

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

**UNDER** the Resource Management 1991

**IN THE MATTER** of of appeals under Clause 14 of the First Schedule of the Act

**BETWEEN**

**TRANSPOWER NEW ZEALAND LIMITED**  
(ENV-2018-CHC-26)

**FONTERRA CO-OPERATIVE GROUP**  
(ENV-2018-CHC-27)

**HORTICULTURE NEW ZEALAND**  
(ENV-2018-CHC-28)

**ARATIATIA LIVESTOCK LIMITED**  
(ENV-2018-CHC-29)

**WILKINS FARMING CO**  
(ENV-2018-CHC-30)

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**STATEMENT OF EVIDENCE OF MATTHEW MCCALLUM-CLARK ON  
BEHALF OF THE SOUTHLAND REGIONAL COUNCIL  
14 December 2018**

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Judicial Officer: Judge Borthwick and Judge Hassan

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**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT  
COUNCIL & INVERCARGILL DISTRICT COUNCIL**  
(ENV-2018-CHC-31)

**DAIRYNZ LIMITED**  
(ENV-2018-CHC-32)

**H W RICHARDSON GROUP**  
(ENV-2018-CHC-33)

**BEEF + LAMB NEW ZEALAND**  
(ENV-2018-CHC-34 & 35)

**DIRECTOR-GENERAL OF CONSERVATION**  
(ENV-2018-CHC-36)

**SOUTHLAND FISH AND GAME COUNCIL**  
(ENV-2018-CHC-37)

**MERIDIAN ENERGY LIMITED Act 1991**  
(ENV-2018-CHC-38)

**ALLIANCE GROUP LIMITED**  
(ENV-2018-CHC-39)

**FEDERATED FARMERS OF NEW ZEALAND**  
(ENV-2018-CHC-40)

**HERITAGE NEW ZEALAND POUHERE TAONGA**  
(ENV-2018-CHC-41)

**STONEY CREEK STATION LIMITED**  
(ENV-2018-CHC-42)

**THE TERRACES LIMITED**  
(ENV-2018-CHC-43)

**CAMPBELL'S BLOCK LIMITED**  
(ENV-2018-CHC-44)

**ROBERT GRANT**  
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, SOUTHLAND  
PLANTATION FOREST COMPANY OF NZ,  
SOUTHWOOD EXPORT LIMITED**  
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,  
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE  
RUNANGA O ORAKA APARIMA**  
(ENV-2018-CHC-47)

**PETER CHARTRES**  
(ENV-2018-CHC-48)

**RAYONIER NEW ZEALAND LIMITED**  
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY  
OF NEW ZEALAND**  
(ENV-2018-CHC-50)

**Appellants**

**AND**

**SOUTHLAND REGIONAL COUNCIL**

**Respondent**

## Introduction

- 1 My full name is Matthew Eaton Arthur McCallum-Clark.
- 2 I am a Resource Management Consultant and a director of the firm Incite, which has offices in Auckland, Wellington, Christchurch and Dunedin.
- 3 I hold a Bachelor of Laws from Canterbury University, a Bachelor of Commerce (Economics) from Otago University and have undertaken a postgraduate diploma in Environmental Auditing through Brunel University in the UK. I am also a qualified and experienced independent hearing commissioner with chair endorsement under the Ministry for the Environment's Making Good Decisions Programme.
- 4 Apart from a short period at a city council, I have been a resource management consultant for about 22 years. Over the last ten years I have specialised in providing policy advice to a range of clients, particularly local authorities. This has included significant involvement in regional plan development for the Canterbury, Waikato and Southland Regional Councils, and the Marlborough District Council. I have been, or are currently involved in the development of a number of district plans.
- 5 I was the lead consultant engaged to assist with preparing the proposed Southland Water and Land Plan (**pSWLP**), I supervised the preparation of the Section 32 Report, was an author of the Section 42A Report and Section 42A Reply Report and sat through the hearing process.
- 6 I have been engaged by the Southland Regional Council (**Council**) to prepare evidence for these proceedings.

## Code of Conduct

- 7 I confirm that I have read the Code of Conduct for expert witnesses as contained in the Environment Court Practice Note 2014. I have complied with the Code of Conduct when preparing my written statement of evidence and will do so when I give oral evidence.
- 8 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence. The reasons for the opinions expressed are also set out in my evidence.

- 9 Other than where I state I am relying on the evidence of another person, my evidence is within my area 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

- 10 I have been asked to provide evidence in relation to the pSLWP appeals. My evidence addresses:
- (a) An overview of the development of the pSWLP
  - (b) The Objectives and Policies 1 and 3;
  - (c) Physiographic Zones – general and policies;
  - (d) Freshwater Management Unit (**FMU**) Policies 45, 46 and 47; and
  - (e) The definitions of ‘wetland’ and ‘natural wetland’.
- 11 In preparing this evidence, I have read and considered the following documents:
- (a) The pSWLP (notification and decisions versions);
  - (b) Section 32 Report;
  - (c) Section 42A Hearing Report and Reply Report;
  - (d) The Council’s Decision Report;
  - (e) The Appeals and Section 274 Notices;
  - (f) The Initial Planning Statement;
  - (g) The evidence prepared for the Council by Mr Hodson, Mr Ward, Dr Snelder, Ms Robinson, Mr Rodway and Dr Lloyd; and
  - (h) The National Policy Statement for Freshwater Management 2014 (as amended 2017) (**NPS-FM**) and the Southland Regional Policy Statement 2017 (**RPS**).

## **Executive Summary**

- 12 This evidence briefly sets out the background to the development of the pSWLP, and considers each of the Topic A provisions that have been appealed, in the same order they appear in the pSWLP.
- 13 A number of the objectives, policies, rules, definitions and appendices in the pSWLP have been appealed and most have multiple appellants and section 274 parties. Pursuant to section 274 of the Resource Management Act (**RMA**), other parties have joined these appeals. This evidence addresses “Topic A” matters, as set out in the Court’s directions.
- 14 Topic A largely covers the objectives of the pSWLP, some key policies, and the physiographic zone policies. Matters of detail are to be dealt with in Topic B.
- 15 For each of the objectives and policies under appeal, the history and revisions of the provision to date are set out, the positions of the appellants and section 274 parties is set out, and where appropriate, other context, such as RPS material, is set out. Where I have considered it may be helpful to the Court, I have set out some commentary on the positions of the parties, and possible implications of the relief sought.

## **Background**

- 16 The pSWLP is a regional plan, developed by the Council under the RMA. The pSWLP is intended to provide direction and guidance regarding the sustainable use, development and protection of water and land resources in the Southland region.
- 17 The pSWLP was notified in 2016, with over 900 submissions lodged. The submission and hearing process closed in October 2017. The Hearing Panel then wrote a report that made recommendations to Council on the provisions in the pSWLP and the decisions on submissions. The Council accepted all of the Panel’s recommendations as its decision on the provisions and matters raised in the submissions on the pSWLP.

- 18 The pSWLP fits within a framework of national, regional and local resource management policies and as such the following documents I discuss below have influenced its development.
- 19 The RMA establishes the functions of the Council, which includes the control of the use of any land (including the beds of lakes and rivers) for the purposes of soil conservation, water quality, water quantity, the maintenance of ecosystems in waterbodies and the avoidance or mitigation of natural hazards.<sup>1</sup>
- 20 The pSWLP must give effect to any national policy statement.<sup>2</sup> There are currently five national policy statements in force, four of which are particularly relevant to the pSWLP.<sup>3</sup>
- 21 The NPS-FM sets out objectives and policies that direct the Council to manage water in an integrated and sustainable way, while providing for economic growth within set water quality and quantity limits. The NPS-FM also provides a framework for recognising the national significance of freshwater and Te Mana o te Wai, which puts the mauri of the waterbody and its ability to provide for te hauora o te tangata (the health of the people), te hauora o te taiao (health of the environment) and te hauora o te wai (the health of the waterbody) at the forefront of freshwater management.
- 22 The Council has recently notified a revised Progressive Implementation Programme for implementing the NPS-FM, that sets out how the Council will establish values and uses, freshwater objectives, and limits and targets over the coming years. A copy of that Progressive Implementation Programme was appended to the Council's Initial Planning Statement.<sup>4</sup>
- 23 Other national policy statements that have influenced the pSWLP include the National Policy Statement for Renewable Electricity Generation 2011 (**NPSREG**), which directs the Council to make provision for renewable electricity generation, the National Policy Statement on Electricity Transmission 2008 (**NPSET**), which sets out the

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<sup>1</sup> RMA, s 30(1)(c).

