

# **Reply Report**

## **Proposed Otago Regional Policy Statement**

**Parts considered to be a Freshwater Planning Instrument  
under section 80A of the Resource Management Act 1991**



**15 September 2023**

## Contents

<b>1.</b>	<b>Introduction .....</b>	<b>4</b>
<b>2.</b>	<b>Update on the LWRP .....</b>	<b>5</b>
<b>3.</b>	<b>Te Mana o te Wai.....</b>	<b>6</b>
3.1.	General application of Te Mana o te Wai .....	6
3.2.	Scope of the priorities.....	8
3.3.	The difference between the first and second priorities .....	11
3.4.	Whether the second priority includes people outside New Zealand .....	11
3.5.	Final recommendation .....	12
3.6.	Section 32AA evaluation .....	12
<b>4.</b>	<b>Freshwater visions .....</b>	<b>12</b>
4.1.	Structure .....	12
4.2.	Providing for resource use .....	13
4.3.	Naturalness .....	15
4.4.	Transition framework.....	15
4.5.	Timeframes .....	16
4.6.	Provision for non-diadromous galaxiids and Canterbury mudfish .....	18
4.7.	Final recommendation .....	18
4.8.	Section 32AA evaluation .....	20
<b>5.</b>	<b>Integrated catchment management .....</b>	<b>20</b>
5.1.	Integrated catchment management in Otago .....	21
5.2.	Inclusion in LF-WAI.....	23
5.3.	A policy or a method .....	23
5.4.	Clause (1): active engagement at the rohe and catchment level .....	24
5.5.	Clause (2): Integrated Catchment Management Groups.....	26
5.6.	Clause (3): content of Catchment Action Plans .....	26
5.7.	Final recommendation .....	28
<b>6.</b>	<b>Direct discharges of wastewater .....</b>	<b>28</b>
6.1.	Discussion.....	28
6.2.	Final recommendation .....	29
6.3.	Section 32AA evaluation .....	29
<b>7.</b>	<b>Natural wetlands .....</b>	<b>30</b>
7.1.	The case for managing ‘natural wetlands’ as well as ‘natural inland wetlands’ .....	30
7.2.	Managing natural wetlands more stringently than natural inland wetlands .....	31
7.3.	Renewable electricity generation and electricity transmission activities.....	32

7.4.	LF-FW-O9 – Natural wetlands .....	31
7.5.	LF-FW-P9 – Protecting natural wetlands .....	33
7.6.	Final recommendation .....	34
7.7.	Section 32AA evaluation .....	34
<b>8.</b>	<b>Efficient use and water storage .....</b>	<b>34</b>
8.1.	Prioritising different uses of water .....	34
8.2.	Prioritising efficiency.....	35
8.3.	Water harvesting and storage .....	35
8.4.	Amendment for clarification.....	36
8.5.	Final recommendation .....	36
8.6.	Section 32AA evaluation .....	37
<b>9.</b>	<b>SRMR – Significant resource management issues for the region .....</b>	<b>37</b>
9.1.	New significant resource management issue for the region .....	37
9.2.	SRMR-I5 – Freshwater demand exceeds capacity in places .....	38
9.3.	SRMR-I6 – Declining water quality has adverse effects on the environment, our communities and the economy.....	39

## 1. Introduction

1. This report has been prepared to sit alongside and explain the “marked up” version of the final recommendations on the part of the proposed Otago Regional Policy Statement (pORPS) identified as the Freshwater Planning Instrument (FPI).
2. This report responds to matters that have been raised in legal submissions and evidence as well as by submitters at the hearing, and where the matter either needs a direct response from Council officers, or results in a recommended change from the officers’ previous position. Essentially, this report addresses the further changes from the earlier section 42A report recommendations and respond to some specific issues raised by the submitters and the Hearing Panel. In that sense, it is very much a “reply” document, and does not set out to restate the Council’s earlier reports.
3. The associated "tracked changes" version of the FPI (attached as Appendix A to the report) shows the final recommendations, as a complete whole. This includes all recommended changes from the notified version (including from the s42A report, supplementary evidence, and opening statements) but does not show their development through the various stages of the process. Where there is any discrepancy between that version and the recommendations in the reply report, the tracked changes version should be treated as the 'correct' version of any provision. For completeness, the version attached contains all final recommendations from both the FPI and non-FPI parts.
4. Where a matter has been raised in legal submissions or evidence, and the submitter takes a different point of view to the officers, but it does not result in an altered recommendation from officers, these matters are often not specifically addressed. The original section 42A report and supplementary/opening statements of evidence address the majority of the issues raised by submitters at the hearing, and those assessments are not repeated here.
5. On this basis, if there is no further assessment in this reply report, it is not an indication that officers have not carefully considered the matters raised in evidence, but rather that officers have concluded that their assessment and conclusion in the original section 42A report, as modified by supplementary evidence, provide adequate analysis of the issue and continue to be the officers’ analysis and recommendation.
6. This report is the final set of advice on the FPI and is in addition to:
  - a. Section 42A report on the FPI (2 June 2023),
  - b. Brief of supplementary evidence of Felicity Ann Boyd: FPI – Implications of the NPSIB (11 August 2023).
  - c. Summary of James Henry Adams - Key Points of Difference: RMIA Resource Management Issues of Significance for Iwi Authorities (2 August 2023),
  - d. Opening statement of Felicity Ann Boyd: FPI (28 August 2023), and
  - e. Opening Statement of Jacqueline Ann Todd: SRMR – Significant resource management issues for the region (28 August 2023)

7. This report addresses the following topics:
  - a. Update on the Land and Water Regional Plan (LWRP),
  - b. Te Mana o te Wai,
  - c. Freshwater visions,
  - d. Integrated catchment management,
  - e. Direct discharges of wastewater,
  - f. Natural wetlands,
  - g. Efficient use and storage of water, and
  - h. SRMR – Significant resource management issues for the region.
8. Some matters are not addressed in this report because there are no remaining points of contention. This includes the RMIA section, which was addressed in Mr Adams’ summary statement.
9. Sections 1 to 8 of this report have been prepared by Felicity Boyd. Section 9 has been prepared by Jacqui Todd.

## 2. Update on the LWRP

10. The importance of the pORPS for informing the development of the LWRP has been emphasised by many submitters. The LWRP is now only nine months from notification and there have been multiple engagement periods with the community so far to develop its provisions:
  - a. pORPS: Freshwater visions (October – November 2021),<sup>1</sup>
  - b. LWRP Round 1: Values (November 2021 – March 2022),<sup>2</sup>
  - c. LWRP Round 2: Environmental outcomes and actions to achieve them (October – December 2022),<sup>3</sup>
  - d. LWRP stakeholder workshops (November – December 2022), and
  - e. LWRP Round 3: Draft plan (September – November 2023).<sup>4</sup>
11. There will be additional engagement prior to notification. In particular:
  - a. Technical information on water quantity in some catchments was not available in time for the current round of engagement and will need to be subject to a separate engagement process with those affected communities prior to notification.<sup>5</sup>

---

<sup>1</sup> Appendix 5 of the Section 32 Evaluation Report.

<sup>2</sup> <https://www.orc.govt.nz/plans-policies-reports/land-and-water-regional-plan/previous-community-feedback/community-feedback-round-one>

<sup>3</sup> <https://www.orc.govt.nz/plans-policies-reports/land-and-water-regional-plan/previous-community-feedback/community-feedback-round-two>

<sup>4</sup> <https://www.orc.govt.nz/plans-policies-reports/land-and-water-regional-plan>

<sup>5</sup> For example, there is no recommended environmental flow and level or take limit for the Taiari River.

- b. Consultation under clause 3 of Schedule 1 of the RMA.<sup>6</sup>
  - c. Consultation with iwi authorities under clause 4A of Schedule 1 of the RMA.
12. The pORPS is the higher order document and must be given effect to in the LWRP, rather than the other way around (the ‘tail wagging the dog’). However, the delays in the pORPS process have meant that the LWRP is now following more closely behind the pORPS than expected. It would be helpful if the panel keeps in mind the implications of substantial changes to pORPS provisions at this late stage, particularly those which relate to the procedural elements of preparing the LWRP.

### 3. Te Mana o te Wai

13. Te Mana o te Wai, its interpretation and its application in the pORPS has been a central theme of the hearing. In this section, I address four matters:
- a. General application of Te Mana o te Wai,
  - b. The scope of the priorities,
  - c. The difference between the first and second priorities, and
  - d. Whether the second priority includes people outside New Zealand.

#### 3.1. General application of Te Mana o te Wai

14. Throughout the hearing, there have been different approaches outlined to applying the hierarchy of obligations from the NPSFM. There has been a tendency to discuss the hierarchy of obligations in a way that suggests it is a ‘categorisation exercise’ whereby activities slot into one of the tiers in the hierarchy.<sup>7</sup> I do not share this view.
15. In my opinion, it is a disservice to the concept of Te Mana o te Wai to see it as a way of categorising activities for the purposes of allocating either quantities of water or contaminants. Te Mana o te Wai is a concept and a framework.<sup>8</sup> It encompasses six principles: mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship, and care and respect. It also includes the hierarchy of obligations, but that should not be divorced from the wider concept outlined in clause 1.3 of the NPSFM. For completeness, clause 1.3(3) and (4) read (my emphasis added):

(3) *Te Mana o te Wai encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this National Policy Statement and its implementation.*

---

<sup>6</sup> Clause 3 consultation must, at minimum, include the Minister for the Environment, other Ministers who may be affected by the plan, local authorities, tangata whenua through iwi authorities, and any customary marine title group, but may include anyone else at the Council’s discretion.

<sup>7</sup> Legal submissions on behalf of QLDC dated 30 August 2023, paras 6.2-7.5; Legal submission on behalf of COWA dated 30 August 2023, paras 20-27; Legal submissions on behalf of DCC dated 4 September 2023, paras 8-12, 22, and 23; Opening Statement of James Taylor for DCC dated 4 August 2023, paras 5-9.

<sup>8</sup> Clause 1.3, NPSFM

(4) *The 6 principles are:*

- (a) *Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater*
- (b) *Kaitiakitanga: the obligations of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations*
- (c) *Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others*
- (d) *Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future*
- (e) *Stewardship: the obligations of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations*
- (f) *Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.*

16. These principles provide a foundation for the hierarchy of obligations and they must inform its application. There is a clear emphasis on people looking after water and, in turn, the water looking after people. When she appeared at the hearing, Ms Roberts for Horticulture NZ discussed the concept of manaakitanga on the marae and likened it to Te Mana o te Wai: people must care for the water and look after it, and in return the water cares for and looks after people (i.e. by allowing us to use it to sustain our well-being). I consider this is what the principles above emphasise.

