

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

UNDER The Resource Management Act 1991 (RMA)

IN THE MATTER Appeals under clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Southland Water and Land Plan

BETWEEN **MERIDIAN ENERGY LIMITED**
Appellants

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

STATEMENT OF EVIDENCE OF MARGARET JANE WHYTE

FOR

MERIDIAN ENERGY LIMITED

15 March 2019

Judicial Officers: Judge Borthwick and Judge Hassan

Solicitor acting:

Humphrey Tapper
In-house counsel
287–293 Durham St North
Christchurch Central
Christchurch 8013
humphrey.tapper@meridianenergy.co.nz

Counsel acting:

Stephen Christensen
Project Barrister
PO Box 1251, Dunedin Metro 9054
P 027 448 2325
stephen@projectbarrister.nz

FONTERRA CO-OPERATIVE LTD

(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND

(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LTD

(ENV-2018-CHC-29)

WILKINS FARMING CO

(ENV-2018-CHC-30)

GORE AND SOUTHLAND DISTRICT COUNCILS, INVERCARGILL CITY COUNCIL

(ENV-2018-CHC-31)

DAIRYNZ LTD

(ENV-2018-CHC-32)

H W RICHARDSON GROUP LTD

(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND

(ENV-2018-CHC-34 AND 35)

DIRECTOR-GENERAL OF CONSERVATION

(ENV-2018-CHC-36)

SOUTHLAND FISH & GAME COUNCIL

(ENV-2018-CHC-37)

MERIDIAN ENERGY LTD

(ENV-2018-CHC-38)

ALLIANCE GROUP LTD

(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND

(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POHERE TAONGA

(ENV-2018-CHC-41)

STONEY CREEK STATION LTD

(ENV-2018-CHC-42)

THE TERRACES LTD

(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LTD

(ENV-2018-CHC-44)

ROBERT GRANT

(ENV-2018-CHC-45)

SOUTHWOOD EXPORT LTD, SOUTHLAND PLANTATION FOREST COMPANY OF NZ

(ENV-2018-CHC-46)

TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA, WAIHOPAI RUNAKA, TE RUNANGA O AWARUA AND TE RUNANGA O ORAKA APARIMA

(ENV-2018-CHC-47)

PETER CHARTRES

(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LTD

(ENV-2018-CHC-49)

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INC

(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

INTRODUCTION

Qualifications and Experience

- 1 My name is Margaret Jane Whyte. I hold the degrees of Bachelor of Arts and Master of Regional and Resource Planning from Otago University. I am a full member of the New Zealand Planning Institute. I am a Director of ResponsePlanning Consultants Limited. I have over twenty-six years planning and resource management experience.
- 2 I prepared a statement of evidence in relation to Topic A matters appealed by Meridian Energy Limited (Meridian Energy) dated 15 February 2019 in which I stated my experience, qualifications, involvement with and knowledge of the Southland Region and a declaration of interest. I confirm those details.
- 3 I have read the evidence in chief of the witnesses for other appellants to Topic A that address matters in which Meridian Energy has an interest as expressed in its section 274 notices, and the purpose of this statement of evidence is to address matters raised in the evidence of those witnesses.

Code of Conduct

- 4 I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence and will do so when I give oral evidence before the Environment Court.
- 5 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 6 Unless I state otherwise, this evidence is within my knowledge and sphere of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

SCOPE OF EVIDENCE

- 7 The matters addressed in my evidence are:
 - (a) Objective 6 and the relief sought in the evidence of:
 - Ben Farrell on behalf of the Royal Forest and Bird Protection Society and the Southland Fish and Game Council.