<sup>2</sup> RMA, s 67(3)(a).

<sup>3</sup> Noting that the National Policy Statement for Urban Development is less relevant to the pSWLP, primarily because it relates more so to territorial authority functions.

<sup>4</sup> Initial Planning Statement, Appendix C.

objective and policies that confirm the national significance of, and benefits of, the National Grid, including a requirement for Council to include objectives, policies and methods to facilitate long-term planning for investment in transmission infrastructure and its integration with land uses, and the New Zealand Coastal Policy Statement 2010 (**NZCPS**), which sets out objectives and policies which promote the sustainable management of the natural and physical resources of the coastal environment, which given the physical geography of the Southland region, is highly relevant to the pSWLP.

- 24 The RPS guides resource management policy and practice in the region and provides a framework that, pursuant to section 67(3) of the RMA, the pSWLP must give effect to.
- 25 There are currently six National Environmental Standards. The pSWLP must be prepared in accordance with these regulations.<sup>5</sup> Those that are relevant to the pSWLP are:
- (a) National Environmental Standard for Sources of Human Drinking Water;
  - (b) National Environmental Standards for Telecommunication Facilities 2016;
  - (c) National Environmental Standards for Electricity Transmission Activities 2009; and
  - (d) National Environmental Standards for Plantation Forestry 2017.
- 26 The pSWLP should also not be inconsistent with the Southland Regional Coastal and Air Plans. Further, the pSWLP must not be inconsistent with the Water Conservation Order (Mataura River) 1997 and the Water Conservation Order (Ōreti River) 2008.<sup>6</sup>
- 27 The Council is also required to:
- (a) take into account<sup>7</sup> any relevant planning document that is recognised by an iwi authority and lodged with the Council, which are:

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<sup>5</sup> RMA, s 66(1)(f).

<sup>6</sup> RMA, s 67(4)(a).

<sup>7</sup> RMA, s 66(2a)(a)



- (i) Te Rūnanga o Ngāi Tahu Freshwater Policy Statement (1999); and
  - (ii) Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (Te Tangi a Tauria).
- (b) have regard to any management plan or strategy prepared under another Act, to the extent that its content has a bearing on the resource management issues of the region. This includes the Southland Sports Fish and Game Management Plan.

### **Issues**

- 28 The introduction sections of the pSWLP set out the background and context of the plan, including Te Mana o te Wai, the purpose of the Plan, the statutory context and, in an informal manner, the issues the pSWLP seeks to address.
- 29 Fish and Game and Ngāi Tahu, and to a lesser extent Forest and Bird, have questioned whether the pSWLP, as a whole, adequately addresses cumulative effects, particularly from diffuse discharges that affect water quality, such that water quality will be maintained or improved.
- 30 In the appeals and in the tables of specific changes attached to the appeals, no specific changes to these earlier parts of the pSWLP are identified. However, depending on decisions on the objectives and policies, some consequential changes may eventuate. As no specific relief has been set out in the notices of appeal, at this stage, no further analysis can be undertaken.

## Objectives

### Objective 2

31 As notified, Objective 2 read:

*Water and land is recognised as an enabler of the economic, social and cultural wellbeing of the region.*

32 Fish and Game submitted that it supported the Objective in part. Fish and Game requested an amendment to include recognition of ecosystem health, ecological processes, natural character, and ecosystem services, and the need for sustainable limits to provide for these, in addition to the economic, social and cultural provisions. In addition, Fish and Game requested human health be included.

33 Ngāi Tahu submitted that it supported the Objective as notified.

34 In response to these submissions, the Reporting Officers, in the Section 42A Hearing Report, stated that the provisions of the pSWLP are to be read together, and, in the Officers' opinion, there were sufficient tools within other Objectives<sup>8</sup> to cover the matters raised.

35 The Pourakino Catchment Group submitted to 'retain' the notified Objective 2 but were also seeking additional objectives and policies to recognise and provide for the economic and social benefits of farming.

36 The Council's decision accepted, in part, the need to amend Objective 2 to address the benefits of farming<sup>9</sup> to the region, such that the decisions version of Objective 2 reads:

*Water and land is recognised as an enabler of primary production and<sup>10</sup> the economic, social and cultural wellbeing of the region*

37 Fish and Game and Ngāi Tahu are both appealing the amendment to Objective 2. Ngāi Tahu considers that the activities of primary production are captured by economic, social and cultural wellbeing, and inclusion of the words "primary production and" does not appropriately recognise Te Mana o te Wai. Fish and Game states that the Objectives in general do not seek to maintain water quality or improve water quality where

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<sup>8</sup> Section 42A Hearing Report, para 5.34.

<sup>9</sup> Report and Recommendations of the Hearing Panel, Appendix A, New Objectives Sought.

<sup>10</sup> 640.31 Pourakino CG.

degraded, or give effect to the RPS or the NPS-FM. It also considers that for Objective 2, an imbalance is created by the addition, in favour of primary production above other activities and values.

38 Both appellants are seeking to amend Objective 2 as follows:

*Water and land is recognised as an enabler of ~~primary production~~  
and the economic, social and cultural wellbeing of the region.*

39 There are seven s274 notices lodged in response to these appeal points. Fish and Game support the appeal of Ngāi Tahu, five parties<sup>11</sup> oppose the appeals on the basis that it is appropriate to specifically recognise the importance of primary production in the region, and Forest and Bird have stated a general interest in the proceedings.

40 The NPS-FM now includes provisions to enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits (Objective A3 and Policy A7). I note that primary production does contribute disproportionately to the Southland economy compared to the rest of the country<sup>12</sup> and plays a significant role in the social, economic and cultural well-being of the region.

41 It is my understanding that the Hearing Panel were cognisant of this and sought recognition of this factual situation in Objective 2. I am also of the view that the addition of these words does not materially alter the likely outcomes, in terms of land and water management and the control of diffuse discharges, as there are other, more specific and directive objectives and policies on these matters.

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<sup>11</sup> Fonterra, Ballance Agri-Nutrients Ltd, Horticulture NZ, Aratiatia Livestock Ltd and Federated Farmers.

<sup>12</sup> "In Southland, agriculture's share of regional GDP was 21.9%, which was double that of most other regions, including Canterbury (7.5%) and Waikato (10.9%)." - Moran, E., Pearson, L., Couldrey, M., and Eyre, K. (2017). The Southland Economic Project: Agriculture and Forestry. Technical Report. Publication no. 2017-02. Environment Southland, Invercargill, New Zealand, at page 20.

## Objective 6

42 As notified, Objective 6 read:

*There is no reduction in the 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 quality of water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.*

43 Objective 6 received 31 submissions, with nine in support. Three submitters, one of whom was Ngāi Tahu, sought that the Objective be retained without amendment.<sup>13</sup>

44 Forest and Bird submitted in support of Objective 6 but sought amendments to part (b) to protect significant values outlined in the NPS-FM and the NZCPS as well as a 10% improvement in water quality by 2025.<sup>14</sup> This “10% improvement” has its origins in Objective 3.1(5) of the Regional Water Plan, which sought a 10% improvement in some water quality states over the 10 years from when the Regional Water Plan became operative in (2010).

45 Fish and Game opposed Objective 6 and sought amendments to include a minimum improvement level within a set timeframe and also a list of water quality parameters to assess that improvement. Fish and Game also sought to have a schedule included within the pSWLP that identified which waterbodies have been degraded by human activities.<sup>15</sup>

46 The Reporting Officer considered that the genesis of Objective 6 sits with Objective A2 of the NPS-FM which requires “*The overall quality of fresh water within a region is maintained and improved...*”<sup>16</sup>. The S42A Hearing Report also noted that the NPS-FM, supported by case-law, does not consider the “overs and unders” approach is appropriate and that the intent of Objective 6 is aspirational in nature and provides

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<sup>13</sup> Ngāi Tahu submitted that all region-wide objectives be retained as notified. This was not recorded in the Summary of Decisions Requested.