17. The hierarchy is a hierarchy of obligations, not activities. ‘Obligation’ is defined in the Oxford dictionary in various ways.<sup>9</sup> I consider the following definition is most relevant to the hierarchy of obligations:

*(3b) An act or course of action to which a person is morally or legally bound; what one is bound to do; a duty, commitment.*

18. An obligation, or a commitment, is consistent with the principles discussed above. People have an obligation to care for fresh water. In my view, the hierarchy is more akin to setting out the priorities that must be afforded to different matters in decision-making than an exercise in categorising or prioritising particular activities. That is not dissimilar

---

<sup>9</sup> (1) Law and Finance. A binding agreement committing a person to a payment or other action; the document containing such an agreement; a written contract or bond. Also: the right created or liability incurred by such an agreement, document, or bond; the duty of a borrower to repay a loan. Now chiefly superseded by contract. (2) The action of constraining oneself by oath, promise, or contract to a particular course of action; a mutually binding agreement. Also: the course of action to which one commits oneself; a formal promise. (3a) Originally Scottish. Moral or legal constraint; the condition of being morally or legally bound; the constraining power of a law, duty, contract, or (more generally) custom, habit, etc. (3b) An act or course of action to which a person is morally or legally bound; what one is bound to do; a duty, commitment.

to the way planning has occurred for decades: some things must be ‘protected’, others ‘preserved’, some must be given ‘regard’ or ‘particular regard’, other things ‘promoted’. All of those different obligations have to form part of the decision-making process, but some are prioritised over others.

19. In his legal submissions for Oceana Gold, Mr Christensen uses the analogy of prioritising his health over his work this year to explain the application of Te Mana o te Wai.<sup>10</sup> He says that prioritising his health over his work does not mean that he will immediately quit his job, or spend all his time sleeping, exercising and eating wholesome food. Instead, it means he will make mindful decisions about the work that he does. There is an implicit assumption in Mr Christensen’s analogy: that his health is good enough to allow him to work. If his health deteriorated so significantly that he was physically unable to work, then prioritising his health may well require quitting his job.
20. In my view, that is the case for some over-allocated water bodies. They are in such a poor state of health that we cannot continue to abstract the same amount of water from them or discharge the same amount of contaminants into them. Giving effect to Te Mana o te Wai, and the implications of prioritising the health and well-being of water bodies, will look different in different catchments and, in every case, will require consideration of the current health of the water body in question.

### 3.2. Scope of the priorities

21. There have been competing views put to the hearing panel throughout the hearing on LF-WAI-P1. Some parties consider that the pORPS should clearly state the scope of each of the priorities so that there is clarity for the LWRP, currently under development.<sup>11</sup> Others consider that this is a matter best addressed at a catchment level through the LWRP, noting that the value-identification process is specifically required to occur as part of implementing the NOF.<sup>12</sup>
22. There are clearly different interpretations of the priorities outlined in the hierarchy of obligations and I do not consider it would assist the LWRP for those differences to remain unresolved in the pORPS. If they do, all of these parties will simply put forward the same cases again through the LWRP submissions and hearing.
23. The main point of contention between parties is the scope of the second priority. As notified, and as I recommend it be amended, the obligation in LF-WAI-P1(2) is limited to the health needs of people as they relate to direct contact with water, either via ingestion or immersion. I have set out the reasons for this in the s42A report.<sup>13</sup>
24. Some parties support this interpretation.<sup>14</sup> Other parties still consider that the scope of the second priority should extend beyond the health of people arising from physical

---

<sup>10</sup> Legal submissions for Oceana Gold dated 31 August 2023, para 29.

<sup>11</sup> For example, Fish and Game

<sup>12</sup> For example, OceanaGold

<sup>13</sup> Section 42A Report: FPI dated 2 June 2023, paras 799-816.

<sup>14</sup> For example, Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku, DOC, Fish and Game, Forest and Bird



contact with water and incorporate the health of people arising from various uses of water, including for:

- a. Renewable electricity generation;<sup>15</sup>
- b. Food production;<sup>16</sup> and
- c. Three waters infrastructure.<sup>17</sup>

25. The arguments put forward by these submitters differ in terms of the activities they seek to include in the second priority, but in my opinion they are all founded on a common argument: that *uses* of water for human health needs should be considered in the second priority rather than the third. In my view, this moves Te Mana o te Wai away from being a concept or a framework and towards being a ‘categorisation tool.’
26. In her oral submissions, Ms Baker-Galloway described expanding the scope of the second priority to include the types of activities above as a “slippery slope”. I agree. If the panel accepts the argument put forward by the submitters, the next question is whether *all* uses that support human health are included in the second priority or whether there is a distinction to be drawn between them, such that some are considered second priority and some third priority. This is a difficult prospect and would undoubtedly be contested amongst the submitters.
27. It seems that the reason parties are seeking an expansion of the scope of the second priority is to ensure that the activities they undertake are afforded priority over other activities. In my view, if the scope of the second priority is expanded to include uses of water, it is hard to see a case where only *one* use is included, with others remaining in the third priority. If multiple uses of water (for example, all three uses listed above) are included in the second priority, then the outcome sought by the submitters is not fully achieved – they are simply competing against other second priority uses instead of against other third priority uses.
28. Expanding the scope of the second priority also exacerbates an issue already present between priorities two and three – how much weight to afford obligations that ‘straddle’ the two priorities (for example, where a use of water provides for human health needs at the same time as other uses, such as commercial or industrial uses). In my view, the “slippery slope” takes us down a pathway where there is an increasingly blurred line between the two priorities and, at the most extreme end, essentially no difference. In contrast, the interpretation of the second priority as I have recommended it provides a clear ‘line in the sand’.
29. If the outcome sought by submitters is some type of prioritisation of their use of water over other uses, expanding the second priority is only one option available. An alternative would be to retain the scope as I recommend it, recognising that there is no constraint on prioritising uses of water amongst the third priority.

---

<sup>15</sup> Manawa, Contact, Meridian

<sup>16</sup> OWRUG, Federated Farmers, Horticulture NZ

<sup>17</sup> QLDC and DCC

30. Many of the examples given by submitters have focused on the allocation of water quantity, and the need to ensure that their activities have sufficient water to continue operating. While I do not dispute the importance of water allocation to anyone, the RMA provides us with a 'first in, first served' model which can make this type of prioritisation difficult to implement in an efficient way. Additionally, some existing quantities of water already allocated via consents and/or in use through s124 rights. I am not convinced that this type of prioritisation on a region-wide scale is appropriate. For example, Ms Burkhardt for Manawa submits that renewable electricity generation should be afforded priority due to its national significance. That may be the case in some catchments (i.e. the Clutha), but it is not the case in others (i.e. the Catlins FMU, where there is no hydro-electricity generation of any significant scale).
31. During their presentations at the hearing, Ms Burkhardt and Ms Styles for Manawa highlighted that there are other parts of an allocation regime that can assist with delivering this type of priority. For example, different activities can be subject to different abstraction cut-offs in times of low flows<sup>18</sup> or, in over-allocated catchments, reductions in actual water use can be required from some uses ahead of others. Water allocation regimes are comprised of more than only the water available for allocation and it is this full suite that should be considered.
32. I consider there is a need for nuance in the way uses of water are provided for, particularly in relation to the specific catchment. The NPSFM requires values to be identified for each FMU or part of an FMU and, in every FMU, the following values must be considered:<sup>19</sup>
- a. Hydro-electric power generation,
  - b. Irrigation, cultivation, and production of food and beverages, and
  - c. Commercial and industrial use.
33. This allows area-specific values to be identified (or not). The NPSFM then requires environmental outcomes to be developed for each value.<sup>20</sup> Target attribute states and environmental flows and levels must then be developed to achieve the environmental outcomes.<sup>21</sup> These processes allow for FMU or rohe-level approaches to be taken to managing water uses, in line with the values and environmental outcomes developed for those areas. In my opinion, this is more appropriate than determining priorities in the use of water at a region-wide level where there are likely to be variations in the importance of those uses in different communities.
34. I do not consider that additional wording in the pORPS is required to enable this outcome – it is already required by implementing the NOF per the NPSFM. However, for certainty, discussion of the hierarchy of obligations in LF-WAI-PR1 could be amended to make it clear that further prioritisation within the third priority can occur through regional plans when implementing the NOF:

---

<sup>18</sup> Currently under the Water Plan, takes for community water supply are exempt from meeting some minimum flows.

<sup>19</sup> Appendix 1B, NPSFM

<sup>20</sup> Clause 3.9, NPSFM

<sup>21</sup> Clauses 3.11(7), 3.16(2)

### LF-WAI-PR1 – Principal reasons

In accordance with the NPSFM, councils are required to implement a framework for managing *freshwater* that gives effect to *Te Mana o te Wai*. This places the mauri (life-force) of the *water* at the forefront of decision making, recognising that *te hauora o te wai* (the health of the *water*) is the first priority, and supports *te hauora o te taiao* (the health of the environment) and *te hauora o te takata* (the health of the people). It is only after the health of the *water* and the health of the people is sustained that *water* can be used for economic purposes. When water is available for use, different uses may be prioritised in different FMUs or rohe depending on the values identified by communities and the environmental outcomes seeking to be achieved. Giving effect to *Te Mana o te Wai* requires actively involving *takata mana whenua* in *freshwater* planning and management.

#### 3.3. The difference between the first and second priorities

35. There have been questions during the hearing about whether it can be assumed that if the health and well-being of water is being prioritised, then the health needs of people are also inherently prioritised. That is true in some cases, but not in others.

36. In her oral submissions, Ms Baker-Galloway for Fish and Game gave an example of water quantity, where a volume of water may be sufficient for the health of a water body but insufficient to provide for drinking water supply. I agree with her example and note that there are distinctions in water quality measures as well.

37. *E.coli* is an attribute for human health listed in the NPSFM. As far as I am aware, *E.coli* is not a contaminant that is particularly detrimental to freshwater ecosystems but it can make people very sick. The thresholds set in the NPSFM are designed to protect human health and are more stringent than they would be if they were set to protect freshwater ecosystems. A contaminant threshold set for *E.coli* to protect freshwater ecosystems would not be stringent enough to also protect human health. For this contaminant, it is important that the health of the water is appropriate both for freshwater ecosystems but also for human health.

38. This illustrates what I consider to be the distinction between priorities one and two: both are concerned with the health of the water, but the first priority as it relates to the water bodies and freshwater ecosystems themselves, and second priority as it relates to the health of people touching or ingesting it. It is only after these two obligations have been prioritised, that the use of water for other purposes can be provided for.

#### 3.4. Whether the second priority includes people outside New Zealand

39. Another question that arose during the hearing was whether the second priority should be read as only applying to people in New Zealand or whether it could apply to the health needs of people elsewhere in the world (for example, where those people rely on importing food from New Zealand).

40. The hierarchy of obligations forms part of Te Mana o te Wai, but, as I have outlined above, the concept also encompasses the six principles set out in clause 1.3. Clause 1.3(3) states that (my emphasis added):

(3) *Te Mana o te Wai encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this National Policy Statement and its implementation.*

41. Sub-clause (4) then lists the principles. The first three (mana whakahaere, kaitiakitanga, and manaakitanga) are focused on tangata whenua, the fourth applies to “those with authority for making decisions” and the rest apply to “all New Zealanders”. I note that the sixth principle, care and respect, specifically refers to (my emphasis added) “the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.”<sup>22</sup>

42. These principles form part of the concept of Te Mana o te Wai and inform the implementation of the NPSFM, including the hierarchy of obligations in the sole objective. In my view, with this context, the second priority should be read as applying to the health needs of people in New Zealand.