- Treena Davidson on behalf of for Ngā Rūnanga and Ngāi Tahu.
- (b) Objective 7 and the relief sought in the evidence of:
- Ben Farrell on behalf of the Southland Fish and Game Council.
- (c) Objective 9 and 9A and the relief sought in the evidence of:
- Ben Farrell on behalf of the Royal Forest and Bird Protection Society and the Southland Fish and Game Council.
 - Treena Davidson on behalf of for Ngā Rūnanga and Ngāi Tahu.
- (d) Objective 9B and the relief sought in the evidence of:
- Treena Davidson on behalf of for Ngā Rūnanga and Ngāi Tahu.
 - Daryl Sycamore and the relief sought by Federated Farmers of New Zealand.
- (e) Policy 47 and Policy 45 and the relief sought in the evidence of:
- Ben Farrell on behalf of the Southland Fish and Game Council.
- 8 The main body of my evidence contains my overall evaluation and conclusions. I have four Appendices which were attached to my original statement of evidence upon which I continue to rely.
- 9 Having considered the above matters in my evidence, my key conclusions are:
- (a) Objective 6 should retain the word “overall” within the objective. However, wording could be added to make it clear that reference to “overall” water quality applies to the Freshwater Management Unit.
- (b) Objective 7 should not include specific reference to numerical values.
- (c) I have no preference with respect to the drafting of Objectives 9 and 9A – but consider Objective 9B should remain as a separate Objective.
- (d) Objective 9B addressing infrastructure should be retained as in the decision version, or alternatively with the amendments suggested by Ms Davidson.
- (e) Policies 45 and 47 should not be amended as sought by Mr Farrell.

10 In preparing my evidence I have considered the following documents:

- (a) The notified Proposed Southland Water and Land Plan (PSWLP)
- (b) The Proposed Southland Water and Land Plan as changed by decisions of Commissioners (PSWLP Decision Version) and the Commissioners' report and recommendation that accompanied the Decision Version
- (c) The evidence of Southland Regional Council, Southland Fish and Game Council, Royal Forest and Bird Protection Society, Federated Farmers, Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima (collectively Ngā Rūnanga), and Te Rūnanga o Ngāi Tahu (collectively Ngāi Tahu) in particular:
 - Mr McCallum-Clark for the Southland Regional Council
 - Mr Farrell for Southland Fish and Game Council and Royal Forest and Bird Protection Society of New Zealand
 - Ms Davidson for Ngā Rūnanga and Ngāi Tahu
 - Mr Sycamore for Federated Farmers of New Zealand
- (d) The evidence of Meridian Energy's ecology witness – Dr James.
- (e) The National Policy Statement for Renewable Electricity Generation (NPSREG)
- (f) The National Policy Statement for Freshwater Management 2014, incorporating the changes made in 2017 (NPSFM 2014 and NPSFM 2017)
- (g) Southland Regional Policy Statement (SRPS).

OBJECTIVE 6

11 Objective 6 is the key objective addressing maintaining and improving water quality.

12 Objective 6 in the PSWLP decision version is:

Objective 6

There is no reduction in the overall quality of freshwater, and water in estuaries and coastal lagoons, by:

(a) maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and

(b) improving the water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.

13 The evidence of Mr Farrell for Southland Fish and Game Council and Royal Forest and Bird Protection Society of New Zealand and Ms Davidson¹ for Ngā Rūnanga and Ngāi Tahu seek the same outcome which is:

Objective 6

There is no reduction in the ~~overall~~ quality of freshwater, and water in estuaries and coastal lagoons, by:

(a) maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and

(b) improving the water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.

14 The matter at issue is whether the word “overall” is retained within Objective 6. In considering the appropriate wording of Objective 6 I have considered how this objective sits within the overall approach to water management within the PSWLP decision version, as well as the direction to be found in the SRPS and the NPSFM.

¹ The evidence of Ms Davidson refers to “Objective 8” – it is considered this reference is a numbering error and I have treated the references to Objective 8 as though it is Objective 6.

- 15 Objective A2 in the NPSFM 2017 is:

Objective A2

The overall quality of fresh water within a freshwater management unit is maintained or improved while:

- (a) protecting the significant values of outstanding freshwater bodies;*
- (b) protecting the significant values of wetlands; and*
- (c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.*

- 16 My evaluation is that the incorporation of the word “overall” in relation to a FMU gives effect to the NPSFM, particularly Objective A2. Even without the word “overall” I consider the Objective still gives effect to the NPSFM, however it goes significantly further than Objective A2 of the NPSFM requires.
- 17 Both Mr McCallum-Clark (paragraph 54) and Ms Davidson (paragraph 70) recognise that within the PSWLP it is anticipated that there may be circumstances where a decision may lead to some level of decline in water quality. Ms Davidson acknowledges that this is anticipated and provided for by the NPSFM when it uses the term “overall” in Objective A2. I agree with this part of the evaluation of both Mr McCallum-Clark and Ms Davidson.
- 18 I agree with Ms Davidson that the most relevant provisions of the SRPS relating to water quality are WQUAL.1 – Water Quality Goals, WQUA.2 – Lowland water bodies and WQUAI.3 – Water in a natural state. I also consider Policy WQUAL.1 – Overall management of water quality, Policy WQUAL.2 – All waterbodies, WQUAL.3 Wetlands and outstanding freshwater bodies and Policy WQUAL.6 to be relevant and have considered these provisions in my evaluation.
- 19 I do not reach the same conclusions as either Ms Davidson or Mr Farrell as to what the provisions of the SRPS mean in relation to whether “overall” should be retained in Objective 6. My opinion is that relative to the SRPS whether or not the word “overall” is included in the objective is not

