

BEFORE THE FRESH WATER HEARINGS PANEL APPOINTED BY THE
OTAGO REGIONAL COUNCIL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF the Proposed Otago Regional Policy Statement 2021
Fresh Water Planning Instrument Hearing

SUBMITTER Silver Fern Farms Limited, Submitter 20

**SUPPLEMENTARY EVIDENCE OF JOHN KYLE REGARDING THE NATIONAL
POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY 2023**

18 AUGUST 2023

INTRODUCTION

- 1 In its Minute 7, the Freshwater Hearing Panel directed submitters to respond by Friday 18 August 2023 to the Otago Regional Council's ("**ORC**") supplementary evidence on the implications of the National Policy Statement for Indigenous Biodiversity 2023 ("**NPSIB**") for freshwater planning issues.
- 2 In response to perceived issues raised by the recent introduction of the NPSIB, Ms Boyd for the ORC recommends amendments to various provisions of the Proposed Otago Regional Policy Statement ("**PORPS**") in both the freshwater and non-freshwater streams.
- 3 In my role as Silver Fern Farms' expert planning witness, I have been asked to provide supplementary evidence regarding Ms Boyd's recommended amendments.

AMENDMENTS TO WETLAND DEFINITIONS

- 4 Ms Boyd recommends that the Panel:
 - a. Amend the PORPS definition of "natural wetland" to align with the definition of the term "wetland" at section 2 of the Resource Management Act 1991 ("Act")¹ but excluding constructed wetlands and wetlands induced by the construction of artificial water bodies; and
 - b. Add a separate definition of "natural inland wetland" aligning with the definition of that term that is given in the National Policy Statement for Freshwater 2020 ("**NPSFM**").
- 5 When the parties to the PORPS freshwater planning process prepared evidence, the PORPS defined "natural wetland" similarly to how the NPSFM defines "natural inland wetland".²
- 6 My 27 June 2023 statement of evidence on behalf of Silver Fern Farms therefore made recommendations about provisions that use the term "natural

¹ **wetland** includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.

² Ms Boyd's supplementary evidence explains the fairly minor differences at [64].

wetland” based on the definition of that term as it was then framed – being a narrower framing than the amended definition Ms Boyd is now recommending.

- 7 In my view, Ms Boyd’s amended definition of “natural wetland” will significantly widen the spatial application of the PORPS policy framework (and that of a future regional plan) for “natural wetlands” in Otago. That is, more areas of purported wetlands will now be subject to the PORPS provisions and those of a future regional plan that implements the PORPS.
- 8 As an example, Ms Boyd’s supplementary evidence at [65] describes an assessment exercise that distinguished wetland extents differently depending on whether or not the NPSFM pasture exclusion methodology was applied. Apparently, when the pasture exclusion methodology was applied:

“...preliminary result suggests that nearly 50% of the previously mapped wetland area in the Scroll Plain will be identified as pasture and non-wetland area”.
- 9 Ms Boyd’s recommended amendment to the definition of “natural wetland” means the PORPS provisions will apply to “natural wetlands” that do not qualify as a “natural inland wetland” under the NPSFM. I consider this to be potentially problematic, in light of the amendments to the NPSFM that the Ministry for the Environment implemented in early 2023.
- 10 The Ministry for the Environment amended the NPSFM in early 2023 on the basis of consultation undertaken since its commencement. The consultation identified a broad range of issues with the NPSFM.³ My own experience with proposals that engaged the NPSFM, confirmed a range of problems with its implementation and I am not surprised that there was widespread interest in its refinement.
- 11 As a result of the 2023 amendments, exemptions to the wetland provisions were introduced to NPSFM clause 3.22, along with refined tests to clarify what does and does not qualify as a “natural inland wetland”.

³ Ministry for the Environment. 2023. Summary of recommendations and the Minister for the Environment’s decisions on amendments to the NPS-FM 2020. Wellington: Ministry for the Environment.

- 12 I am therefore concerned by Ms Boyd’s recommendation that the PORPS should manage “natural wetlands” in the same way as (higher quality) “natural inland wetlands”. This seems to me like a step back towards the type of problematic management framework that the NPSFM amendments sought to resolve.
- 13 Ms Boyd’s evidence at [91] to [93] recalls that the PORPS wetland policies were always meant to be broader than the NPSFM, for example by including wetlands in the coastal marine area that are excluded by the NPSFM.
- 14 However, in my view, the currently recommended approach goes further than the previous provisions did. It will apply very similar (and restrictive) management directions to all wetlands, regardless of whether an area:
- a. Meets all the tests to be defined as a “natural inland wetland” under the NPSFM; or,
 - b. Has lesser values, does not qualify as a “natural inland wetland” but meets the wider definition of “natural wetland”.
- 15 I consider that it will be a significant change if:
- a. The proportion of Otago defined as “natural wetlands” increases by (say) 50% per the example from Ms Boyd’s evidence noted above; and
 - b. That larger area is then subjected to the same directive policy framework that, at the time my evidence was prepared, was limited to smaller areas akin to NPSFM-defined “natural inland wetlands”.
- 16 Based on my experience since the NPSFM was introduced in 2020, and in the absence of any Council analysis in terms of section 32 of the Act that indicates otherwise, extending the PORPS protection and restoration directives to all “natural wetlands” will very likely be problematic for consenting all manner of proposals. This approach appears to disregard:
- a. The values/quality (or lack thereof) of the purported wetland.
 - b. Any functional or operational need for or benefits of the activity.