<sup>14</sup> pSWLP Summary of Decisions Requested sub point 279.6

<sup>15</sup> pSWLP Summary of Decisions Requested sub point 752.22

<sup>16</sup> Correct at the time of writing the S42A Hearing Report. In September 2017, the NPS-FM wording was amended to: “*The overall quality of fresh water within a freshwater management unit is maintained or improved while...*”

guidance for future FMU processes, where freshwater objectives (including timeframes for improvements) will be set.

- 47 Within the RPS, Objectives WQUAL.1 and WQUAL.2<sup>17</sup> give effect to Objective A2 of the NPS-FM<sup>18</sup>. The Reporting Officer recommended that the Objective be retained as notified, particularly as it provides consistency with the RPS.<sup>19</sup> In the S42A Reply Report, further adjustments were recommended, to align Objective 6 with the FMU processes yet to be undertaken.
- 48 The Hearing Panel considered the absolute nature of the ‘no decline in water quality’ aspect of Objective 6 to be unachievable, particularly in relation to areas immediately downstream of point-source discharges. The Hearing Panel considered that inclusion of the word “*overall*” in Objective 6 gives better effect to the NPS-FM Objective A2, and that although the RPS does not refer to the “*overall water quality*”, the NPS-FM is the higher order document.<sup>20</sup>
- 49 Fish and Game, Ngāi Tahu, and Forest and Bird have appealed Objective 6. All three appellants have sought the same outcome with respect to Objective 6, which is the deletion of the word *overall*.
- 50 Ngāi Tahu note that the use of the word *overall* removes the certainty that the quality of all freshwater and water in estuaries and coastal lagoons in Southland is maintained or improved. Forest and Bird consider that the reference to *overall water quality* does not implement the NPS-FM or s30 of the RMA. Fish and Game state that Objective 6

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<sup>17</sup> *Objective WQUAL.1 – Water quality goals*

*Water quality in the region:*

- (a) *safeguards the life-supporting capacity of water and related ecosystems;*
- (b) *safeguards the health of people and communities;*
- (c) *is maintained, or improved in accordance with freshwater objectives formulated under the National Policy Statement for Freshwater Management 2014;*
- (d) *is managed to meet the reasonably foreseeable social, economic and cultural needs of future generations.*

*Objective WQUAL.2 – Lowland water bodies*

*Halt the decline, and improve water quality in lowland water bodies and coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands in accordance with freshwater objectives formulated in accordance with the National Policy Statement for Freshwater Management 2014.*

<sup>18</sup> An adjustment to Objective A2 was made in the 2017 amendments to the NPS-FM, but is not particularly relevant for the purposes of this discussion.

<sup>19</sup> Hearing Report: pSWLP (S42A) para 5.77

<sup>20</sup> Report and Recommendations of the Panel (Decision Narrative) para 138.

will not establish appropriate outcomes as it does not seek to maintain water quality or improve water quality where it has been degraded.

- 51 Seven parties have lodged s274 notices on this appeal point with the majority of those in opposition to the amendments sought. Meridian note that the use of the word *overall* is consistent with Objective A2 of the NPS-FM and that making no provision for localised water quality impacts while still maintaining overall water quality is impractical. Further, Meridian considers that this approach does not enable people and communities to provide for their economic well-being in sustainably managing freshwater quality within limits as outlined in Objective A4 of the NPS-FM.<sup>21</sup>
- 52 All s274 parties (excluding Fish and Game and Forest and Bird) have noted that by removing the word “*overall*”, the Objective would be inconsistent with Objective A2 of the NPS-FM.
- 53 In my opinion, retaining the word ‘overall’ could be considered to make the Objective more consistent with Objective A2 of the NPS-FM, as the wording becomes more similar. It is also clear that the NPS-FM is the superior document, so if there is any inconsistency with the RPS, it must be resolved in favour of the NPS-FM. That said, if the RPS is more stringent than the NPS-FM, I do not consider that it is necessarily inconsistent or no longer gives effect to the NPS-FM.
- 54 However, in my opinion, there remains a risk that the impression created by introducing this word may be that the fundamental position of no further decline in water quality, expressed in the RPS and set out as a high-level direction from the Council during the drafting process, is somehow less firmly held. I agree that there are specific circumstances where the pSWLP provides for a resource consent application to be made that may lead to some level of water quality decline, particularly when compliance with the Appendix E water quality standards for point source discharges lead to a reduction in water quality. I anticipate that there would need to be reliance on the stronger direction of RPS provisions and other policies in the pSWLP to ensure that the wording was not considered to be a softening of the simple and clear message of no further decline in water quality.

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<sup>21</sup> Section 274 notice by Meridian.

## Objective 7

55 As notified, Objective 7 read:

*Any further over-allocation of freshwater (water quality and quantity) is avoided and existing over-allocation is phased out in accordance with timeframes established under Freshwater Management Unit (FMU) processes.*

56 Fish and Game submitted that it supported the Objective in part. Fish and Game requested an amendment to avoid the further allocation of freshwater and to phase out existing over-allocation when considering consent applications for land use and/or discharge activities prior to freshwater objectives being set through the FMU process:

*Any further over-allocation of freshwater (water quality and quantity) is avoided and existing over-allocation is phased out in accordance with timeframes established under Freshwater Management Unit (FMU) process or earlier when considering consent applications for land use and/or discharge activities.*

57 Similar concerns were raised by the Director General of Conservation (DoC) in their submission.<sup>22</sup>

58 In response to this submission, the Reporting Officers stated that although the submission had merit, the provisions of the pSWLP are to be read together and, in the Officers' opinion, there were sufficient tools (such as Objectives 6, 9 and 12) to ensure that further over-allocation will be avoided prior to FMU limit setting.<sup>23</sup>

59 Federated Farmers submitted that it opposed Objective 7, one reason being that it is not yet known whether Southland's water is 'over allocated'. The Reporting Officers agreed with this reasoning and changes were recommended in the Section 42A Hearing Report.<sup>24</sup> The recommended change to Objective 7 was as follows:

*~~Any further~~ Over-allocation of freshwater (water quality and quantity) is avoided and any existing over-allocation is phased out in*

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<sup>22</sup> Hearing Report: pSWLP (S42A) para 5.79.

<sup>23</sup> Hearing Report: pSWLP (S42A) para 5.87.

<sup>24</sup> Hearing Report: pSWLP (S42A) para 5.86.

*accordance with timeframes established under Freshwater Management Unit (FMU) processes.*

60 However, in response to questions from the Hearing Commissioners, it was accepted by the Reporting Officers that retaining the words “Any further ...” would clarify the intended staged approach of this Objective, with regard to halting further decline, as well as requiring the improvement to existing water quality and quantity.<sup>25</sup>

61 The Hearing Commissioners adopted the Officers’ recommendations<sup>26</sup>, and added reference to freshwater objectives and quality limits in response to a submission of the Fertiliser Association of NZ, such that the decisions version of Objective 7 reads:

*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.*

62 The changes made to Objective 7 in the decision are relatively minor but clarify that over-allocation (as that term is used in the NPS-FM) occurs primarily in the context of the FMU limit setting process. Fish and Game are the only appellants and are seeking to amend the Objective, in line with their original submission, to provide additional detail around phasing out existing over-allocation associated with consent applications prior to the limit setting process. Fish and Game’s appeal seeks that Objective 7 be amended as follows:

*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 when considering relevant consent applications.*

63 There are 11 s274 notices lodged in response to Fish and Game’s appeal. Seven of these oppose the changes sought, primarily on the basis that decisions on water allocation should not be made until after the FMU process has been completed. Of the four remaining parties,

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<sup>25</sup> First set of Responses to Questions of Hearing Commissioners on Council S42A report, MMC, para.5.94.

<sup>26</sup> Report and Recommendations of the Hearing Panel, para 137.



three have a general interest in the proceedings and one supports the Objective as giving effect to the NPS-FM and RPS.