fundamental to a consideration of whether it gives effect to the provisions of the SRPS.

- 20 I consider that retaining reference to “overall” does not result in a weakening of the objective, nor will it result in an approach that does not give effect to the SRPS. Rather it recognises that “no reduction” in water quality is not to be taken to mean this is the appropriate outcome in every situation, in every location, at every point in time. Rather it recognises, as acknowledged by Mr McCullum-Clark and Ms Davidson, that there may be circumstances, where there is a decline and that in the context this may be appropriate.
- 21 At a practical level there are going to be instances where a discharge will result in some reduction in water quality within a limited area and/or for a short period of time. For example, it is often the case that when considering point source discharges to water from industrial or trade premises, downstream compliance is measured after allowing for reasonable mixing. Implicit in the setting of a downstream compliance point rather than an ‘end of pipe’ standard is a recognition that within the area of mixing some reduction in water quality is acceptable, and does not result in significant adverse effects.
- 22 Another example is the discharge of sediment during the construction or maintenance of infrastructure on the bed of a lake or river. Once again, in these situations it is accepted that for a short period of time a limited increase in sediment loadings in the water will result in a reduction in water quality, but that this is acceptable and does not result in a significant adverse effect
- 23 When I consider the entirety of the provisions of the PSWLP, especially the policies that implement the objectives and the subsequent rules that give effect to these I consider that retaining the word “overall” does result in a more coherent planning approach between the objectives, policies and supporting provisions, particularly at the FMU level.
- 24 I consider that it is preferable for the objective to be worded to reflect the intended outcomes of the Plan. This is that it is not absolute that in all circumstances and times there is no decline. This approach enables the effective implementation of a number of policies, for example:

- (a) Policy 15 which recognises there are situations where zones of reasonable mixing are anticipated. Meaning that there are circumstances where a reduction of water quality may occur.
 - (b) Policy 16 which recognises that some farming activities may affect water quality and that adverse environmental effects (including on the quality of the water) are to be minimised
 - (c) Policy 16A which recognises that some industrial and trade processes may affect water quality and that adverse environmental effects (including on the quality of the water) are to be minimised
 - (d) Policy 17A which recognises that community sewerage schemes and on-site wastewater systems may affect water quality and that adverse environmental effects are to be minimised.
- 25 Given that there are circumstances expressed in the Plan (including within reasonable mixing zones) that water quality may be reduced I consider that the Objective 6 Decision version better reflects the approach within the Plan and results in more aligned linkages between the objectives, policies and rules and other provisions. I consider that the integrity of the relationships of provisions within the Plan is better achieved through the word “overall” being retained.
- 26 In order to be clear that it is not overall water quality within the region that is to be maintained I consider a minor wording change could be made to insert reference to “within the Freshwater Management Unit” within Objective 6 so it reads:

Objective 6

There is no reduction in the overall quality of freshwater within a Freshwater Management Unit, and water in estuaries and coastal lagoons, by:

- (a) maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and*
- (b) improving the water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.*

OBJECTIVE 7

27 Objective 7 is the key objective addressing overallocation.

28 Objective 7 in the PSWLP decision version is:

Any further over-allocation of freshwater (water quality and quantity) is avoided and any existing over-allocation is phased out in accordance with freshwater objectives, freshwater quality limits and timeframes established under Freshwater Management Unit Processes.

29 The evidence of Mr Farrell for Southland Fish and Game Council seeks changes to this objective to read:

Any further over-allocation of freshwater (water quality and quantity) is avoided and any existing over-allocation is phased out in accordance with freshwater objectives, freshwater quality limits and timeframes established under Freshwater Management Unit Processes, or earlier where the resource is being used to a point where a region-wide freshwater numeric outcome(s) are no longer being met.