### 3.5. Final recommendation

43. I maintain my recommendation on LF-WAI-O1 and LF-WAI-P1 as set out in my opening statement.

44. I recommend the following amendments to LF-WAI-PR1:

... It is only after the health of the water and the health of the people is sustained that water can be used for economic purposes. When water is available for use, different uses may be prioritised in different FMUs or rohe depending on the values identified by communities and the environmental outcomes seeking to be achieved. Giving effect to *Te Mana o te Wai* requires actively involving ~~takata~~ mana whenua in *freshwater* planning and management.

### 3.6. Section 32AA evaluation

45. Principal reasons are explanatory and do not have any legal weight in decision-making. I do not consider any further evaluation is required.

## 4. Freshwater visions

### 4.1. Structure

46. Most parties consider that the approach I have adopted to introducing a region-wide objective which is cross-referenced in the long-term visions for each FMU is lawful.

---

<sup>22</sup> Clause 1.3(4)(f), NPSFM  
Proposed Otago Regional Policy Statement 2021

OWRUG, Federated Farmers, DairyNZ and Horticulture NZ continue to disagree.<sup>23</sup> The lawfulness of this approach is addressed in Mr Anderson’s closing submissions. He has recommended minor changes to LF-FW-O1A and I agree with his amendments.

47. In her opening statement for OWRUG, Federated Farmers, and Dairy NZ, Ms Perkins states:<sup>24</sup>

*As highlighted in my evidence, other experts and farming witnesses, the separation of the visions back out to at least FMU level, even with repetition, will more effectively allow for future changes to the visions as needed at FMU level or below.*

48. I do not agree that there is any difference between making changes to an objective that applies across the region and an objective (vision) that applies to an FMU. Both are provisions in the pORPS and both require a formal planning process to be amended.

49. In her opening statement for Beef + Lamb and DINZ, Ms Perkins attaches her recommended amendments which include inserting the content of LF-FW-O1A back into each of the visions in LF-VM-O2 to LF-VM-O5. In my opinion, this is a matter of form rather than substance – whether the same thing is said once or in multiple places, the effect is the same. I note that Mr Brass shares this view, stating in his opening statement that:<sup>25</sup>

*Although it would be possible to simply repeat the region-wide elements within each FMU/rohe-specific vision, I consider that this would be inefficient and unnecessary, and would run the risk of reducing the clarity of the visions, especially the distinction between elements which are common across the region and those which are more location-specific.*

50. In my view, it is not surprising that there is commonality across the region in terms of the outcomes sought by communities. At a very basic level, most people want our freshwater resources to be healthy. That desire is consistent across the region and, in my experience, across the country.

#### 4.2. Providing for resource use

51. In her opening statement for Beef + Lamb and DINZ, Ms Perkins outlines our discussions on how to provide better recognition of primary production activities within the freshwater visions.<sup>26</sup> As she notes, we agree that the following clause should be incorporated into either LF-FW-O1A (my view) or the visions in LF-VM-O2 to LF-VM-O5 (Ms Perkins’ view):

(7) innovative and sustainable land and water management practices:

---

<sup>23</sup> Legal submissions on behalf of OWRUG, Federated Farmers, and Dairy NZ dated 29 August 2023, paras 64-70; Legal submissions on behalf of Horticulture NZ dated 6 September 2023, paras 42-50.

<sup>24</sup> Opening statement of Claire Perkins for OWRUG, Federated Farmers, and Dairy NZ dated 29 August 2023, para 6.

<sup>25</sup> Opening statement of Murray Brass for Director-General of Conservation dated 5 September 2023, para 14.

<sup>26</sup> Opening statement of Claire Perkins for Beef + Lamb and DINZ dated 4 September 2023, paras 7-9

- (a) support food and fibre production and the continued social, economic, and cultural wellbeing of Otago’s people and communities, and
- (b) improve resilience of communities to the effects of climate change.

52. While I support the inclusion of an additional clause, I have some reservations about using the term “food and fibre production”. Ms Perkins relies on the definition promoted by Ms Scott which is:<sup>27</sup>

**Food and Fibre Production** means the primary sector production industries (other than mining) including Arable, Dairy, Forestry and Wood Processing, Horticulture (including vegetables, viticulture and winemaking), Pork, Poultry, Bees, Red Meat and Wool (Sheep, Beef and Deer), Seafood and Cross-Sector and the related processing industries. This definition is intended to describe the suite of activities that occur throughout Otago from a rural land use perspective and is not intended to prioritise one primary sector production industry over another.

53. My concern is that there was clear feedback from some communities about forestry in their FMUs (my emphasis added):<sup>28</sup>

- a. **North Otago FMU:** “Identified drivers of poor water quality included urban storm water, forestry, and lack of fencing of waterways. Suggested solutions included investment in storm water and sewerage infrastructure along with improved planning and regulation of forestry activities and fencing and revegetation of riparian areas and wetlands.” (para 88)
- b. **Taiari FMU:** “...There was strong opposition to forestry in the Taiari FMU, as a threat to natural character and agriculture.” (para 96)
- c. **Catlins FMU:** “...Community members considered some improvement in water quality was needed and could be supported by investing in proper infrastructure such as sealed roads, constructing flood prevention structures, and regulating forestry to minimise sedimentation.” (para 109) and “The community values the FMU’s rural character and would largely prefer to maintain the agricultural base for the economy. This will require planning to manage extent and location of urban development, along with control of forestry development.” (para 113)

54. The terminology used by participants in the engagement on freshwater visions to describe the activities they want to see in their catchments tended to be either “food production” or “agriculture.” In light of the feedback provided, I cannot support the use of “food and fibre production” as recommended by Ms Scott and Ms Perkins. Instead, I recommend referring to “pastoral, arable, and horticultural production”. I note that this is consistent with the terminology used in relation to Freshwater Farm Plans.<sup>29</sup>

---

<sup>27</sup> Opening statement of Kate Scott for Beef + Lamb and DINZ dated 3 September 2023, paras 7-16

<sup>28</sup> All quotes from the consultation report attached to the section 32 report as Appendix 5.

<sup>29</sup> Section 217D of the RMA requires certain types of farms to have a certified freshwater farm plan, including farms with 20+ hectares of arable land use, 5+ hectares of horticultural land use, or 20+ hectares of pastoral land use. These terms are defined in section 217B.

#### 4.3. Naturalness

55. Some submitters have highlighted the modified nature of Otago’s catchments, whether from drainage, flood protection works, or irrigation schemes. There has been concern about whether the pORPS requires a return to ‘natural’ (pre-human) state and, if so, how achievable that is in modified catchments. I understand the concern relates primarily to three provisions:

- a. LF-FW-O1A(4): the natural form, function and character of water bodies reflects their natural characteristics and natural behaviours to the greatest extent practicable, and
- b. LF-VM-O2(7A): in the Lower Clutha rohe, opportunities to restore the natural form and function of water bodies are promoted wherever possible.
- c. LF-VM-O5(3): healthy riparian margins, wetlands, estuaries and lagoons support the health of downstream coastal ecosystems and opportunities to restore the natural form and function of water bodies are promoted wherever possible.

56. I addressed LF-FW-O1A(4) in the section 42A report where, in summary, I considered that any outcome regarding natural form and function needed to be aspirational but also practical.<sup>30</sup> For this reason, I have recommended including “to the greatest extent practicable” in this clause. In my view, this recognises that there are practical constraints on the ability for water bodies to reflect their natural form and function (i.e. due to modification). However, the fact that water bodies have been modified should not, alone, be a reason not to pursue opportunities to improve their form and function where these exist and can be practically achieved.

#### 4.4. Transition framework

57. Through both the non-FPI and FPI hearings, OWRUG, Federated Farmers, and DairyNZ and Beef + Lamb and DINZ have sought various amendments to the pORPS to introduce a transition framework for resource users. In my non-FPI reply report on the LF chapter I addressed the concept of a transition framework generally, and outlined my views that most of the transitional provisions sought by the submitters are required to be included in the LWRP, rather than the pORPS.<sup>31</sup>

58. In the FPI hearing, the amendments sought by these submitters have coalesced into a suite of three new policies:

- a. LF-VM-P6A – Transitions over time,
- b. LF-FW-7B – Recognise existing regulatory and non-regulatory measures when managing land and freshwater, and
- c. LF-WAI-P3A – Integrated catchment management.

---

<sup>30</sup> See paras 922-

<sup>31</sup> Reply Report 9: LF – Land and freshwater, paras 23-33.

59. Having heard the submissions and evidence from these parties, I recognise the uncertainty faced by the rural sector and the desire for some recognition of the need for transitions in resource use to occur over time in a way that is sustainable for those communities. As Ms Perkins notes in her opening statement for Beef + Lamb and DINZ, we have discussed and agreed on a new policy (LF-VM-P6A) which, in my view, provides this recognition in a way that does not inappropriately constrain, or override, the NPSFM implementation to occur in the LWRP.
60. I have outlined my concerns with proposed new policy LF-FW-P7B in my opening statement.<sup>32</sup> While I note the two minor changes recommended by Ms Perkins, my concerns remain and I do not agree that this policy should be included in the pORPS.
61. I have addressed LF-WAI-P3A separately in this report as it is not solely related to freshwater visions.

#### 4.5. Timeframes

62. In my opening statement, I discussed the requirement in the NPSFM for the goals and timeframes included in freshwater visions to be “ambitious but/and reasonable.”<sup>33</sup> I then assessed, as far as I could with the information available, whether I considered the goals and timeframes met this test in each FMU and rohe. I concluded that:
- a. North Otago FMU (2050) and Catlins FMU (2030) looked unlikely to be achievable given nutrient lag times.
  - b. Lower Clutha rohe (2045) may be unachievable given there are higher/contributing catchments with longer timeframes.
  - c. Manuhereki rohe (2050) is challenging, and I was open to hearing more evidence on the timeframe.
63. There was little commentary during the hearing from submitters seeking to extend these timeframes, however some submitters still consider they should be shortened. In particular:
- a. Fish and Game seeks amendments to allow environmental outcomes to be achieved after 2040 if all behavioural changes required to meet those outcomes are implemented by 2040.<sup>34</sup>
  - b. Wise Response seeks to amend all timeframes to 2035 to reflect the need for urgency in addressing the environmental challenges faced by Otago and the world.<sup>35</sup>
  - c. Forest and Bird seeks that no timeframes exceed 2040.<sup>36</sup>

---

<sup>32</sup> Opening statement of Felicity Boyd dated 28 August 2023, paras 38-53.

<sup>33</sup> Opening statement of Felicity Boyd dated 28 August 2023, paras 75-84.

<sup>34</sup> Opening statement of Ben Farrell for Fish and Game dated 30 August 2023, para 11.

<sup>35</sup> Legal submissions for Wise Response dated 7 September 2023, Appendix 1 at pp 5-6.