64 In Southland, the only water body confirmed as being over-allocated, ahead of the FMU-based freshwater objective and quality limit process, is the Cromel Stream. This water body is controlled by Rule 49(e) which makes any additional water takes, diversions, or uses of water a prohibited activity. In addition, the pSWLP sets out how water quantity over-allocation is to be addressed through Policy 42(2) which states that:

(2) *except for non-consumptive uses, consents replacing an expiring resource consent for an abstraction from an over-allocated water body will generally only be granted at a reduced rate, the reduction being proportional to the amount of over-allocation and previous use, using the method set out in Appendix O; and ...*

65 There may be benefit in a change to Policy 42(2) to lessen the discretion currently afforded through the phrase *generally only be granted*. Given Objective B2 of the NPS-FM requires existing over-allocation to be phased out, the above sentence could benefit from more surety, while still allowing some flexibility should circumstances require it. Fish and Game have appealed Policy 42(2) and have sought relief similar to the above suggestion and that may be a more appropriate place to address this concern.

66 With respect to water quality, and water quantity where limits have not yet been set, it is my understanding that the NPS-FM sets out a process, in Policies CA1 to CA4, to establish freshwater objectives, limits and targets. This process is prescriptive and is the subject of the Regional Council's recently updated Progressive Implementation Programme. This programme has commenced but is still some time from developing these freshwater objectives, limits and targets.

67 The NPS-FM defines overallocation as: "*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.*

68 Both "limit" and "freshwater objective" are defined in the NPS-FM. As stated above, freshwater objectives have not yet been established, and

nor have limits for water quality in the region and water quantity in many locations. Council's legal advice, with which I agree, is that in advance of the FMU freshwater objective, limit and target setting process, it is not possible to ascertain "overallocation", as defined by the NPS-FM.

- 69 For practical purposes, it would appear that some waterbodies in Southland are degraded, when this term is used colloquially. By this, I mean that some could be below national bottom lines in terms of the NPS-FM, or below commonly acceptable water quality. In my opinion, other objectives and policies of the pSWLP, such as Objectives 3 and 6, and Policies 15B, 17A, 40 and 42, provide sufficient direction in the interim period such that any resource consent is likely to be granted to maintain, if not improve, the existing situation and is likely to be for a comparably short duration, so that the forthcoming FMU processes are not compromised.

#### **Objectives 9 and 9A**

- 70 As notified, Objective 9 read:

- (a) *The quantity of water in surface waterbodies 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 waterbodies and their margins are safeguarded; and*
- (b) *Provided (a) is met, water is available both instream and out-of-stream to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.*

- 71 Fish and Game, and Forest and Bird submitted that they supported the Objective in part, and requested the following amendment to part (a):

- (a) *The quantity and quality of water in ~~surface~~ waterbodies and coastal water is managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes, significant indigenous vegetation and habitats, recreational values, natural character, and historic heritage values of surface waterbodies and their margins are safeguarded and protected; and*

- 72 Heritage NZ submitted that it supported the Objective and sought that it be retained in whole.
- 73 Federated Farmers submitted that it opposed the Objective in part and sought Objective 9 to be replaced by two new Objectives to better achieve the purpose of the RMA, to recognise that in-stream and out-of-stream values are of equal importance.
- 74 Fonterra submitted that it opposed the Objective in part and sought, in addition to other submitters, the deletion of the words “recreational values”.
- 75 The Hearing Commissioner’s largely adopted the Reporting Officers’ recommendations<sup>27</sup>, such that the Objective is split into two Objectives, 9 and 9A, and the matters to be safeguarded refined. The decision version reads:

*Objective 9*

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

*Objective 9A*

*~~Provided (a) is met, water is~~ Surface water is sustainably managed available both instream and out-of-stream to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.*

- 76 There are four appeals to Objective 9, relating to three distinct matters:
- (a) The deletion of the words “recreational values”. Fish and Game and Forest and Bird both seek to reinstate the words “recreational values”.
  - (b) The deletion of the words “and their margins”. Forest and Bird seeks to reinstate those.

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<sup>27</sup> Report and Recommendations of the Hearing Panel, para 137.

(c) The deletion of the words “historic heritage values”. Heritage NZ and Ngāi Tahu seek to reinstate the reference to historic heritage throughout the pSWLP, including in Objective 9.

- 77 Twelve parties have lodged twenty-five s274 notices in response to the four appeals on this Objective<sup>28</sup>.
- 78 For the appeal of Forest and Bird and Fish and Game, seeking the reinstatement of recreational values, there are six s274 parties who oppose the appeal and three who support it. Horticulture NZ opposes the reinstatement as it is not a s6 matter, which is considered to be the focus of Objective 9. Fonterra, Dairy NZ and Federated Farmers all oppose the reinstatement of recreational values on the basis that critical social and economic needs, and human and animal health needs, should not be subservient to a desire to safeguard recreational values. The Territorial Authorities oppose the reinstatement of recreational values as they consider it could have undesirable consequences for Southland’s regionally significant, nationally significant and critical infrastructure. Meridian Energy also opposes the reinstatement of recreational values as it considers the decisions version is an appropriate and balanced suite of Objectives for managing water quality in the region. DoC supports the reinstatement of recreational values as it gives effect to the RPS. Forest and Bird, and Fish and Game are s274 parties in response to each other’s appeals.
- 79 For the appeal of Forest and Bird, seeking the reinstatement of waterbody margins, there are two s274 parties who oppose the appeal and two who support it<sup>29</sup>. Federated Farmers opposes the reinstatement of waterbody margins as being inconsistent with Part 2 of the RMA, because it considers it sets up a hierarchy between instream and out of stream values. Fish and Game support the appeal, stating that the

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<sup>28</sup> It should be noted that Horticulture NZ, Federated Farmers and Dairy New Zealand lodged s274 notices opposing Forest and Bird’s appeal against the new Objective 9B. However, the content of their notices relate only to matters contained in 9 and 9A and are dealt with under these headings.

<sup>29</sup> Note that the Territorial Authorities 274 notice opposing Forest and Bird’s appeal appears to seek an amendment only in relation to 9B issues. If this is correct, they don’t appear to oppose the changes to 9 or 9A. Aratiatia Livestock are also listed as a 274 party to 9 and 9A but its notice appears to seek an amendment only in relation to 9B issues and don’t appear to oppose the changes to 9 or 9A. Consequently, these two 274 notices have been considered under the 9B discussion.

deletion of waterbody margins will not safeguard the life supporting capacity of ecosystems.

- 80 For the appeals of Heritage NZ and Ngāi Tahu, seeking the reinstatement of the notified version of Objective 9, including the reference to historic heritage, there are four s274 parties who oppose the appeal and two who support it. Federated Farmers oppose the inclusion of historic heritage as controlling land use for the purpose of historic heritage is not a listed function of regional councils under the RMA. The Oil Companies, Territorial Authorities and Fonterra do not discuss opposition to historic heritage per se, they are primarily concerned with the relief sought, being the reinstatement of the notified version of Objective 9, as the relief will potentially have significantly wider implications than in relation to historic heritage and they prefer the decisions version of Objective 9. Forest and Bird supports any changes to the pSWLP if it ensures that water quality will be maintained or improved, and ecosystems safeguarded. Ngāi Tahu is in support of the reinstatement of the words 'historic heritage', but not the reinstatement of the Objective to the notified version, as it would allow for historic heritage matters to be considered for resource consent applications.
- 81 As I understand it, the removal of recreational values was on the basis of Fonterra's submission, when the Objective was in part (a) and (b), as recreational values could be considered as a subset of social wellbeing.
- 82 The changes to the NPS-FM in 2017, including the insertion of Objective A3 which requires that the quality of fresh water is improved to allow primary contact more often, may encourage inclusion of recreational values in this Objective.
- 83 DoC states that inclusion of recreational values gives effect to the RPS. However, Objective WQUAN.1 is about meeting the needs of a range of uses including social, economic and cultural needs; Policy WQUAN.1 recognises the instream values, such as aquatic habitat and natural character; and Policy WQUAN.7 recognises the "social, economic and cultural benefits". There is no particular mention or use of the wording "recreational values" in any of the RPS objectives or policies cited in the s274 notice. In my opinion, as Objective 9 relates to natural values and Objective 9A relates to social, economic and cultural values, then the RPS matters would appear to be appropriately covered.