30 I do not support the changes to Objective 7 recommended by Mr Farrell. I note the change recommended by Mr Farrell departs from the relief sought in the appeal of Southland Fish and Game Council which sought changes to Objective 7 to provide for over-allocation to be addressed pending the FMU processes only where resource consents were applied for.

31 Mr Farrell's proposed change in wording to address over-allocation pending the FMU processes from at the time of a relevant resource consent application to a requirement to address it whenever certain numerical outcomes are not met would mean that the consent authority may be charged with the task of reviewing existing water and discharge permits in places where interim numeric values are not met prior to the setting of freshwater objectives and limits via the FMU processes.

32 This is a change from the approach in the notified and decision version where further overallocation is to be addressed through the FMU processes enabling a comprehensive consideration of freshwater objectives, and limits to determine appropriate FMU specific standards.

33 It also appears to be a departure from the outcome sought by the Fish & Game Council appeal, which provided for over-allocation to be addressed in an interim way only through a resource consent process – which is triggered by an applicant - to an approach that means the consent authority could potentially be required to review consents in advance of the FMU processes.

34 When considering over allocation within the context of the NPSFM I recognise that it is defined to be:

Over-allocation is the situation where the resource:

- a) *has been allocated to users beyond a limit; or*
- b) *is being used to a point where a freshwater objective is no longer being met.*

This applies to both water quantity and quality

35 As I read the PSWLP with respect to clause a) water is not being allocated to users beyond a limit. With respect to determination of over-allocation through clause b) this requires that freshwater objectives are established and water is then determined to be used to a point where a freshwater objective is not being met. The PSWLP identifies that the setting of the freshwater objectives will occur through the FMU processes.

36 The approach of the decision version of Objective 7 is consistent with Policy WQUAN.2 and Method WQUAL.6 in the SRPS. These provisions identify how overallocation is to be addressed relative to setting a timetable and policy framework for Freshwater Management Units. The signalled FMU processes and any subsequent plan change to incorporate the outcomes into the PSWLP will be public processes and enable input from a range of parties to identify the values, freshwater objectives and limits that apply. These matters will in turn provide information to inform a decision by the Regional Council as to whether there are any additional over-allocation matters to be addressed.

37 The NPSFM in Policy B6 recognises that if over-overallocation is identified a defined timeframe and methods are to be included in regional plans to address the phasing out of that over-allocation. This includes by reviewing water permits and consents to help ensure the total amount of water allocated in a Freshwater Management Unit is reduced to the level set to

give effect to Policy B1. In my opinion this shows there is a strong link between the setting of freshwater objectives and phasing out over-allocation.

- 38 I consider the change sought by Mr Farrell to Objective 7, particularly when considered in combination with the changes he has identified to Policies 45 and 47, is not necessary in order to give effect to the SRPS and NPSFM. I do not consider it necessary or appropriate to introduce another potential process in advance of the FMU processes.
- 39 I now consider the implications of including reference to numeric values within Objective 7 as recommended by Mr Farrell. Dr James has addressed some technical problems with the numeric values recommended by Professor Death, particularly in relation to periphyton and its relationship to other indicators of water quality, especially in places affected by didymo, and I rely on Dr James's evidence in that regard.
- 40 The evidence of Dr James illustrates that there is difficulty in determining what region-wide numerical outcomes should be and the implications of these at this time in the hearing process. Given this I consider that these matters should not be specifically referenced within Objective 7. I do not support the changes sought by Mr Farrell.
- 41 I support the retention of Objective 7 as set out in the decision version.

OBJECTIVE 9 AND 9A

- 42 Objective 9 and 9A in the PSWLP decision version is:

9 The quantity of water in surface waterbodies is managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes and natural character are safeguarded.

9A Surface water is sustainably managed to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.

- 43 Mr McCallum-Clark in his evidence has considered that "re-merging Objectives 9 and 9A and re-instating the clear prioritization would, in my

opinion, remove any doubt and would make the pSWLP clearer and easier to interpret².

- 44 The evidence of Ms Davidson for Ngā Rūnanga and Ngāi Tahu seeks that the Objectives be revised back to how they were when originally notified which is:

Objective 9

(a) The quantity of water in surface water bodies is managed so that aquatic ecosystem health, life supporting capacity, outstanding natural features and landscapes, recreational values, natural character and historic heritage values of surface water bodies and their margins are safeguarded; and

(b) Provided (a) is met, water is available both in-stream and out-of-stream to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.