<sup>36</sup> Legal submissions for Forest and Bird dated 6 September 2023, paras 37-41.



64. I agree with these submitters that action should be taken immediately to halt the decline in freshwater health in Otago and to improve already degraded water bodies. However, I am not convinced that the submitters have demonstrated that the timeframes they seek are “reasonable” in accordance with clause 3.3 of the NPSFM. Some parts of Otago are facing significant challenges that will affect communities for generations and it will not be a simple exercise to address them. In some cases, large investments will be required to ensure secure water supply in the future – during the hearing, Ms Heckler for OWRUG, Federated Farmers and Dairy NZ indicated a figure of hundreds of millions in the Manuherehia rohe alone. In my view, the timeframes for achieving the visions need to balance the need for action with the large and difficult actions that need time to be planned, funded, and carried out.
65. Having heard the evidence from parties, and following on from the tentative conclusions I reached in my opening statement, I recommend retaining the timeframes as notified with the following exceptions:
- a. **Catlins FMU:** I consider there is good reason to believe that this timeframe will not be met due to nutrient lag times and there will not be an opportunity to review the timeframe before it is reached through normal plan review processes. For this reason, I recommend revising this timeframe to 2035.
  - b. **Lower Clutha rohe:** As outlined in my opening statement, I consider it is a difficult proposition for this rohe, which is located at the bottom of the Clutha Mata-au catchment, to have an earlier timeframe than the rohe higher in the catchment (which affect the Lower Clutha rohe). The solution is either to align the higher catchments with the Lower Clutha rohe timeframe or to extend the Lower Clutha timeframe to align with the higher catchments. Given the issues with the Manuherehia rohe, I do not consider it would be feasible to bring forward the timeframe for achieving the Manuherehia rohe vision and therefore I recommend extending the Lower Clutha rohe timeframe to 2050 for consistency.
66. On further reflection, I do not recommend altering the North Otago FMU or Manuherehia rohe timeframes. I still consider there is a risk that the North Otago FMU vision will not be achieved by 2050 due to lag times, however there will be at least one review of the pORPS content prior to that deadline being reached. Given the urgent need to take action in this FMU, I consider that retaining the notified timeframe is preferable and reviewing it in the future if monitoring demonstrates with greater certainty that the timeframe will not be met (and what alternative timeframe may be achievable).
67. In relation to the Manuherehia rohe, I note Ms Heckler’s strong view at the hearing that the issues in that catchment should be resolved by this generation, rather than pushing them to the next generation by extending the timeframe. Accordingly, I do not recommend amending the 2050 timeframe for achieving the Manuherehia rohe vision.

4.6. Provision for non-diadromous galaxiids and Canterbury mudfish

68. In my opening statement, I recommended referring to non-diadromous galaxiids and Canterbury mudfish in LF-FW-O1A in response to the evidence of Mr Brass for the Director-General of Conservation, as follows:

(1) healthy freshwater and estuarine ecosystems support healthy populations of indigenous species (including non-diadromous galaxiids and Canterbury mudfish) that are plentiful enough to support mahika kai and safe for consumption,

69. In his opening statement, Mr Brass points out that this wording changes the focus of the clause such that the purpose of supporting healthy populations of indigenous species is only valued in relation to mahika kai rather than in its own right.<sup>37</sup> I agree that is the case and confirm it was not my intent to limit the scope of the clause in this way. Mr Brass recommends amending the clause as follows:

(1) healthy freshwater and estuarine ecosystems support healthy populations of indigenous species (including non-diadromous galaxiids and Canterbury mudfish) ~~that are plentiful enough to support and~~ mahika kai ~~and which is~~ safe for consumption,

70. I am concerned that this removes the reference to plentiful mahika kai, the importance of which has been highlighted in the cultural evidence for Kāi Tahu. As an alternative, I recommend the following wording which I consider retains this element but also addresses the issue raised by Mr Brass:

(1) healthy freshwater and estuarine ecosystems support healthy populations of indigenous species (including non-diadromous galaxiids and Canterbury mudfish) ~~that are and~~ plentiful ~~enough to support~~ mahika kai ~~and that are~~ safe for consumption,

4.7. Final recommendation

71. I recommend the following amendments:

a. Amending the title and chapeau of LF-FW-O1A:

**LF-FW-O1A – Visions set for each FMU and rohe**

In each FMU and rohe in Otago and within the timeframes specified in the freshwater visions in LF-VM-O2 to LF-VM-O6:

b. Amending clause (1) in LF-FW-O1A:

(1) healthy *freshwater* and estuarine ecosystems support healthy populations of indigenous species (including non-diadromous galaxiids and Canterbury mudfish) and plentiful *mahika kai* that are safe for consumption,

---

<sup>37</sup> Opening statement of Murray Brass for Director-General of Conservation dated 5 September 2023, paras 16-19.

- c. Amending clause (7) in LF-FW-O1A:

(7) innovative and sustainable *land* and *water* management practices:

(a) support pastoral, arable, and horticultural production and the continued social, economic, and cultural well-being of Otago's people and communities, and

(b) improve the resilience of communities to the *effects of climate change*, and

- d. Including a new policy LF-VM-P6A as follows:

**LF-VM-P6A – Transitions over time**

Provide for ambitious and reasonable transitions in the use of land and water to achieve the long-term visions by:

(1) recognising that changes to practices and activities will need to occur over time; and

(2) managing the adverse impacts of implementing these changes on people and communities, including by phasing implementation of new requirements and building on actions undertaken by catchment and other community groups, and

(3) enabling innovation and the development of new practices.

- e. Amending the timeframes in LF-VM-O2 and LF-VM-O5 as follows:

**LF-VM-O2 – Clutha Mata-au FMU vision**

...

(8) the outcomes sought in ~~(7)~~<sup>38</sup> are to be achieved within the following timeframes:

(a) by 2030 in the Upper Lakes rohe,

(b) by 2045 in the Dunstan, and Roxburgh ~~and Lower Clutha~~ rohe, and<sup>39</sup>

(c) by 2050 in the Manuherehia and Lower Clutha rohe.<sup>40</sup>

**LF-VM-O6 – Catlins FMU vision**

By ~~2030~~ 2035<sup>41</sup> in the Catlins *FMU*, and in addition to the matters in LF-FW-O1A.<sup>42</sup>

...

---

<sup>38</sup> Clause 16(2), Schedule 1, RMA

<sup>39</sup> 00239.077 Federated Farmers

<sup>40</sup> 00239.077 Federated Farmers

<sup>41</sup> FPI029.001 Otago Regional Council

<sup>42</sup> Clause 10(2)(b)(ii), Schedule 1, RMA – consequential amendment arising from introducing LF-FW-O1A

#### 4.8. Section 32AA evaluation

72. I discussed the background to LF-FW-O1A(7) in the section 42A report.<sup>43</sup> I do not consider that there is a significant difference between the clause as I now recommend it be included and similar clauses included in the notified versions of LF-FW-O2(7)(b)(ii), LF-VM-O2(7)(c)(iii), LF-VM-O3(5), and LF-VM-O4. The main difference is that the application of the clause has now been expanded by moving it into a region-wide objective. This means it now applies in the Dunedin & Coast and Catlins FMU visions (LF-VM-O5 and LF-VM-O6 respectively) as well. In my view, this is more appropriate for achieving the purpose of the Act because it recognises the need for sustainable practices to be implemented in all parts of the region.
73. LF-VM-P6A is a new policy and has not been subject to s32 evaluation. The benefits of including this policy are that it better recognises the need for changes in practices over time and requires managing the impacts of those changes on communities, which is consistent with section 5(2) of the RMA – “managing ... natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being ...” I do not consider there are any additional costs from including the policy, as it simply recognises the types of considerations that are required by the NPSFM when implementing the NOF in the LWRP.<sup>44</sup> Overall, I consider this policy improves the effectiveness of the suite of policies designed to achieve the objectives (particularly the visions) of the LF chapter by recognising the need for change management, the use of tools to managing impacts on communities (such as phased implementation) and building on existing work underway.
74. In my opening statement, I assessed each of the notified vision timeframes against the test in the NPSFM (“ambitious but reasonable”) and indicated where I thought amendments may be required. I do not consider any further evaluation is required in relation to the amendments I now recommend.

## 5. Integrated catchment management

75. The legal submissions of Dr Somerville and the opening statement of Ms Perkins for Beef + Lamb and DINZ proposed a new policy on integrated catchment management:

### **LF-WAI-P3A – Integrated Catchment Management**

- (1) When developing and implementing planning instruments to give effect to the objectives and policies in this policy statement through integrated management of land and freshwater, Otago Regional Council must actively engage with local communities and tangata whenua, at the rohe and catchment level,
- (2) Provide for integrated management at a catchment level by supporting the establishment of Integrated Catchment Management Groups that

---

<sup>43</sup> See paras 932-937.

<sup>44</sup>

incorporate Otago Regional Council with local community and tangata whenua representatives, and

(3) Progress and implement integrated management of catchments through the preparation of Catchment Action Plans by the Integrated Catchment Groups, in accordance with clause 3.15 of the NPSFM that:

(a) develop visions, identify values and environmental outcomes for Otago's catchments and the methods to achieve those outcomes, including as required by the NOF process,

(b) develop and implement actions that may be adapted over time with trigger points where additional regulatory and/or non-regulatory intervention is required,

(c) make recommendations on amendments that may be required to the provisions of this policy statement, including the visions and timeframes in the parent FMU, and any other changes necessary to achieve integrated catchment management pursuant to clauses 3.2(2) and 3.5(2) of the NPSFM

(d) at a local catchment level, encourage community initiatives to maintain or improve the health and well-being of waterbodies and their freshwater ecosystems, to meet the health needs of people, and enable the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

76. In my view, there are six matters to address in relation to this new policy:

- a. Integrated catchment management in Otago,
- b. Its proposed inclusion in the LF-WAI – Te Mana o te Wai section,
- c. Whether it is a policy or a method,
- d. Clause (1): active engagement at the rohe and catchment level,
- e. Clause (2): Integrated Catchment Management Groups, and
- f. Clause (3): content of Catchment Action Plans.