- 84 Some s274 parties consider the Objective should relate to s6 matters only. In my opinion, while there is some correlation with s6, I do not consider it to capture all s6 matters, nor be exclusively addressing this part of the RMA. I do not consider that the Objective should be constrained by whether or not the matters are included in s6.
- 85 Section 6 of the RMA requires preservation of the margins of lakes, rivers and wetlands. Objective 17<sup>30</sup> of the pSWLP clearly provides for this. In addition, Objective 9 relates to water quantity, and while abstraction of water can have some influence on the margins of water bodies, that influence is often, in my opinion, quite secondary. It could be considered as duplication to include waterbody margins within Objective 9, which focuses on water quantity, when Objective 17 provides a similar outcome to the relief sought.
- 86 In relation to historic heritage the legal position of several parties (including the Council) was that regional councils had jurisdiction under s30 RMA to include objectives and policies in relation to historic heritage, but that the regional council does not have jurisdiction to include rules in a regional plan that control the use of land for the purpose of historic heritage. On that basis, the Hearing Panel removed reference to historic heritage from multiple rules, and from objective and policies. The decision states this was because they saw no benefit in retaining references to historic heritage in the objectives and policies if it wasn't also addressed in the rules.
- 87 As I understand it, the inclusion of historic heritage within objectives and policies is legally justifiable. The Council, in its capacity as consent authority, may also consider adverse effects on matters that are not directly within its land use functions under section 30(1)(c), including adverse effects related to historic heritage. Some objective or policy guidance may be helpful if this occurs.
- 88 Two appeals were lodged against Objective 9A, both of which relate to the issue of prioritising environmental bottom lines for freshwater, before provision is given to the needs of people and communities. Ngāi Tahu seeks to reinstate the reference to managing the needs of the surface

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<sup>30</sup> Objective 17: The natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, are protected from inappropriate use and development.

waterbody for aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes and natural character, with the provision for the needs of people and communities subservient to that. Similarly, Forest and Bird seeks to amend Objective 9A to clearly make it subservient to Objective 9.

- 89 Seven parties have lodged twelve s274 notices in response to the two Objective 9A appeals.
- 90 The inclusion of the new Objective establishing a framework for infrastructure, referenced as Objective 9B, has also caused some confusion with the Objective 9 and 9A appeals. Objective 9B is a distinct Objective, unrelated to the water quantity framework of 9 and 9A. Some of the s274 notices appear to relate to Objective 9B. For clarity, s274 notices that list all three Objectives, but seek outcomes only relevant to Objectives 9 and 9A, are dealt with here.
- 91 Horticulture NZ and Meridian consider that the hierarchy sought by the appellants is inappropriate to achieve the outcomes sought in the pSWLP. They consider that the decision-version of the Objectives achieves a fair balance between potentially competing interests in water. Federated Farmers also opposes the Forest and Bird appeal on the basis that setting up in-stream and out-stream hierarchies would be inconsistent with Part 2 of the RMA.
- 92 DoC and Fish and Game support the relief sought by both appellants on the basis that to achieve freshwater objectives, activities should be sustainably managed within environmental limits.
- 93 The Territorial Authorities lodged a neutral s274 notice, noting their interest in any changes to the management of water when Objective 9 and 9A are considered together.
- 94 In originally suggesting that the notified Objective 9 be split into two Objectives, I was cognisant that the wording of the two Objectives, in my opinion, inherently had a strong element of prioritisation. In Objective 9, the natural values are to be “safeguarded”, while Objective 9A “supports the reasonable needs of people and communities”. In my mind, safeguarding is a high level of protection, thereby inherently elevating this over abstractive uses of water.

- 95 Given the appeals and their reasoning, and particularly the reasoning in the s274 notices, I now question if this inherent prioritisation is too subtle and risks being lost in the separation of the Objectives. Re-merging Objectives 9 and 9A and re-instating the clear prioritisation would, in my opinion, remove any doubt and would make the pSWLP clearer and easier to interpret.

### **Objective 9B**

- 96 Objective 9B was not part of the pSWLP as notified. It was introduced in response to a number of submitters that identified that there were no objectives or policies in the pSWLP that recognised the importance of critical or regionally significant infrastructure.
- 97 In response to the submissions by Gore District Council, Invercargill City Council and Southland District Council<sup>31</sup>, and the New Zealand Transport Agency<sup>32</sup>, the Reporting Officers agreed that there is existing infrastructure that is vital to the continued effective functioning of communities, and also that the operation and development of that infrastructure can cause adverse effects.
- 98 The RPS acknowledges the importance of providing for the development, maintenance, upgrade and on-going operation of infrastructure to contribute to the social, economic and cultural wellbeing of people and communities while ensuring that adverse effects may be avoided, remedied or mitigated. Upon hearing the evidence presented, and to give effect to the RPS, the Reporting Officer recommended that a new objective, policy and definitions relating to significant infrastructure be included in the pSWLP<sup>33</sup>.
- 99 The Hearing Commissioners agreed that the lack of an objective enabling significant infrastructure did not give effect to the purpose of the RMA, the NPSREG, the NPSET and the RPS. New Objective 9B was added, as follows:

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<sup>31</sup> Summary of decisions requested 330.2.

<sup>32</sup> Summary of decisions requested 614.2.

<sup>33</sup> S42A Reply Report, para 4.55.



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

- 100 There are four appeals to Objective 9B, three support the Objective in part, with amendments to the word 'enabled', and one in opposition, seeking its deletion in entirety.
- 101 Southland Fish and Game's appeal requests that the word 'enabled' be amended to *recognised and provided for*. Forest and Bird's appeal requests the words *sustainably managed*<sup>34</sup> and Federated Farmers appeal requests the word *recognised*.
- 102 Ngāi Tahu's appeal seeks to delete Objective 9B in its entirety on the basis that there is insufficient clarity in the Objective and definitions, as well as potentially significant negative impacts on taonga species, values, customary management tools and the redress from the Ngāi Tahu Claims Settlement Act 1998. They also contest that it does not encourage a ki uta ki tai approach to management.
- 103 Ten parties have lodged twenty-eight s274 notices in response to the four appeals on this Objective<sup>35</sup>.
- 104 As discussed above, three of the appeals, Fish and Game, Forest and Bird and Federated Farmers, support the inclusion of Objective 9B. However, they request an amendment to the word 'enabled'. The Territorial Authorities' s274 notice opposes all three appeals on the basis that changing the word 'enabled' could have undesirable consequences for the infrastructure as defined and that any change would not properly give effect to higher order documents or the purpose of the RMA. Meridian, Transpower and the Invercargill City Council Water Manager also oppose any change to the word 'enabled'.
- 105 The Oil Companies are not necessarily opposed to alternatives to the word 'enable'. However, they specifically oppose the relief sought by Federated Farmers as not making sense in the context of Objective 9B as drafted.

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<sup>34</sup> Although the word significant is underlined in the appeal relief sought, this word is already included in the decisions version of the pSWLP so is not a requested addition.

<sup>35</sup> Note there are three 274 notices lodged for Objective 9B appeals that are not relevant to Objective 9B issues. These are outlined in the discussion on Objective 9 and 9A.

- 106 Invercargill Airport and Federated Farmers support changing the word 'enable', and favour the relief sought by Fish and Game to bring the Objective into line with the RPS and the RMA, without significantly deviating from its original intent.
- 107 Forest and Bird oppose the inappropriate enabling of infrastructure and support the relief sought by Federated Farmers. They also lodged a general s274 notice to the Fish and Game appeal that supports the relief sought on the basis that it is necessary to ensure water quality is maintained and improved and ecosystems are safeguarded.
- 108 DoC supports all three appellants seeking to change the word 'enable', considering that a change would give effect to the RPS, in particular Policy INF.1; the NPS-FM, in particular Objectives A4 and B5, and Policies A5 and B5; and in the coastal environment the NZCPS, in particular Objectives 1 and 7, and Policies 3, 5, 11,13 and 21.
- 109 Invercargill Airport lodged a s274 notice opposing the relief sought by Forest and Bird. However, their interest appears to address the effects of other activities on infrastructure (reverse sensitivity), rather than the infrastructure itself. They state that the:
- relief too narrowly focuses the objective to the effects generated by regionally significant, nationally significant and critical infrastructure and does not provide for consideration of the effects of other activities on regionally significant, nationally significant and critical infrastructure.*
- 110 The Ngāi Tahu appeal seeks to have Objective 9B deleted. Horticulture NZ, the Oil Companies, the Territorial Authorities<sup>36</sup>, Meridian, Invercargill Airport and Transpower all oppose the appeal in their s274 notices. Generally, the s274 parties consider that the Objective is part of an appropriate and balanced framework, that regionally significant, nationally significant and critical infrastructure requires the type of consideration that Objective 9B affords, and that cultural values are also adequately protected when the proposed framework is applied. DoC opposes the deletion, as Objective 9B partly gives effect to the RPS, in particular Policy INF.1.

