of interacting terrestrial or aquatic living organisms within their natural and physical environment.	Canterbury Regional Policy Statement 2013
Ecosystem services	Are the resources and processes the environment provides that people benefit from (for example purification of water and air, pollination of plants and decomposition of waste).	Drafted for RPS
Emergency services	Has the meaning set out in section 4 of the Civil Defence Emergency Management Act 2002.	Civil Defence Emergency Management Act 2002

Endemic	Species that are naturally restricted to within a certain area.	Drafted for RPS
Essential services	Include hospitals and health services, schools, public transport and essential commercial activities for civil defence purposes.	Drafted for RPS
Exit strategy	A means of leaving a current situation that is likely to become difficult, e.g. as a result of natural hazards or climate change. Means of leaving may include approaches such as managed retreat or relocating dwellings.	Drafted for RPS
Future urban development areas	Land mapped in district plans to provide direction on the location of greenfield urban expansion.	Drafted for RPS
Hazardous substance	Has the meaning set out in section 2 of the Hazardous Substances and New Organisms Act 1996, but including non-toxic environmentally damaging substances, medicines in dosage form, hazardous biological substances and radioactive substances.	Derived from Hazardous Substances and New Organisms Act 1996
Hazardous waste	Hazardous wastes are wastes that exhibit properties such as corrosiveness, explosiveness, flammability, capacity to oxidise, toxicity or eco-toxicity, and have the potential to adversely affect human, animal or other species and natural resources.	Drafted for RPS and derived from HSNO Control Regulations and local government strategies and plans
Highly valued soils	Soils valued for their significance, including: <ul style="list-style-type: none"> a) Versatility for primary production, such as highly versatile soils; b) Pollutant buffering or filtering services; c) Providing water storage or flow retention services; d) Rarity. 	Drafted for RPS
Highly versatile soils	Land classified as Land Use Capability I or II in the New Zealand Land Resource Inventory.	Derived from New Zealand Land Resource Inventory
Indigenous species	In relation to a species of flora or fauna, means a species or genetic variant found naturally in New Zealand, including migrant species visiting New Zealand on a regular or irregular basis.	Derived from various sources including Proposed National Policy Statement on Indigenous Biodiversity and various RMA statements and plans (e.g. Proposed Southland Regional Policy Statement 2012).
Infrastructure	a) Pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or	Resource Management Act definition

	<p>geothermal energy;</p> <p>b) A network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001;</p> <p>c) A network for the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989;</p> <p>d) Facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person—</p> <p>i. uses them in connection with the generation of electricity for the person's use; and</p> <p>ii. does not use them to generate any electricity for supply to any other person;</p> <p>e) A water supply distribution system, including a system for irrigation;</p> <p>f) A drainage or sewerage system;</p> <p>g) structures for transport on land by cycleways, rail, roads, walkways, or any other means;</p> <p>h) Facilities for the loading or unloading of cargo or passengers transported on land by any means;</p> <p>i) An airport as defined in section 2 of the Airport Authorities Act 1966;</p> <p>j) A navigation installation as defined in section 2 of the Civil Aviation Act 1990;</p> <p>k) Facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988;</p> <p>l) Anything described as a network utility operation in regulations made for the purposes of the definition of “network utility operator” in section 166 of the Resource Management Act 1991.</p>	
Iwi authority	The authority which represents an iwi and which is recognised by that iwi as having the authority to do so. Te Rūnanga o Ngāi Tahu is the iwi authority in Otago.	<p>First sentence: Resource Management Act definition.</p> <p>Second sentence: added for clarification.</p>
Lifeline utilities	Has the meaning set out in section 4 of the Civil Defence Emergency Management Act 2002.	Civil Defence Emergency Management Act 2002
Marae related	Māori cultural activities and provision of services primarily aimed at the health and wellbeing of the	Drafted for RPS.

activity	Māori population, by or for takata whenua, undertaken on a marae that has the approval of rūnaka, including: a) Hui; b) Wānaka; c) Tangi; d) Overnight accommodation for visitors; e) Events and gatherings; f) Health services; and g) Cultural tourism.	
Multiple hazards	Where two or more unrelated natural hazard events may occur.	Drafted for RPS.
Native Reserve	Any property or site that is a: Native Reserve excluded from the Ōtākou Land purchases (1848), Native Reserves excluded from the Kemps Land Purchases (1848), Reserves granted by the Native Land Court (1868), Half Caste Reserves (1881), Landless Native Reserve (1896), Other reserves (1890 and 1900).	Drafted for RPS.
Natural hazard	Includes any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, drought, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment.	Derived from RMA definition but excludes wind and fire
Originally rare	In relation to terrestrial ecosystems, “originally” means the ecosystem type was present when Māori arrived, and still exists today. “Rare” means the total extent of each originally rare ecosystem type is less than 0.5 percent of New Zealand’s total area – that is, less than 134,000 hectares. A published list of originally rare terrestrial ecosystem types has been compiled by Landcare Research and is available from that organisation.	Derived from a number of sources such as Canterbury Regional Policy Statement 2013, Department of Conservation publications and other RMA plans and policy statements.
Renewable electricity generation	The generation of electricity from solar, wind, hydro electricity, geothermal, biomass, tidal, wave, or ocean current energy sources.	Derived from Renewable Energy definition in RMA
Residual risk	The risk remaining after the implementation or undertaking of risk management measures.	Drafted for RPS
Resilient / Resilience	The capacity and ability to withstand or recover quickly from difficult conditions.	Oxford Dictionary
Reverse sensitivity	Arises where an established activity is causing adverse environmental impact to nearby land, and an activity susceptible to those impacts is proposed for that land.	Drafted for RPS

	The sensitivity is created by the likelihood that if the new use is permitted, the established activity may be required to restrict its operations or mitigate its effects to avoid adversely affecting the new activity.	
Risk	In the context of natural hazards means a combination of the likelihood of occurrence and consequences of a natural hazard event, and incorporates the concept of probabilities and impacts included in the definition of “effect” in Section 3 of the RMA.	Drafted for RPS.
Special Amenity Landscape	Special amenity landscapes are those landscapes which have natural values that are of significance under Sections 6(a), 6(c), 6(e), 7(c) and 7(f), but do not meet the exceptional quality test to qualify them as ‘outstanding natural landscapes’ under Section 6(b) of the RMA. Different labels have been applied to these landscapes, such as Visual Amenity Landscapes, Rural Amenity Landscapes, and Significant Amenity Landscapes.	Derived from S6 matters in the RMA.
Statutory acknowledgement	An acknowledgement by the Crown of Ngāi Tahu’s special relationship with identifiable areas, namely Ngāi Tahu’s particular cultural, spiritual, historical, and traditional association with those areas (known as statutory areas).	Derived from Ngai Tahu Claims Settlement Act 1998
Urban growth boundary	Boundary mapped in district plans to identify areas of existing urban development and where further urban development can take place over the next 10 years and beyond.	Drafted for RPS.
Waste	Has the meaning set out in section 5 of the Waste Minimisation Act 2008.	Waste Minimisation Act 2008