77. I address these in the sections below.

5.1. [Integrated catchment management in Otago](#)

78. ORC's website describes integrated catchment management as follows:<sup>45</sup>

*The approach called Integrated Catchment Management (ICM), is based on a holistic, natural resource management philosophy that recognises that all the elements of an ecosystem, including the people, are connected.*

---

<sup>45</sup> ORC. (2023). *Integrated catchment management*. <https://www.orc.govt.nz/managing-our-environment/integrated-catchment-management>

79. In its Long-term Plan 2021-31, ORC committed to leading the development, implementation, and review of integrated catchment plans in collaboration with iwi and community.<sup>46</sup> These plans will integrate actions for water, ecosystems, biodiversity, biosecurity, and natural hazard mitigation.<sup>47</sup> ORC describes them as:<sup>48</sup>

*A CAP [Catchment Action Plan] is a plan for the management and conservation of an entire catchment or catchments. It is a long-term plan that builds on the work that communities and local government are already doing to protect and manage their place and serves as a focus for new actions and projects.*

*Although the catchment, or watershed, is used to frame a CAP, it is not focused on just freshwater. A CAP looks at the whole system: biodiversity, water (fresh and salty), land, and the ecosystem services they provide as well as human wellbeing values (including mahika kai, wāhi tupuna and livelihoods).*

*The CAP can refer to regulatory (or mandatory) rules that may need to be taken to achieve environmental outcomes required by regional plans, but it will not be creating 'rules'.*

*Successful CAPs are 'owned' by the community, iwi and the ORC. This means they are developed with the community. ORC, key stakeholders, and subject experts will be working with communities and iwi to co-design these detailed catchment action plans for their area.*

80. There are three key documents outlining the various decisions made about this programme of work:
- a. Paper to Strategy and Planning Committee: Item 8.2 Integrated catchment management programme (10 August 2022),<sup>49</sup>
  - b. Paper to Council: Item 8.2 Integrated catchment management Catlins Integrated Catchment Group terms of reference (1 June 2023),<sup>50</sup> and
  - c. Paper to Environmental Implementation Committee: Item 8.2 Integrated catchment management programme (9 August 2023).<sup>51</sup>
81. The August 2023 paper confirms that Catchment Action Plans will:<sup>52</sup>
- a. Be developed in partnership with mana whenua and community who are “local and connected” to place, with the ICM programme providing a mechanism for putting into practice the partnership between mana whenua and ORC,
  - b. Collate and build on the community’s existing work and identify gaps and opportunities,

---

<sup>46</sup> ORC Long-term Plan 2021-2031, p.17.

<sup>47</sup> Ibid, p.23.

<sup>48</sup> ORC. (2023). *Integrated catchment management*. <https://www.orc.govt.nz/managing-our-environment/integrated-catchment-management>

<sup>49</sup> <https://www.orc.govt.nz/media/12701/agenda-strategy-and-planning-20220810.pdf>

<sup>50</sup> <https://www.orc.govt.nz/media/14504/council-meeting-agenda-28-june-2023.pdf>

<sup>51</sup> <https://www.orc.govt.nz/media/14807/eic-2023-08-09-agenda.pdf>

<sup>52</sup> Para 7.

- c. Incorporate science and mātauraka Māori, and
- d. Serve to focus and target effective environmental management actions.

82. Integrated catchment management is an approach that has already been endorsed by ORC for some time and is now entering its implementation phase. It will be important that this programme retains flexibility so that it can be implemented as desired in different communities and adapted over time as lessons are learned. ORC has been clear that this is *not* a regulatory approach, but will work alongside those tools to achieve the outcomes desired in FMUs and rohe.

## 5.2. Inclusion in LF-WAI

83. Dr Somerville submits that:<sup>53</sup>

*There needs to be a directive management process policy framework to address integrated catchment management. The directions in the NPSFM to the ORC are to engage with communities and tangata whenua to give effect to TMOTW in integrated management processes. This is not optional, it is an NPSFM requirement. If these processes are applied at a catchment level, they should not be left to the existing methods included in the PORPS. These are uninformed by a directive process policy framework addressing integrated catchment management. To replicate current integrated catchment approaches in Otago, the PORPS should direct that the ORC's engagement should occur through catchment management groups that include representatives of local communities and tangata whenua. The engagement process should involve action planning and regulatory and non-regulatory processes to give effect to TMOTW.*

84. I agree with Dr Somerville that the NPSFM requires engaging with communities and tangata whenua to give effect to Te Mana o te Wai and using integrated management. I do not consider this results in a *requirement* for integrated catchment management, but I agree it is one approach that can be adopted.

85. The LF-WAI – Te Mana o te Wai section in the LF chapter sits 'above' the rest of the chapter. Its content is a suite of provisions that express Te Mana o te Wai and must be given effect to when implementing the sections that follow.<sup>54</sup> This is consistent with the direction in Policy 1 of the NPSFM, which requires that freshwater is managed in a way that gives effect to Te Mana o te Wai. In my opinion, the policy sought by the submitters is not part of the expression of Te Mana o te Wai, rather it is one of the ways Te Mana o te Wai can be implemented. It does not, therefore, belong in the LF-WAI section.

## 5.3. A policy or a method

86. It is commonly accepted in planning that provisions have different purposes and that:<sup>55</sup>

<sup>53</sup> Legal submissions for Beef + Lamb and DINZ, para 75.

<sup>54</sup> See LF-WAI-P4.

<sup>55</sup> Quality Planning. (n.d.). *Writing provisions for plans*. Quality Planning <https://qualityplanning.org.nz/node/608>

- a. Policies are the course of action to achieve the objective (i.e. the path to be followed to achieve a certain, specified, environmental outcome.), and
- b. Methods are the means by which policies are implemented and can be regulatory or non-regulatory.

87. The key regulatory methods in the pORPS are regional and district plans. Direction for those documents is set out in LF-FW-M6/LF-LS-M11 (regional plans) and LF-FW-M7/LF-LS-M12 (district plans). The NPSFM also requires (in some instances) and leaves open (in others) the development of action plans to implement its direction. These are addressed in LF-FW-M8. It is evident from clause (3) of the policy proposed by Beef + Lamb and DINZ that Catchment Action Plans are intended to be actions plans as the NPSFM envisages them. For that reason, I consider it is unhelpful to have a proposed policy in one section repeating the content of a method in another section.

88. In my view, the policy proposed is not a policy, it is a method. Preparing action plans in and of themselves will not achieve the objectives of the pORPS. Rather, they can assist with identifying the actions to be taken to implement the policies, which in turn assist with achieving the outcomes sought by the objectives.

#### 5.4. Clause (1): active engagement at the rohe and catchment level

89. When developing plans to implement the pORPS, clause (1) of the proposed policy requires ORC to actively engage with local communities and tangata whenua at the rohe and catchment level. Although this is included in a policy titled 'Integrated Catchment Management', its implications are much broader – the requirement would apply to the LWRP and any future change to that plan.

90. There are different engagement requirements under the NPSFM in relation to implementing the NOF. Clause 3.7(1)(a) requires engaging with communities and tangata whenua at every step of the NOF process. However, clause 3.4(1) requires local authorities to actively involve tangata whenua (to the extent they wish to be involved) in freshwater management, including when implementing the NOF. Neither clause specifies the spatial scale at which engagement is to occur.

91. The LWRP is due to be notified in June 2024 (nine months from now). That timeframe has already been extended once with the Minister's agreement, and there is a legislative 'backstop' for all other councils of notifying prior to 31 December 2024. Whether the engagement processes undertaken by ORC to date equate to 'engagement' or 'active engagement' is likely to be debated. As outlined at the beginning of this statement, there has been engagement with communities in a number of forms over the past three years as the development of the LWRP has progressed and, as far as I am aware, that engagement meets the legal obligations ORC has under the NPSFM.

92. The LWRP must give effect to the pORPS. In my view, there is a risk that if, in terms of engagement, LF-WAI-P3A(1) requires something *more* than what has been undertaken to date in the development of the LWRP, the LWRP will not be giving effect to the pORPS and there are grounds for legal challenge on this basis. The alternative would be to, very quickly and with extremely limited time available, undertake additional engagement that



is (a) more intensive than ORC is currently undertaking, and (b) on a smaller spatial scale. I note that ORC commenced its latest round of engagement on 9 September which will run until early November. Realistically, any additional engagement to that already scheduled will result in the notification deadline not being met.

93. Putting aside the LWRP, it is clear from ORC’s website and Council papers that Catchment Action Plans will be developed closely with communities and mana whenua. There are a range of different terms used across the information available, including ‘partnership’ and ‘in collaboration with’. The Council paper in Attachment 2 to Dr Somerville’s submissions states that using the Conservation Standards<sup>56</sup> approach to co-designing workshops in the Catlins FMU has been endorsed by the Integrated Catchment Management Working Group.

94. It is unclear exactly what type of engagement will occur in these processes, or how these might differ across FMUs or rohe, however I consider that it is evident ORC’s programme of work will involve ‘active involvement’. In the context of Catchment Action Plans, I do not oppose the pORPS requiring active engagement in their development but I do not support making this engagement mandatory at the rohe or catchment level. The latest paper to Council on this programme notes that:<sup>57</sup>

*Mana whenua have indicated that the existing FMU / rohe boundaries are the appropriate scale at which to do this work as this scale allows for full participation from interested runaka – Any smaller would impact their ability to resource representation.*

95. This has informed, in part, the Council’s decision to development Catchment Actions Plans at the FMU and rohe scale. However, the Council paper also notes that:<sup>58</sup>

*...the ORC has received fixed-term resourcing from MfE targeted towards supporting catchment group initiatives. This enables the ORC to facilitate the development of CAPs at a sub FMU / rohe scale where there is an interest from an engaged community group. That is, ORC will run two parallel processes – one that rolls out CAPs at FMU / rohe scale as per the order in Attachment 1 and another that develops CAPs for sub-areas in any FMU where it is desirable to do so, and resources allow. Both will use the same approach to maximise consistency and provide a clear line of sight between CAPs at different scales.*

96. It appears that the ‘default’ scale will be FMU or rohe, however there are some opportunities to facilitate smaller-scale (e.g. catchment) plans where there is an interest. With this context, I do not consider the reference in LF-WAI-P3(1) to actively engaging “at the rohe and catchment level” accurately reflects the approach adopted by Council to the development of Catchment Action Plans. If this provision is to remain in the pORPS, it

---

<sup>56</sup> <https://conservationstandards.org/wp-content/uploads/sites/3/2020/10/CMP-Open-Standards-for-the-Practice-of-Conservation-v4.0.pdf>

<sup>57</sup> Agenda for the Environmental Implementation Committee meeting on 9 August 2023, item 8.2, para 13[b]. <https://www.orc.govt.nz/media/14807/eic-2023-08-09-agenda.pdf>

<sup>58</sup> Agenda for the Environmental Implementation Committee meeting on 9 August 2023, item 8.2, para 16. <https://www.orc.govt.nz/media/14807/eic-2023-08-09-agenda.pdf>

should require engagement at the FMU and rohe scale, but leave optional the ability to engage at smaller scales.

5.5. Clause (2): Integrated Catchment Management Groups

97. The Catlins FMU is a pilot for the rest of the region's Integrated Catchment Management programme. The media release included as Attachment 2 to Dr Somerville's submissions outlines the process for appointing the Catlins Integrated Catchment Group which will collaboratively prepare the Catchment Action Plan. From my reading of the ORC documentation available, it is not clear whether this approach will be adopted in all FMU and rohe or whether it will be adapted to different contexts. On this basis, I consider it is appropriate that clause (2) refers to *supporting* the establishment of integrated catchment management groups rather than *requiring* it.