- 45 The evidence of Mr Farrell for both the Southland Fish and Game Council and Royal Forest & Bird Protection Society of NZ seeks amendments to these objectives. In relation to Objective 9 Mr Farrell has provided the following amended wording:

Objective 9

The quantity of water in surface waterbodies managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes, recreational values and natural character of waterbodies and their margins are safeguarded.

- 46 Mr Farrell when addressing structure has stated³ that “I agree with Mr McCallum-Clark that re-merging Objectives 9 and 9A and reinstating the intended prioritisation of the matters in 9A being subordinate to those matters in 9 would remove any doubt and make the PSWLP clearer and easier to interpret”. Alternative wording is not included in the evidence of either Mr McCullum-Clark or Mr Farrell.

- 47 I have assumed that Mr Farrell is not seeking the deletion of the matters addressed in Objective 9A, and the matter at issue is whether the

² Evidence of Matthew McCallum-Clark 14 December 2018 Paragraph 95

³ Evidence of Ben Farrell 17 February 2019 Paragraph 97

amendments are made to Objective 9 as sought and Objective 9A continues in the PSWLP decision version or whether the wording changes sought by Mr Farrell to Objective 9A are made and then Objectives 9 and 9A are amalgamated into one objective.

- 48 The key matter of interest to Meridian Energy is the interrelationship between Objectives 9, 9A and 9B. On the basis my assumption is correct and no party is seeking the matters addressed in Objective 9A be deleted, I have no concerns with whether Objectives 9 and 9A are amalgamated or remain separate, and I have no opinion on that matter.
- 49 As I read the evidence no expert suggests that the matters addressed in Objective 9B should be incorporated as part of either Objective 9 or 9A. I have therefore addressed Objective 9B separately.

OBJECTIVE 9B

- 50 I have addressed Objective 9B in my evidence in chief at paragraphs 63 to 80. I supported the Objective as worded in the decision version.
- 51 I have now had the opportunity to consider the evidence of Ms Davidson for Ngā Rūnanga and Ngāi Tahu and Mr Sycamore for Federated Farmers of New Zealand.
- 52 Ms Davidson seeks that Objective 9B be amended to read:

The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is enabled while managing adverse effects on the environment.

- 53 Mr Sycamore supports the relief that Southland Fish and Game Council seeks. I understand that Southland Fish and Game Council is no longer pursuing its interest in Objective 9B. The relief that was sought and I understand to be supported by Mr Sycamore is:

The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is ~~enabled~~ recognised and provided for.

- 54 Having considered all of the wording options put forward I consider that any of the wording (decision version, that of Mr Sycamore and that of Ms Davidson) can be considered to give effect to the SRPS particularly

Objective INF.1, Policy INF.1, Policy INF.2, and Policy INF.6. I therefore do not find that one is preferable over another with respect to providing for the relationship between the SRPS and the PWLRP decision version.

- 55 I do not take issue with the changes sought by Ms Davidson to include reference to managing adverse effects on the environment. When considering the relationship of Objective 9B with the relevant policies that implement the objective and the rules and other provisions that implement the policies in the PSWLP the management of adverse effects is an intended outcome. I therefore do not have concerns whether the wording in the decision version is retained or the wording is changed consistent with the evidence of Ms Davidson.
- 56 I consider that any of the wordings proposed will still provide an alternative means of achieving the relief sought by Meridian with respect to non Manapouri Power Scheme-related renewable electricity generation.

POLICY 47 AND 45

- 57 Policies 45 and 47 address FMU processes.
- 58 Policy 47 in the PSWLP decision version is:

The FMU sections will:

1. *identify values and establish freshwater objectives for each Freshwater Management Unit, including where appropriate at a catchment or sub-catchment level, having particular regard to the national significance of Te Mana o te Wai, and any other values developed in accordance with Policies CA1-CA4 and Policy D1 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017); and*
2. *set water quality and water quantity limits and targets to achieve the freshwater objectives; and*
3. *set methods to phase out any over-allocation, within a specified timeframe; and*
4. *assess water quality and quantity taking into account Ngai Tahu indicators of health.*

59 Policy 45 in the PSWLP decision version is:

Policy 45- Priority of FMU values, objectives, policies and rules

In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Region-wide Policies. Any provision on the same subject matter in the relevant FMU section of this Plan prevails over the relevant provision within the Region-wide Objectives and Region-wide Policy sections, unless it is explicitly stated to the contrary.