- c. Any mitigation measures proposed (including mitigation measures that present an environmental gain).
- 17 With regard to analysis in terms of section 32 of the Act, Ms Boyd's evidence simply states:

[93] I consider that there are environmental (and associated cultural) benefits from ensuring that wetlands falling outside the definition of 'natural inland wetlands' are protected from activities that would irreversibly damage them. In my view, while this may place additional restrictions on resource users, it is an outcome that would likely have arisen by the application of the NPSFM regardless. Addressing this gap in the policy framework is a more effective way of achieving the objective and policies of the NPSFM than leaving it for the LWRP to address.

- 18 I appreciate that there *may* be a policy gap as identified by Ms Boyd in respect of how the PORPS would give effect to the NPSFM and clause 3.21(2)(d) of the NPSIB. (The NPSIB requires the plan and regional policy statement provisions to prioritise restoration of areas including "*natural inland wetlands whose ecological integrity is degraded or that no longer retain their indigenous vegetation or habitat for indigenous fauna*").
- 19 However, without an analysis of the specific resource management issue raised, nor the costs, opportunities and options available to ORC to address the matter, I do not support the approach recommended by Ms Boyd.
- 20 In particular, I am conscious of the likely disadvantages of a policy framework that treats all purported wetlands as requiring protection and restoration, regardless of the context, especially the costs and benefits.

FPI PROVISIONS RELEVANT TO NATURAL WETLANDS

- 21 The key freshwater planning provisions affected by Ms Boyd's recommended amendments to the wetland definitions are:
- a. LF-FW-O9 (Natural wetlands);
- b. LF-FW-P9 (Protecting natural wetlands); and

- c. LF-FW-P10 (Restoring natural wetlands).
- 22 LF-FW-O9 and LF-FW-P10 require that natural wetlands:
- a. Be protected or restored, with no net decrease and preferably an increase in extent and diversity of ecosystem types and habitats, and with no reduction (and where degraded, an improvement) in ecosystem health, hydrological functioning, amenity values, extent or water quality;
- 23 Ms Boyd recommends amending LF-FW-P9 to include a new sub-clause which would require:
- Protect natural wetlands by:*
- (1) preventing activities that will, or are likely to, result in irreversible damage to a natural wetland;*
- 24 Otherwise under LF-FW-P9, the recommendation is that “natural inland wetlands” be managed as per NPSFM clause 3.22.
- 25 As previously noted, my evidence was based on a definition of “natural wetland” that would have only applied the above directions to higher-quality areas meeting the NPSFM definition of “natural inland wetland”.
- 26 Ms Boyd’s recommended amendments broaden the policy framework to apply the foregoing directions for protection, restoration, no reduction in extent or value and preventing (unquantified) “irreversible damage” to (presumably) a much larger area meeting the proposed amended definition of “natural wetland”.
- 27 For the reasons discussed earlier in this evidence, I consider this approach will probably result in unforeseen outcomes and significant constraints on all manner of proposals in Otago. I am unaware of an analysis by the council that properly quantifies the costs to the region of applying such a stringent policy framework over the proposed more broadly defined category of “natural wetland”.
- 28 A secondary matter is that the provisions do not signal the assessment pathway for activities that affect a “natural wetland” that is not also a “natural

inland wetland”. The latter must be assessed in accordance with the NPSFM as per PORPS policy LF-FW-P9(2). The pathway for the former is not stated.

- 29 For the reasons discussed above, I am concerned that Ms Boyd’s recommended amendments:
- a. Are unsupported by an analysis in terms of section 32 of the Act; and
 - b. Do not represent the most appropriate way to manage the policy gap (if any) between areas defined as “natural inland wetlands” and other areas that do not meet that threshold but remain to be defined as “natural wetlands”.
- 30 In my view, a more appropriate approach would see the policy framework responding more specifically to the distinction between higher value “natural inland wetlands” and “natural wetlands”.

John Kyle

18 August 2023