5.6. Clause (3): content of Catchment Action Plans

98. Clause (3)(a) appears to require implementing some steps of the NOF (visions, environmental outcomes, and methods "including as required by the NOF") through Catchment Action Plans. It is unclear whether this is expected to occur instead of, or in addition to, implementing the NOF as required by the NPSFM. I note that:

- a. Clause 3.3(1) requires long-term visions for freshwater to be included as objectives in regional policy statements.
- b. Clause 3.9(4) requires environmental outcomes to be included as an objective, or multiple objectives, in regional plans.
- c. Clause 3.12(1)(b) requires limits on resource use to achieve target attribute states to be included as rules in regional plans.
- d. Clause 3.17(1)(b) requires take limits to be included as rules in regional plans.

99. Mr Anderson has addressed the legal issues arising from the approach proposed by Beef + Lamb and DINZ. I agree with him that the proposed policy does not give effect to the direction in the NPSFM. In my view, implementing this policy would not be possible prior to the LWRP being notified in June – it would require 'going back to the start' and re-doing the development process. That commits ORC to actions and timeframes that it has not previously agreed to or funded. I do not consider this is appropriate or desirable.

100. Clause (3)(b) requires Catchment Action Plans to develop and implement actions that may be adapted over time with trigger points where additional regulatory and/or non-regulatory intervention is required. This again repeats the requirements of the NPSFM: clause 3.20 requires that if a regional council detects that an FMU or part of an FMU is degraded or degrading it must, as soon as practicable, take action to halt or reverse the degradation (for example, by making or changing a regional plan, or preparing an action plan).

101. In my view, the direction in the NPSFM is clearer than proposed LF-WAI-P3A(3)(b) because it sets out (a) the trigger points (i.e. 'degraded' or 'degrading', which are both defined terms in the NPSFM that refer to target attribute states and environmental flows

and levels not being met) and (b) the types of actions to be taken in response. I consider that a Catchment Action Plan may be a response to detected degradation, but cannot be the home of the 'trigger points' themselves – the NPSFM requires these to be part of regional plans.

102. Proposed LF-WAI-P3A(3)(c) requires Catchment Action plans to make recommendations on amendments that may be required to the provisions of the pORPS, including the visions and timeframes for FMUs and any other changes necessary to achieve integrated catchment management. I do not oppose these types of recommendations being included in Catchment Action Plans, however I am not convinced it should be a mandatory requirement – in some FMUs, there may not need to be any recommended amendments to the pORPS.
103. LF-WAI-P3A(d) requires encouraging community initiatives to achieve a range of outcomes. I agree that this is an important part of Catchment Actions Plans.
104. Overall, I am concerned that some parts of LF-WAI-P3A(3) may inappropriately constrain the content of ORC's Catchment Action Plans. It is evident from the ORC documents that Catchment Action Plans are not solely about fresh water – they are addressing a range of different matters, including biodiversity, biosecurity, and natural hazards. While they may contain parts that are also considered action plans in accordance with clause 3.15 of the NPSFM, they will not be limited only to this content.
105. There is an emphasis on these plans being community-led and locally owned, and I am reluctant to foreclose options for the content of these plans through the pORPS. The August 2022 Council paper noted that (my emphasis added):
- The ICM Programme is an area of work being developed by ORC (as per the 2021/22 Target from the Long-Term Plan). It is in the early stages of development and not constrained or driven by statutory timeframes or policy planning directives. Council can therefore choose a timeframe for development and delivery that is acceptable to ORC, its iwi partners and the community.*
106. In my opinion, one of the benefits of the integrated catchment management programme is that it is, as the Council paper notes, 'unconstrained' by policy planning directives. The programme is very early in its implementation, with the first pilot currently commencing in the Catlins FMU. I consider the programme should have the ability to be flexible, to adapt to different catchments and communities, and to include content that is desired by communities, rather than specified by regulatory instruments such as the pORPS.
107. For that reason, I recommend including a new method LF-FW-M8AA which allows (but does not require) the use of integrated catchment management as an additional method for achieving the outcomes required by the LF chapter, drawing on the agreements by Council about the approach to developing, and content of, Catchment Action Plans. I have discussed this method and its content with ORC staff involved in the integrated catchment management programme and they are comfortable with its inclusion. Although the programme is currently committed to and funded under the Long-term Plan 2021-31, I recommend that the method remains optional as I am conscious that the programme is in its early stages and its effectiveness has not yet been established. It

would be unhelpful for the pORPS to mandate the use of a method if its effectiveness is unknown.

5.7. Final recommendation

108. I recommend including a new method LF-FW-M8AA as follows:

**LF-FW-M8AA – Integrated catchment management**

Otago Regional Council may:

- (1) develop and implement an integrated catchment management programme for the region, and
- (2) work in partnership with *mana whenua* and in collaboration with communities to develop catchment action plans that:
  - (a) collate and build on existing work in the catchment,
  - (b) incorporate science and mātauraka Māori, and
  - (c) identify and target effective environmental management actions.

5.8. Section 32 evaluation

109. The effect of including this method will vary depending on the extent of its uptake, given it is an optional method rather than a mandatory one. I consider that including this method in the pORPS does not introduce any *new* benefits or costs because it is a programme of work already funded by ORC and currently being implemented. However, highlighting its role in the implementation of the LF chapter provisions assists with providing transparency about the suite of methods being adopted and is therefore more effective.

## 6. Direct discharges of wastewater

### 6.1. Discussion

110. In my opening statement, I outlined the opposing views amongst submitters on whether direct discharges of wastewater should be phased out entirely across Otago.<sup>59</sup> Having heard the evidence from submitters, I remain concerned that there is insufficient evidence to assess the impacts of requiring all existing direct discharges to be phased out, particularly for Clutha and Central Otago District Councils and their ratepayers. I do not underestimate the significance of this recommendation for Kāi Tahu and I have reached it reluctantly, mindful of the obligations on the Council under section 32.

111. My view is different when it comes to new discharges. In these situations, there are more opportunities for systems to be designed to avoid discharging directly to water and, in my opinion, requiring new discharges to be to land gives effect to Te Mana o te Wai by

---

<sup>59</sup> Opening statement of Felicity Boyd for ORC dated 28 August 2023  
Proposed Otago Regional Policy Statement 2021

prioritising, first, the health and well-being of the water bodies and freshwater ecosystems.

112. Some submitters have identified a lack of clarity in the direction in LF-FW-P16. In light of my recommendations above, I recommend minor changes to this policy for consistency with LF-FW-O1A and to address these points.

## 6.2. Final recommendation

113. I do not recommend any further amendments to LF-FW-O1A(8) as proposed in the s42A report.

114. I recommend amending LF-FW-P16 so that it reads:

Minimise the adverse effects of direct and indirect discharges containing animal effluent, sewage, and industrial and trade waste to fresh water by:

(1) phasing out existing discharges containing sewage or industrial and trade waste directly to water to the greatest extent possible,

(2) requiring:

(a) new discharges containing sewage or industrial and trade waste to be to land,

## 6.3. Section 32AA evaluation

115. My assessment of LF-FW-O1A is included in the s42A report and I do not consider any further evaluation is required.

116. The notified pORPS required:

- a. No direct discharges of wastewater to water in the Lower Clutha rohe (LF-VM-O2(7)(c)(iv) and Taiari FMU (LF-VM-O4(7)), and
- b. Elsewhere, preferring discharges of wastewater to land over discharges to water, unless adverse effects associated with a discharge to land are greater.

117. As I recommend them, LF-FW-O1A(8) and LF-FW-P16 are now more stringent in some ways and less stringent in others:

- a. LF-FW-P16 now prevents new discharges of wastewater to water, but allows for some existing discharges to continue. This is more stringent than the general preference for discharges to land included in the notified pORPS.
- b. Direct discharges are no longer required to be prevented in the Lower Clutha rohe or Taiari FMU. Instead, in all FMUs and rohe, direct discharges are to be phased out to the greatest extent practicable. This works alongside LF-FW-P16 above which prevents *new* discharges to water but does not require *all* existing discharges to be phased out.

118. The submissions and evidence have highlighted the significant costs involved in upgrading existing infrastructure in order to remove direct discharges to water. In some cases, submitters have identified that moving these discharges to land would not result in

particularly positive environmental outcomes either. On the contrary, Kāi Tahu cultural witnesses have outlined the cultural costs endured by the continuation of discharging directly to water.

119. The amendments I recommend will continue to result in financial costs for those managing existing discharges and contemplating new discharges. However, there will be environmental and cultural benefits to reducing the volume of existing discharges to water and avoiding them in the future. At the same time, there will be ongoing cultural costs associated with continuing some discharges to water. In my view, this is an efficient response to a very complicated issue. It is also effective as it will better give effect to Te Mana o te Wai and prioritise the health and well-being of water bodies.

## 7. Natural wetlands

120. There remain disputes over whether the pORPS should provide direction on the management of wetlands that do not meet the NPSFM definition of “natural inland wetland.” In my opening statement, I outlined the key themes from submitter evidence on the implications of the NPSIB:<sup>60</sup>

- a. Whether there should be greater distinction between higher value ‘natural inland wetlands’ and other ‘natural wetlands’,
- b. Whether my proposed amendments inadvertently make the management of natural wetlands more stringent than natural inland wetlands,
- c. How to address the exclusion of renewable electricity generation and electricity transmission activities from the effects management hierarchy in the NPSIB, and
- d. The wording of the proposed new clause (1) I recommend in LF-FW-P7.

121. I address these in the sections below.

### 7.1. The case for managing ‘natural wetlands’ as well as ‘natural inland wetlands’

122. In his supplementary evidence, Mr Kyle considers that my recommendation to include reference to ‘natural wetlands’ would significantly widen the spatial application of the pORPS.<sup>61</sup> I disagree this is the case. The RMA definitions of ‘fresh water’<sup>62</sup> and ‘water body’<sup>63</sup> include fresh water in wetlands, and wetlands themselves, respectively. Therefore, all of the provisions in the pORPS referring to ‘fresh water’ and/or ‘water bodies’ have always applied to wetlands (the broader category, not only ‘natural inland wetlands’). Further, there are relevant submission points by Kāi Tahu ki Otago seeking that the pORPS manage all wetlands, not only natural inland wetlands. Even if this were not the case, freshwater hearing panels can make recommendations that are outside the

---

<sup>60</sup> Opening statement of Felicity Boyd dated 28 August 2023, paras 145-154.

<sup>61</sup> Supplementary evidence of John Kyle for Silver Fern Farms dated 18 August 2023, para 7.

<sup>62</sup> Freshwater or fresh water means all water except coastal water and geothermal water.

<sup>63</sup> Water body means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.

scope of submissions.<sup>64</sup> In my view, the matter for the panel to address is the merits of managing natural wetlands in the pORPS or not, rather than an issue of scope.