As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.

Note: It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.

60 The evidence of Mr Farrell for both the Southland Fish and Game Council and Royal Forest & Bird Protection Society of NZ seeks that Policy 47 and 45 be amended to read:

Policy 47 – FMU Processes

The FMU sections will support the implementation of region wide objectives by:

- 1. identifying values and establishing specific freshwater objectives for each Freshwater Management Unit, including where appropriate at a catchment or sub-catchment level, having particular regard to the national significance of Te Mana o te Wai, and any other values developed in accordance with Policies CA1-CA4 and Policy D1 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017); and*
- 2. set water quality and water quantity limits and targets to achieve the region wide and specific freshwater objectives; and*

3. *set methods to phase out any over-allocation, within a specified timeframe; and*
4. *assess water quality and quantity taking into account Ngāi Tahu indicators of health.*

Policy 45- Priority of FMU values, objectives, policies and rules

In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Region-wide Policies. Any provision on the same subject matter in the relevant FMU section of this Plan prevails over the relevant provision within the Region-wide Objectives and Region-wide Policy sections, unless ~~it is explicitly stated to the contrary~~ the provision in the relevant FMU Section of this plan is less protective of water quality, quantity or aquatic ecology than the Region-wide Objectives and Region-wide Policies.

As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.

Note: It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.

- 61 I do not support the changes sought by Mr Farrell to either Policy 45 or Policy 47. I consider that the proposed changes unnecessarily constrain the matters that will be addressed through the FMU process and are inconsistent with the framework and content of the plan as currently proposed.
- 62 The decision version of these policies recognises that there is to be a relationship between the region wide objectives and policies and that these prevail unless it is explicitly stated to the contrary within the FMU specific provisions. I consider this is appropriate.
- 63 The decision version wording provides for the possibility that if through the FMU process particular circumstances are identified meaning that an outcome may be appropriate within that FMU, but not region-wide, this can

be achieved. The decision version recognises that this FMU-specific departure from the region-wide outcomes could be by either a more strict or more lenient approach, depending on the circumstances.

64 Mr Farrell has referred to the numerics suggested by Professor Death and I have responded to these when addressing Objective 7 above. Mr Farrell considers that providing strong guidance in the PSWLP on some 'bottom line' freshwater outcomes will assist the FMU process, not hinder it⁴. He also states that the NOF process provides the opportunity to refine and prioritise freshwater objectives in a more localised way. However, the NPSFM does not allow 'trade offs' in respect of the compulsory values under the NOF⁵.

65 I consider that retaining the possibility for specific values, freshwater objectives and limits to be established through the FMU process that may be different to the region-wide matters is appropriate. I understand what Mr Farrell is saying in that the NPSFM does not allow "trade offs" of the compulsory values, but in my opinion it is important that some flexibility be retained to deal with the particular circumstances of each FMU. From Dr James's evidence it appears that the presence of didymo in the Waiau and Mararoa catchments provides a relevant example where it would be problematic and unhelpful to require certain numeric standards (or better) to be met on the basis that they were region-wide standards, when the presence of an invasive species like didymo makes it impractical to do so. In my opinion such a case requires the flexibility to set meaningful objectives and limits having regard to the realities presented by didymo. The decision version of Policy 45 provides for this, but the version recommended by Mr Farrell does not. In addition I note that NPSFM Policy CA3 does set out that there are some limited circumstances where the setting of freshwater objectives for compulsory values may not have to be set at or above the national bottom line.

66 At this stage we do not know what values will be identified through the FMU processes, nor what freshwater objectives and limits will be determined as appropriate within each FMU.

67 I consider that the FMU process policies (Policy 45 and 47) should retain flexibility so that outcomes determined to be appropriate through the more

⁴ Evidence of Ben Farrell Paragraph 170

⁵ Evidence of Ben Farrell paragraph 174

detailed and public FMU process, be they stricter or more lenient, are be capable of being implemented without any FMU plan change needing to also amend Objective 45 and 47.

68 I do not support the changes addressed by Mr Farrell and prefer the wording of Policies 45 and 47 in the PSWLP decision version.

A handwritten signature in black ink, appearing to read 'M. Whyte', is centered on the page. The signature is written in a cursive, flowing style.

Margaret Jane Whyte

15 March 2019