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<sup>36</sup> The Invercargill City Council Water Manager lodged a s274 notice opposing Ngāi Tahu's appeal seeking the deletion of Policy 26A, but did not lodge a s274 notice on the deletion of 9B. Policy 26A is inherently related to Objective 9B.

- 111 Policy 26A is closely related to Objective 9B, and enables the provision of infrastructure while avoiding, remedying or mitigating adverse effects. Appeals on Policy 26A raise a similar range of issues to appeals on Objective 9B.
- 112 In my opinion, the inclusion of an objective on significant infrastructure more appropriately gives effect to the NPS-ET and the RPS, in particular Policy INF.1 of the RPS which requires recognition of the benefits to be derived from, and provision for the development, maintenance, upgrade and ongoing operation of regionally significant, nationally significant and critical infrastructure and associated activities. Regional Policy Statement Policy INF.2 similarly provides for significant infrastructure by requiring adverse effects be avoided, remedied or mitigated, where practicable. This policy recognises that at times, effects associated with significant infrastructure may not be able to be fully addressed.
- 113 The appeals on these provisions all focus on how 'enabling' the Objective should be. With the exception of Ngāi Tahu, all appellants agree that the provisions are appropriate in the pSWLP, and the appeals are focused on the final word.
- 114 Ngāi Tahu have appealed, seeking the deletion of both Objective 9B (and related Policy 26A) on the basis that there is no clarity around what effective development, operation, maintenance and upgrading means. In my opinion, as the Objective gives effect to higher order documents, its deletion is not appropriate, notwithstanding that additional clarification may be appropriate.
- 115 Fish and Game and Federated Farmers have requested changes to Objective 9B from enabling the infrastructure, to recognising and providing for, and recognising respectively. In my opinion, there is little merit in changing from enabling to recognising and providing for. Similarly, changing the provision to simply recognising the infrastructure is not consistent with the RPS, which is enabling.
- 116 Forest and Bird have requested a change to sustainably managed. In my opinion this does not provide the requisite guidance in the pSWLP that is anticipated by the RPS.

## Objective 10

117 As notified, Objective 10 reads:

*The national importance of the existing Manapōuri Power Scheme in the Waiau catchment is provided for, and recognised in any resulting flow and level regime.*

118 Objective 10 received 17 submissions, with three in opposition seeking that the Objective is deleted and three in support seeking that the objective be retained. The remaining submissions largely oppose Objective 10, with submitters seeking amendments to provide for other water uses in the Waiau catchment.

119 The Reporting Officers recommended that Objective 10 be retained as notified.<sup>37</sup>

120 In considering the evidence, particularly from Meridian, the Hearing Commissioners considered that Objective 10 should be amended to recognise that the Manapōuri Power Scheme structures form part of the existing environment. They recommended an amendment to Objective 10 to recognise that fact, and to give better effect to the NPSREG and the RPS. In making that recommendation they specifically recorded that they did not find it appropriate to refer to the Manapōuri Power Scheme takes and discharges as forming part of the existing environment, noting that those activities will be revisited when replacement consents for the Manapōuri Power Scheme are determined in 2031. The final version of Objective 10 reads:

*The national importance of the existing hydro-electric generation schemes, including the Manapōuri Power S-hydro-electric generation scheme in the Waiau catchment, is provided for, ~~and~~ recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment.*

121 There are four appellants.

122 Aratiatia Livestock Limited (**Aratiatia**) and Ngāi Tahu essentially seek the reinstatement of the notified version of the Objective.

123 Federated Farmers argues that the Scheme is already provided for in the RPS and considers it inappropriate to provide the primacy of

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<sup>37</sup> S42A report, para. 5.128.

recognition afforded the activities associated with the Manapōuri Power Scheme to the detriment of all other users. Federated Farmers seeks alternate wording is as follows:

*The national importance of the existing Manapōuri Power Scheme in the Waiau catchment is provided for, and*

1. *is recognised in any resulting flow and level regime, and*
2. *the Manapōuri Power Scheme including its associated water takes, use, damming, diverting and discharge of contaminants and water to water or onto and into land where this enters water is considered as part of the existing environment; and*
3. *allows for enhancement of the scheme where the effects of these can be appropriately managed.*

124 Meridian's appeal focusses on the decision version of Objective 10 not going far enough to recognise the national importance of the Scheme, particularly in relation to the extent of the matters considered as part of the existing environment, and not providing adequately for the enhancement of the Scheme. The requested amendment to Objective 10 is as follows:

*The national importance of the existing hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment and*

1. *is recognised in any resulting flow and level regime, and*
2. *the Scheme and its components and activities is considered as part of the existing environment, including that water takes, use, diversions and discharges are an integral part of the scheme; and*
3. *allows for enhancement of the scheme where the effects of these can be appropriately managed.*

125 Twelve parties have lodged s274 notices in response to the four appeals. The majority of the s274 notices support the concerns raised in the appeals of Aratiatia, Federated Farmers and Ngāi Tahu. Of note, Meridian generally supports Federated Farmers suggested relief. However, it prefers the wording of Meridian.

- 126 The eight s274 parties who lodged in response to Meridian's appeal all oppose the relief sought. Notwithstanding the evidence to be presented by these parties, their opposition generally concerns the implications on the status of the existing consent; the consideration of the ancillary activities of the Scheme as existing environment; and the elevation of the Scheme's priority above other renewable energy providers and water users.
- 127 Both Objective 10 and Policy 26 have been amended as a result of submissions, but in essence, are similar in intent to the notified provisions. Meridian has also lodged an appeal to include a new Objective, assessed below, which seeks to recognise the benefits of renewable energy generally, rather than being focussed on the Manapōuri hydro-electric generation scheme in the Waiau catchment.
- 128 Aratiatia have appealed on the basis that the objective gives unjustified provisions for the Manapōuri scheme. Their appeal notice outlines adverse economic effects as a result of the scheme and consequent impacts on the river. They outline that Objective 10 is unnecessary to give effect to the NPS-REG, which does not apply to the allocation of freshwater. Ngāi Tahu have appealed, seeking, among other things, the deletion of the part of the Objective that recognises the associated structures as part of the existing environment.
- 129 Meridian and Federated Farmers have both sought very similar relief, suggesting changes to the objective to include water takes within the existing environment, and to allow the scheme to be enhanced where appropriate. This appears inconsistent with the reasons given for the Federated Farmers appeal.
- 130 As I understand it, the Hearing Panel carefully considered Objective 10, in terms of what it should provide for 'as part of the existing environment'. It is clear from the Decision Report that the Panel considered only the structures as part of the existing environment and specifically excluded the takes and discharges from the existing environment. The decision report does not elaborate on the reasons why that conclusion was reached.
- 131 In my opinion, given the nature and scale of the water take, and that permits authorising water takes, discharges, damming and diversions expire e.g. are only granted for a finite period (and there is no automatic

right of renewal under the RMA), it seems inappropriate to include the water takes, discharges, damming and diversions as part of this existing environment as sought by Meridian and Federated Farmers. Given that the pSWLP is the first stage in the limit setting conversation, and community values for this FMU have yet to be explored (which will occur as the Council completes the limit-setting process under the NPS-FM in accordance with its Progressive Implementation Programme), in my opinion there is opportunity to consider whether provision for the existing water takes, discharges, damming and diversions should be included at an objective or policy level at that stage.

### **New Objective - Meridian**

- 132 Meridian's submission on the notified pSWLP sought the inclusion of a new Objective to address renewable electricity generation activities other than the Manapōuri Power Scheme, such as the nationally significant White Hill Wind Farm. The new Objective requested was:

*Recognise and make provision for the national significance of renewable electricity generation activities.*

- 133 In response to this submission, the Reporting Officers noted that a number of submitters had sought new objectives in relation to regional, national and critical infrastructure, including renewable electricity generation activities, and considered that these matters were already provided for in Objective 2, where land and water is recognised as an enabler of the economic, social and cultural wellbeing of the region. Overall, the Reporting Officers did not consider that new objectives were necessary to provide for infrastructure in the Southland region<sup>38</sup>.
- 134 Upon hearing the evidence presented, in the Section 42A Reply Report, the Reporting Officers discussed that the RPS acknowledges the importance of providing for the development, maintenance, upgrade and on-going operation of infrastructure to contribute to the social, economic and cultural wellbeing of people and communities while ensuring that adverse effects may be avoided, remedied or mitigated<sup>39</sup>. Therefore, the

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<sup>38</sup> Section 42A Hearing Report, para 5.230.