123. Both Ms Hunter and Mr Kyle refer to ‘natural inland wetlands’ being of higher value than ‘natural wetlands’.<sup>65</sup> I do not consider the ecological evidence supports this conclusion. Mr Brass for the Director-General of Conservation highlights the evidence of Mr McKinlay in respect of ephemeral wetlands, many of which would not meet the definition of a ‘natural inland wetland’ due to the presence of exotic pasture species in them. Mr McKinlay’s evidence outlines the biodiversity values of these wetlands in particular, including that they have a species richness of 20.6% of native flowering plants and an even higher proportion (29.3%) of monocots and the presence of 28 species of threatened plant species in this ecosystem type.<sup>66</sup>
124. As Mr Brass puts it, “the biodiversity values of these wetlands do not stop at the point where the proportion of exotic pasture species reaches 50%, as per the NPSFM definition.”<sup>67</sup> I agree. It is overly simplistic to use this threshold as a ‘hard and fast’ indicator of the significance of the values of a wetland.
125. In my view, the evidence of Mr McKinlay for the Director-General of Conservation, Mr Couper for Fish and Game, and Dr Joy for Wise Response underscores the need for the pORPS to manage more than only ‘natural inland wetlands’. I note that the opposition to my recommendation is generally from planners concerned about the ability for their clients to continue undertaking their activities (current and future). That is a valid concern, but must be considered within the framework of Te Mana o te Wai which requires prioritising the health and well-being of water bodies (including wetlands) and freshwater ecosystems.
126. I continue to support the recommendations I made in my supplementary evidence on the NPSIB: introducing a definition of ‘natural inland wetland’, amending the definition of ‘natural wetland’, and amending LF-FW-P7. In relation to the last point, I consider further refinements could be made to my supplementary recommendations. I discuss these further below.

## 7.2. LF-FW-09 – Natural wetlands

127. In the s42A report, I recommended amendments to this objective so that the outcome sought was not net decrease, and preferably an increase, in the extent and diversity or indigenous ecosystem types and habitats in natural wetlands. The legal submissions for Forest and Bird oppose this amendment, stating that this reference does not appropriately reflect Policy 6 of the NPSFM which requires that there is no further loss of

---

<sup>64</sup> Clause 49(2), Schedule 1, RMA

<sup>65</sup> Supplementary evidence of Claire Hunter for Oceana Gold dated 18 August, para 22; Supplementary evidence of John Kyle for Silver Fern Farms dated 18 August, para 30.

<sup>66</sup> Opening statement of Bruce McKinlay for the Director-General of Conservation dated 5 September 2023, para 14.

<sup>67</sup> Supplementary evidence of Murray Brass for the Director-General of Conservation dated 18 August 2023, para 24.

extent of natural inland wetlands, their values are protected, and their restoration is promoted.<sup>68</sup>

128. While I agree that there are restrictions on the use of offsetting in the NPSFM (and also the pORPS), I do not agree with counsel that this prevents offsetting in every instance (though certainly it will in some cases). In my view, if an offset proposal meets the criteria in the NPSFM then it is acceptable and, consequentially, some loss of extent *is* allowable under the NPSFM (provided the impacts of that are offset elsewhere). This leads me to believe that the requirement to avoid the loss of extent of natural inland wetlands in Policy 6 must be referring to net loss in wetland extent rather than the loss of extent of an individual wetland. If that was not the case, the NPSFM would not provide for offsetting to occur.

129. Mr Farrell seeks to include a new clause (5) focused on enhancing the ability of natural wetlands to support recreation values and food harvesting activities now and in the future. I am not strongly opposed to this amendment, but I consider that this outcome is likely to be achieved by achieving (1) to (4) (i.e. if the health of wetlands is protected or restored, they will support a range of use values). For that reason, I do not recommend including this clause.

130. I maintain the recommendation set out in the s42A report on this provision.

### 7.3. Managing natural wetlands more stringently than natural inland wetlands

131. Ms Hunter summarises my recommendation as being that “the PORPS should manage ‘natural wetlands’ in the same way as ‘natural inland wetlands’.”<sup>69</sup> That is incorrect: my recommendations seek to manage natural wetlands *as well as* natural inland wetlands, but not by applying all of the NPSFM and NESF provisions for natural inland wetlands to natural wetlands. I accept that this was not clear in the amendments I recommended to LF-FW-P9 and consider this can be addressed by including “except as provided for by (2)” at the beginning of clause (1). This amendment would ensure that the direction in clause (1) would only apply to natural wetlands not managed under (2).

### 7.4. Renewable electricity generation and electricity transmission activities

132. As I recommend it be amended in my opening statement, LF-FW-P9(2) directs that effects on indigenous biodiversity as a result of an activity occurring in a natural inland wetland are to be managed in accordance with the pORPS effects management hierarchy for indigenous biodiversity (included in ECO-P6 as notified). In my opening statement, and in response to the supplementary evidence of Ms Styles for Manawa, Ms Ruston for Meridian, and Ms McLeod for Transpower, I noted that this approach may need revision if ECO-P6 is amended to follow the approach in the NPSIB (i.e. by not applying to renewable electricity generation or electricity transmission networks).

133. Supplementary evidence on the implications of the NPSIB for the non-FPI part of the pORPS was filed by Andrew MacLennan on 8 September. He has recommended adopting

---

<sup>68</sup> Legal submissions for Forest and Bird dated 6 September 2023, paras 67-70.

<sup>69</sup> Supplementary evidence of Claire Hunter for Oceana Gold dated 18 August, para 10.



the approach in the NPSIB to exclude renewable electricity generation and electricity transmission network activities from the effects management hierarchy for indigenous biodiversity but has also recommended including a new policy ECO-P6A for managing the effects of these activities. This policy is less stringent than the effects management hierarchy in the NPSFM and therefore cannot be used instead of the NPSFM hierarchy.

134. I recommend amending LF-FW-P9 to exclude the development, operation, maintenance, and upgrade of renewable electricity generation and electricity transmission network infrastructure from the direction to apply the effects management hierarchy (in relation to indigenous biodiversity). This means the effects of these activities will continue to be managed by the effects management hierarchy (in relation to natural inland wetlands and rivers).

#### 7.5. LF-FW-P9 – Protecting natural wetlands

135. In my opening statement, I noted that discussions were ongoing between Mr Farrell for Fish and Game, Mr Brass for the Director-General of Conservation, Ms McIntyre for Kāi Tahu ki Otago, Ms Bartlett for Ngāi Tahu ki Murihiku, and myself about the new clause I recommended including in LF-FW-P9 to address natural wetlands. Those discussions have concluded and the wording we agreed is appended to the legal submissions for Fish and Game as follows:

(1) managing activities to ensure they maintain or enhance the ecosystem health, indigenous biodiversity values, and hydrological functioning of natural wetlands,

136. The wording I recommended in my supplementary evidence was focused on preventing irreversible damage. I accept Mr Couper's evidence on the difficulties with that term.<sup>70</sup> One of the matters the planning witnesses and I discussed was whether framing the direction in a more positive way (i.e. in relation to the outcome sought, rather than the level of harm to be managed) would assist with providing flexibility for the LWRP to manage different activities in different ways, provided collectively activities are achieving a common outcome. I agree that this is approach is preferable.

137. Mr Farrell continues to recommend a new clause (2) in LF-FW-P9 to recognise that restoring and enhancing natural wetlands is part of protecting them. While I do not disagree with the general intent of this, I consider that the clause recommended by Mr Farrell introduces confusion. LF-FW-P9 is focused on protection whereas LF-FW-P10 is focused on restoration. It is both actions that achieve LF-FW-O9.

138. While preparing this report, I noted that LF-FW-P9 highlights the need to manage natural wetlands in the coastal environment in accordance with the NZCPS as well as the NPSFM. As I recommended this policy be amended in my supplementary evidence, that direction sat under the clause relating to natural inland wetlands rather than natural wetlands. The NZCPS does not differentiate between wetland types in the way the NPSFM does,

---

<sup>70</sup> Supplementary evidence of Jayde Couper for Fish and Game dated 22 August 2023, paras 20-24  
Proposed Otago Regional Policy Statement 2021

therefore I consider this clause should be moved to become clause (1) and apply to natural wetlands (which includes natural inland wetlands).

139. As a consequential amendment, I also recommend renumbering the remaining clauses.

7.6. Final recommendation

140. I recommend deleting the wording of LF-FW-P9 as notified and replacing it with the following:

Protect natural wetlands by:

(1) in the coastal environment, managing them in accordance with the NZCPS in addition to (2) or (3) below,

(2) except as provided for by (3), managing activities to ensure they maintain or enhance the ecosystem health, indigenous biodiversity values, and hydrological functioning of natural wetlands,

(3) for natural inland wetlands, implementing clause 3.22(1) to (3) of the NPSFM, except that when managing the adverse effects of an activity on indigenous biodiversity, the effects management hierarchy (in relation to indigenous biodiversity) or ECO-P6A applies instead of the effects management hierarchy (in relation to natural wetlands and rivers).

7.7. Section 32AA evaluation

141. I discussed the implications of my recommended amendments to this policy in the s42A report<sup>71</sup> and in my supplementary evidence.<sup>72</sup> I do not consider the amendments I recommend above require any further evaluation under s32AA as they are primarily for clarification purposes and do not change the overall application of the policy, other than to clarify its implementation.

## 8. Efficient use and water storage

142. This topic arose throughout the hearing in a number of different ways, but primarily as a result of discussion about the content of LF-FW-P7A.

8.1. Prioritising different uses of water

143. In the s42A report, I recommended including a new policy LF-FW-P7A in response to submissions seeking more direction on the use of water. This policy has generally been supported, however some parties still seek amendments that would prioritise allocation to certain uses over others. I addressed this in my opening statement, and I continue to

---

<sup>71</sup> Section 8.5.7.4

<sup>72</sup> Paras 62-111

maintain the same view: LF-FW-P7A should not seek to prioritise allocation of water to particular uses as this is a matter for the regional plan to consider.<sup>73</sup>

144. Ms Hunter seeks to change the reference to ‘land-based primary production’ to ‘primary production’. I do not consider this is consistent with the community feedback on the freshwater visions, which this policy assists with achieving. Other activities included in the definition of ‘primary production’ (namely mining and aggregate extraction) were not highlighted as being important region-wide in the way that pastoral, arable and horticultural activities were. I do not recommend making the amendment proposed by Ms Hunter.

## 8.2. Prioritising efficiency

145. The legal submissions for Strath Clyde Water Limited, McArthur Ridge Investment Group Limited, Mount Dunstan Estates Limited, and McArthur Ridge Vineyard Limited continued to seek the inclusion of greater specificity on allocation decisions. Specifically, the submitters seek a policy prioritising certain uses of water, based on measures of efficiency. The natural outcome of applying this policy would be to prioritise the allocation of water for viticulture above other agricultural uses, however I consider there may be unintended consequences. For example, water bottling would likely be prioritised above other types of uses, including viticulture. That is unlikely to be a desired outcome in some parts of Otago.

146. The submitters point to similar provisions in Marlborough and Hawke’s Bay, which are also significant areas for viticulture in New Zealand. As I noted in the s42A report,<sup>74</sup> those provisions are included in regional plans, not regional policy statements. I maintain my position that this type of specific direction is most appropriately provided in the LWRP.

## 8.3. Water harvesting and storage

147. As requested by the Chair, Horticulture NZ filed a memorandum with suggested wording for a policy in relation to water harvesting and storage.<sup>75</sup> Mr Hodgson and I discussed his suggestions and I generally support the amendments he has proposed to LF-FM-P7A, LF-VM-M3, and LF-FW-M6. However, I note that LF-VM-M3 is not an FPI provision and is therefore not within the scope of the hearing panel’s consideration in this process.

148. ORC is currently engaging with communities on the draft LWRP. In relation to this topic the engagement material indicates the following content in the LWRP:<sup>76</sup>

- a. Under ‘Damming and Diversion’, permitting off-stream dams if they meet conditions.
- b. Under ‘Environmental flows and take limits’:

---

<sup>73</sup> Paras 155-162

<sup>74</sup> Para 1239

<sup>75</sup> Memorandum of counsel for Horticulture NZ dated 13 September 2023.

<sup>76</sup> <https://www.orc.govt.nz/plans-policies-reports/land-and-water-regional-plan/proposed-changes-to-rules-and-regulations>

- i. Policies and rules that provide for the consented taking of water at higher flows (for storage) and which consider ecological requirements to ensure water bodies are not ‘flat-lined’.
- ii. Permitting takes from artificial sources (including storage reservoirs)

149. In my view, the amendments proposed by Mr Hodgson provide useful policy direction to support the approach proposed above.

150. There are some amendments I recommend to Mr Hodgson’s drafting:

- a. Referring to the ‘effects’ rather than ‘impacts’ of climate change in new LF-FW-P7A(3A) as this is more consistent with the terminology elsewhere in the pORPS,
- b. Incorporating some of Mr Hodgson’s recommended amendments to LF-FW-M6 into the new clause (5A) I recommended in the s42A report (which already provides a link with LF-FW-P7A), and
- c. In LF-FW-M6(5A), not including reference to harvesting and storage “in environmental flow and water allocation regimes” because the preference in Otago is for off-stream storage, which does not necessarily form part of a flow and allocation regime.

#### 8.4. Amendment for clarification

151. In my opening statement I noted that Ms McIntyre for Kāi Tahu ki Otago had concerns with the reference to “within limits” at the start of this policy. During the hearing, Ms McIntyre clarified that the issue was one of sentence structure – as worded in the s42A report the policy suggests that phasing out over-allocation must occur within limits, which is clearly problematic (over-allocation generally occurring when limits are exceeded). Ms McIntyre and I have discussed this and agree that reordering the chapeau addresses this issue:

Over-allocation is either phased out or avoided and, within limits and in accordance with any relevant environmental flows and levels, the benefits of using fresh water are recognised by:

...

#### 8.5. Final recommendation

152. I recommend the following amendments:

- a. To LF-FW-P7A:

Over-allocation is either phased out or avoided and, within limits and in accordance with any relevant environmental flows and levels, the benefits of using fresh water are recognised by:

...

(4) ensuring that the efficiency of freshwater abstraction, storage, and conveyancing infrastructure is improved,

(5) enabling the harvesting and storage of freshwater to meet increasing demand for water, to manage water scarcity conditions and to provide resilience to the effects of climate change,

...

b. To LF-FW-M6:

Otago Regional Council must publicly notify a Land and Water *Regional Plan* no later than ~~31 December 2023~~ 30 June 2024<sup>77</sup> and, after it is made operative, maintain that *regional plan* to:

...

(5A) provide for the allocation and use of fresh water in accordance with LF-FW-P7A, including for water harvesting and storage,

...

8.6. Section 32AA evaluation

153. The amendments I recommend above do not significantly alter the content or application of the provisions; rather they clarify existing direction. For this reason, I do not consider further evaluation under section 32AA is required.

## 9. SRMR – Significant resource management issues for the region

154. This section addresses three remaining matters in contention for the SRMR chapter:

- a. New significant resource management issue for the region,
- b. Amendments to SRMR-I5, and
- c. Amendments to SRMR-I6.

155. This section has been prepared by Jacqui Todd.

9.1. New significant resource management issue for the region

9.1.1. Discussion

156. DCC sought a new significant resource management issue for the region to identify damming of the Clutha River/Mata-au as a regionally significant issue and legacy effect.<sup>78</sup> During the hearing Commissioner Crosby asked for more detail about what DCC was seeking, and why I do not consider this to be a significant resource management issue for the region.

157. In its submission, the key reason given by DCC is that the damming of the Clutha River/Matau-au has a significant impact on sediment delivery down river and to the

---

<sup>77</sup> Clause 16(2), Schedule 1, RMA

<sup>78</sup> FPI001.003 DCC

coast.<sup>79</sup> This can cause increased rates of erosion along the Otago coastline due to a loss of sediment supply. DCC references several reports on this issue in its submission. No suggested wording was provided by DCC, and they did not elaborate further on this at the hearing.

158. My analysis of this submission is discussed briefly in paragraph [501] of the s42 Report. I am still of the opinion that the damming of the Clutha River/Mata-au itself is not a regionally significant issue. Rather, I consider that the resulting effects of concern are relevant matters to acknowledge within the existing issues in the SRMR chapter. In this regard, I note that:

- a. The effects of damming on native fish are recognised in SRMR-I7; and
- b. The effects of damming on Kāi Tahu are discussed in RMIA-WAI-I1, RMIA-WAI-I5 and RMIA-CE-I1, including reference to the effects on natural flow patterns (RMIA-WAI-I5) and effects on the coastal environment (RMIA-CE-I1).
- c. Coastal erosion is acknowledged as an issue in SRMR-I1 (natural hazards) and SRMR-I8 (Otago's coast).

159. Within the scope of the FPI provisions I do not consider that any further amendments are necessary to acknowledge the issue of loss of sediment supply as a result of the damming of the Clutha River/Mata-au.

9.1.2. Final recommendation

160. I do not recommend any further amendments.

9.2. SRMR-I5 – Freshwater demand exceeds capacity in places

9.2.1. Discussion

161. Mr Hodgson for Horticulture NZ is still of the opinion that the Social Impact Snapshot would be improved by the addition of a sentence about water as a source of kai and for harvesting and food production, consistent with the opening sentence of the social impact snapshot for SRMR-I6.<sup>80</sup>

162. Initially I considered that the statement about water as a source of kai and for harvesting and food production was more relevant to water quality issues.<sup>81</sup> However, on reflection, I agree that the importance of water as a source of kai and for harvesting and food production is also relevant to freshwater quantity issues. Therefore, I recommend that the amendment sought by Mr Hodgson be adopted.

9.2.2. Final recommendation

163. I recommend amending the Social impact snapshot for SRMR-I5 as follows:

---

<sup>79</sup> FPI001 DCC at p 10

<sup>80</sup> Summary of evidence of Vance Hodgson for Horticulture NZ dated 4 September 2023, para 9.

<sup>81</sup> Section 42A report, para 556.

Ensuring appropriate *freshwater* supply for human use ~~is available~~ is essential, including<sup>82</sup> as part of planned urban growth and to support rural communities<sup>83</sup> is essential.<sup>84</sup> It is possible this may require consideration of additional *freshwater* storage in the future.

For the wider community, water is a source of kai and for harvesting and food production.<sup>85</sup> The region's *freshwater* assets also support a range of recreation uses, for example camping, fishing, *water* sports, and swimming. These values are strongly linked to environmental, health, landscape and aesthetic<sup>86</sup> values and as such, reduced environmental flows have a corresponding negative impact on social and cultural values, including people's wellbeing.<sup>87</sup>

9.3. SRMR-I6 – Declining water quality has adverse effects on the environment, our communities and the economy.

9.3.1. Discussion

164. In its submission, COWA sought an amendment to the second paragraph of the Context to state that it is 'poorly managed' agriculture that has some of the biggest impacts on water quality.<sup>88</sup> I did not recommend adopting this amendment because no evidence had been provided that it is only poorly managed agriculture that impacts on water quality.<sup>89</sup>

165. In legal submissions, counsel for COWA accepts that in some cases, even well-managed land uses can lead to impacts on water quality. However, they remain concerned about the statement that all agricultural land uses have an impact. To address this, they suggest an amendment to clarify that only 'some forms of agriculture' have the biggest impacts on water quality.<sup>90</sup>

166. I agree with the amendment suggested by COWA. In my opinion it acknowledges that while it is not just poorly managed agriculture that contributes to poor water quality, not all agricultural land uses have a significant impact on water quality. Therefore, I recommend adopting this amendment.

167. Mr Hodgson, for Horticulture NZ, still seeks an amendment to the Economic impact snapshot to acknowledge food production as being affected by water pollution. He notes that food production from an economic and social impact perspective is equally, if not more important, to identify than property values.<sup>91</sup>

168. In regard to the amendment sought by Mr Hodgson, I did not recommend that it be adopted because I did not consider it necessary to expand on the list of industries and

---

<sup>82</sup> FPI038.020 NZSki, FPI039.022 Realnz

<sup>83</sup> FPI026.008 Federated Farmers, FPI023.003 Moutere Station

<sup>84</sup> FPI038.020 NZSki, FPI039.022 Realnz

<sup>85</sup> FPI047.009 Horticulture NZ

<sup>86</sup> FPI037.007 Fish and Game

<sup>87</sup> FPI037.007 Fish and Game, FPI038.020 NZSki, FPI039.022 Realnz

<sup>88</sup> FPI009.002 COWA

<sup>89</sup> Section 42A report, para 602

<sup>90</sup> Legal submissions of COWA dated 30 August 2023, paras 39 to 40.

<sup>91</sup> Summary of evidence of Vance Hodgson for Horticulture NZ dated 4 September 2023, para 10.

sectors affected by water pollution.<sup>92</sup> I considered that they were covered more generally by reference to ‘other sectors’. However, in my opinion Mr Hodgson makes a valid point that food production is equally as important to the Otago region as the other sectors and industries referenced in the statement about water pollution. Therefore, I recommend that the amendment sought by Horticulture NZ be adopted.

9.3.2. Final recommendation

169. I recommend the following amendments:

a. Amend the second paragraph of the Context as follows:

*Water* quality affects a wide range of environmental health factors, human health and<sup>93</sup> survival needs, and cultural, social, recreational, and economic uses. Some of the biggest impacts on *water* quality in Otago are considered to come from some forms of<sup>94</sup> agriculture and urbanisation, through diffuse *discharges* and point source *discharges*.

b. Amend the first paragraph of the Economic impact snapshot as follows:

*Water* pollution (from nutrients, chemicals, pathogens, and sediment and other contaminants)<sup>95</sup> can have far-reaching effects potentially impacting tourism, food production,<sup>96</sup> property values, commercial fishing, recreational businesses, and many other sectors that depend on clean *water*.<sup>97</sup>

---

<sup>92</sup> Section 42A report, para 612.

<sup>93</sup> FPI047.010 Horticulture NZ, FPI043.023 OWRUG

<sup>94</sup> FPI009.002 COWA

<sup>95</sup> FPI026.014 Federated Farmers

<sup>96</sup> FPI043.023 OWRUG, FPI047.012 Horticulture NZ

<sup>97</sup> <https://www.epa.gov/nutrientpollution/effects-economy> (accessed 26 May 2021)