<sup>39</sup> Objective INF.1, Policy INF.1, Policy INF.2, Policy INF.3.

Officers recommended a new Objective, Policy and definitions. The resulting Objective 9B has been addressed earlier.

- 135 Meridian is appealing the decision, on that basis that there are no other provisions of the pSWLP, including Objective 10 (and 9B), that adequately address renewable electricity generation activities. The relief sought is the inclusion of a new Objective as worded in their original submission.
- 136 There are six s274 parties, five<sup>40</sup> who oppose the appeal and one<sup>41</sup> who has registered its interest without clearly stating a position. The opposing s274 parties generally consider the relief sought as too enabling and/or unnecessary renewable electricity generation activities are already adequately addressed in other provisions of the pSWLP.
- 137 Meridian's requested new Objective seeks to recognise the national significance of renewable electricity generation activities. The national significance of this activity is recognised by the NPSREG and the RPS, both higher-order documents that need to be given effect to by the pSWLP.
- 138 In my opinion, consideration needs to be given to whether Objective 9B and related policies, which enable the development, operation, maintenance and upgrading of infrastructure more generally, and Policy 26, which specifically recognises the national significance of renewable electricity generation activities, adequately addresses this issue.

### **Objective 11**

- 139 As notified Objective 11 read:

*Water is allocated and used efficiently.*

- 140 Objective 11 received 32 submissions, 13 of which were in support. Alliance Group submitted that it supported the Objective in part. Alliance Group requested an amendment to better guide decision making in relation to efficient water use, by reiterating the primacy of water supply for critical needs, which better links the Objective to the Policies of the pSWLP:

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<sup>40</sup> Aratiatia Livestock Ltd; Federated Farmers of New Zealand (Southland); Southland Fish and Game Council; Waiau Rivercare and Ngāi Tahu

<sup>41</sup> Royal Forest and Bird Protection Society of New Zealand



*Water is allocated and used efficiently having had regard to the primacy of community water supply and priority takes.*

- 141 The Reporting Officers recommended adoption in part of the relief requested in the submissions of Irrigation NZ and Fish & Game<sup>42</sup> in relation to providing clarity to 'efficient use' by including 'reasonable use' within the Objective<sup>43</sup>. Objective 11 was amended, and the reasoning in the S42A Hearing Report was adopted by the Hearing Panel without substantive additional comment<sup>44</sup>:

*The amount of water abstracted is shown to be reasonable for its intended use and wWater is allocated and used efficiently.*

- 142 Alliance Group is the only appellant. It seeks to amend Objective 11 by reverting to the notified version, with addition of guidance to decision makers on the primacy of water supply for community water supplies and priority takes. The appeal states that this will provide appropriate direction for these important matters which are also recognised in subsequent Policies. The requested amendment repeats the Alliance Group's original submission:

*Water is allocated and used efficiently having had regard to the primacy of community water supplies and priority takes.*

- 143 Seven s274 notices have been lodged in response to Alliance Group's appeal. Three support the appeal, suggesting that the wording provides better clarity in relation to subsequent Policies. Three oppose the appeal on the grounds that there should be no differentiation in circumstances as to when water should be used efficiently. One noted a general interest.
- 144 Objective 11 is a relatively straightforward provision that addresses efficiency of both allocation and use. The intention of Objective 11 is that it generally applies to all activities and water takes, and provides direction on how water is to be taken and used. In my opinion, the primacy that Alliance Group is seeking is more appropriately suited to a policy level, and is provided for through Policies 20, 21, 22, 24 and 25. These Policies collectively outline how water is to be allocated and used efficiently.

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<sup>42</sup> Submission 414.2 INZ and 752.27 Fish & Game.

<sup>43</sup> S42A report, para 5.136.

<sup>44</sup> Report and Recommendations of the Hearing Panel, para 137.

- 145 In my opinion, the decision version of the Objective gives effect to Objective B3 of the NPS-FM which seeks to *improve and maximise the efficient allocation and efficient use of water*, and would not be improved by removal of the 'reasonable use' part of the Objective and addition of the words sought by the appellant.

### **Objectives 13, 13A and 13B**

- 146 As notified, Objective 13 reads:

*Enable the use and development of land and soils, provided:*

- a) *the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities and discharges to land;*
- b) *the discharge of contaminants to land or water that have significant or cumulative effects on human health are avoided; and*
- c) *adverse effects on ecosystems (including diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained or enhanced.*

- 147 Ngāi Tahu and Heritage New Zealand submitted in support of Objective 13 as notified.

- 148 Forest and Bird submitted in partial opposition to Objective 13. It stated that by providing for discharges to have adverse effects on human health so long as these were not "significant" or "cumulative" did not go far enough to enable people to provide for their wellbeing which, it argued, is inconsistent with the requirements of the NPS-FM. It requested the following amendments:

- (a) *The quantity, quality and structure of soil resources are managed to avoid irreversible degradation ~~not irreversibly degraded~~ through land use activities and discharges to land;*
- (b) *the discharge of contaminants to land or water that have ~~significant~~ adverse or cumulative effects on human health and recreation are avoided; and*
- (c) *adverse effects on ecosystems (including indigenous diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to*

*ensure these values are maintained safe guarded or enhanced.*

*(d) Provided a, b and c is met enable the use of development of land and soils.*

149 Fish and Game submitted in partial support and considered that Objective 13 is inconsistent with Part 2 of the RMA in that it doesn't take into account the effects associated with land development in headwater sub-catchments. They also restated Forest and Bird's submission in relation to 13(b). It requested the following amendments:

*Enable the use and development of land and soils, provided that (a) – (d) are met:*

- a) Adverse effects on the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities and discharges to land are avoided, remedied or mitigated to ensure these values are maintained or enhanced;*
- b) the discharge of contaminants to land or water that have significant adverse or cumulative effects on human health and recreation are avoided; and*
- c) adverse effects on ecosystems (including diversity and integrity of habitats), amenity values, recreational values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained or enhanced., and*
- d) Significant adverse effects on the natural flow regime of rivers, including the duration and severity of low flow conditions and the magnitude of flood flows, are avoided.*

150 As a means to address issues raised in submissions, the Reporting Officers suggested that it may be more appropriate to list the outcomes sought as separate objectives. They also recommended several amendments to the wording of the new objectives.

151 The Hearing Commissioners accepted the Council Officers recommendations and the reasons for them<sup>45</sup>, such that the decisions version reads:

*Objective 13*

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<sup>45</sup> Report and Recommendations of the Hearing Commissioners, para 137.

*Enable the use and development of land and soils to support the economic, social, and cultural wellbeing of the region, provided*

*Objective 13A*

*~~The quantity, quality and structure of soil resources are not irreversibly degraded through land use activities and or discharges to land.~~*

*Objective 13B*

*~~The discharges of contaminants to land or water that have significant or cumulative adverse effects on human health are avoided.~~*

*~~(c) adverse effects on ecosystems (including diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained or enhanced~~*

- 152 There are five appeals to Objective 13, and four to 13A and 13B. There are also 17 s274 parties who have lodged multiple s274 notices across the five appeals relating to the three new Objectives. The primary issues appear to focus on:
- (a) Splitting the notified objective into three, thereby enabling the use of land and soils, without conditional requirements relating to avoiding, remedying or mitigating adverse effects on ecosystems (including indigenous biological diversity and integrity of habitats), amenity values, cultural values and historic heritage values;
  - (b) The use of the word 'avoid' in relation to point source discharges in Objective 13B; and
  - (c) The deletion of the original clause (c) on the basis that it was addressed by other Objectives.
- 153 In my opinion, the purpose of this suite of Objectives is to balance the tension between the use and development of land and soils for the economic, social and cultural wellbeing of the region, with the need to protect and enhance soil resources and ecosystem values and protect human health. On reflection, I consider that further improvements to these Objectives could improve clarity, particularly with respect to the appropriate balance between these, at times competing, values. I

consider that splitting the Objective into three may have lost the element of enabling activities, within limits, that was originally intended. For example, Objective 13 is now very similar to Objective 2, and Objective 13 does not have particular linkages to Objectives 13A and 13B.

- 154 Objective 13B is very similar to the notified Objective 13(b) and gives effect to Objective A1(b) of the NPS-FM. Objective 13B requires that the health of people and communities as affected by contact with fresh water be safeguarded, when managing the use and development of land and of discharges of contaminants. It also addresses Policy A4 which requires Councils, when considering resource consent applications, to have regard to the extent to which the discharge would avoid contamination that will have an adverse effect on the life-supporting capacity of fresh water, including on any ecosystem associated with fresh water; and the extent to which the discharge would avoid contamination that will have an adverse effect on the health of people and communities as affected by their contact with fresh water.
- 155 Alliance's appeal states that using the word "avoid" in Objective 13B is not appropriate and not supported by the context of the submission that was relied upon to make that change. In my opinion, this Objective is supported by the language in Policy A4 of the NPS-FM. While I agree that the notified provision was more restricted in scope than the decision on Objective 13B, I do not consider that the Objective, given that it relates to human health, is inappropriate, but agree that the word 'avoid' in the way it is used, is stronger than Policy A4 of the NPS-FM, and there may be situations where remedying or mitigating these effects may also be appropriate.
- 156 In my opinion, the issues dealt with in subclause (c) of the notified Objective are sufficiently removed from subclauses (a) and (b) but do have overlap with other objectives, particularly 9, 14 and 17. However, the appeals make it clear that notified Objective 13(c) did provide a level of protection for land-based ecosystems, amenity values, and cultural values, which are not provided for in Objectives 9, 14 and 17. With the deletion of clause (c), there is limited provision for protection of land-based ecosystems, cultural values and amenity values. On that basis, there may be merit in exploring the reinstatement of clause (c) as requested directly or indirectly by all appellants.

## Objective 14

157 As notified, Objective 14 read:

*The range and diversity of indigenous ecosystem types and habitats within dryland environments, rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.*

158 The submission of Invercargill City Council requests Objective 14 be amended to remove the reference to “dryland environments” from the Objective.

159 In response to this submission, the Reporting Officers agreed that this part of the provision could result in duplication with territorial authority functions and recommended that the reference to “dryland environments”<sup>46</sup> be removed.

160 The Hearing Commissioners accepted this recommendation<sup>47</sup> and Objective 14 was amended in the decision to read:

*The range and diversity of indigenous ecosystem types and habitats within ~~dryland environments~~, rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.*

161 Forest and Bird is the only appellant. It seeks to reinstate “dryland environments” on the basis that removing it fails to provide for the maintenance of indigenous biodiversity as required by s30 of the RMA. Forest and Bird is also concerned that implementing methods, such as Rule 79 (High Country Burning), will lack policy direction in the absence of dryland environments being identified in Objective 14. It also seeks the inclusion of reference to species in addition to indigenous ecosystem types.

162 Three s274 notices have been lodged in response to Forest and Bird’s appeal, two in support and one in opposition. DoC supports the appeal on the basis that it will give effect to the NPSFM, Objective B.2 and SRPS, Objectives BIO 1 and 2 and Policy BIO 2. Ngāi Tahu also supports the relief in part as it pertains to the Waituna Lagoon and the Waiau River. Federated Farmers opposes the relief, and states that it is

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<sup>46</sup> Hearing Report: pSWLP (S42A) para. 5.176.

<sup>47</sup> Report and Recommendations of the Hearing Panel, para 137.

overly complex, would establish a litigious framework without certainty and that it is already sufficiently addressed in both the SRPS and District Plans.

- 163 Of particular relevance is the SRPS, which places the responsibility for the control of the use of land for the maintenance of biodiversity in the coastal marine area, wetlands, and lakes and rivers and their margins with the Regional Council and all other areas with District Councils:

*Statement of Local Authority Responsibilities*

*Section 62(1)(i)(iii) of the Act requires a regional policy statement to state the local authority responsible, in the whole or any part of the region, for specifying the objectives, policies and methods for the control of the use of land to maintain indigenous biological diversity.*

*The Southland Regional Council: (1) will be responsible for specifying the objectives, policies and methods for the control of the use of land for the maintenance of indigenous biodiversity in the coastal marine area, wetlands, and lakes and rivers and their margins. Territorial authorities: (2) will be primarily responsible for specifying the objectives, policies and methods for the control of the use of land for the maintenance of indigenous biodiversity on all land excluding the coastal marine area, wetlands, and lakes and rivers and their margins.<sup>48</sup>*

- 164 On the basis of this statement, it is my opinion that the deletion of “dryland environments” from this Objective improves efficiency by reducing overlap between regional council and territorial authority plans and processes and is therefore appropriate.

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<sup>48</sup> Southland Regional Policy Statement 2017 Chapter 6 - Page 77.

## Objective 15

165 As notified, Objective 15 read:

*Taonga species, as set out in Appendix M, and related habitats, are recognised and provided for.*

166 There were nine submissions on the notified version of Objective 15 with six of those seeking the Objective be retained. Federated Farmers sought to have this Objective, along with Objectives 3, 4 and 5 replaced with one objective addressing the relationship between iwi and their customs and ancestral lands. The Reporting Officer noted in the S42A Report that these Objectives are complementary rather than a duplication of outcomes sought.<sup>49</sup> Fish and Game supported the notified version of Objective 15.<sup>50</sup>

167 The Reporting Officer recommended the Objective be retained as notified as the Council has a requirement under s6 and s7 of the RMA, along with Objective TW.3 of the RPS, to provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.<sup>51</sup> The Hearing Panel adopted the recommendations of the Reporting Officer and the Objective was retained as notified.<sup>52</sup>

168 In their appeal, Fish and Game are seeking to strengthen the Objective by protecting taonga species and their related habitats rather than providing for taonga species and their habitats:

*Taonga species, as set out in Appendix M, and related habitats, are recognised and ~~provided for~~ protected.*

169 Four s274 notices have been lodged. Forest and Bird and Ngāi Tahu support the appeal. Forest and Bird did not submit on the notified version of Objective 15.

170 The Territorial Authorities oppose the relief sought by Fish and Game, on the basis that the amendments are inconsistent with Objective 9B and Policy 26A. Federated Farmers oppose the relief sought and note

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<sup>49</sup> Hearing Report: pSWLP (S42A) para 5.41.

<sup>50</sup> Summary of Decisions Requests sub point 752.31.

<sup>51</sup> Hearing Report: pSWLP (S42A) para 5.188 and 5.191.

<sup>52</sup> Report and Recommendations of the Hearing Panel, para 137.



practical difficulties of every-day farming that may not “protect” taonga species and related habitats.

- 171 Setting aside the question of whether any submission, including that of Fish and Game, requested that the Objective be strengthened, I note that the list of taonga species in Appendix M is extensive, and includes a large number of birds, trees and plants, and freshwater fish and shellfish<sup>53</sup>. In particular, the ‘related habitats’ would include large areas of Southland, both developed and undeveloped, including almost all waterbodies and wetlands. Therefore, in my opinion, ‘protection’ could be an unrealistic and unreasonable objective and does not appear to be the outcome sought by the higher-order planning documents, particularly as it would relate to all habitats, with no reference to significance.

### **Objective 17**

- 172 As notified, Objective 17 read:

*The natural character values of wetlands, rivers and lakes including channel form, bed rapids, seasonably variable flows and natural habitats, are protected from inappropriate use and development.*

- 173 Forest and Bird submitted that it supported the Objective with minor amendments to better reflect s6(a) of the RMA, by including the requirement to preserve the natural character of wetlands, rivers and lakes and their margins:

*The natural character values of wetlands, rivers and lakes and their margins including channel form, bed rapids, seasonably variable flows and natural habitats, are preserved and protected from inappropriate use and development.*

- 174 The Reporting Officers were silent on the Forest and Bird submission in the Section 42A Hearing Report but recommended adopting the words “and their margins” as requested by Fish and Game in its submission,

- 175 The Hearing Commissioners adopted the Officers’ recommendations, such that the Objective reads:<sup>54</sup>.

- 176 because it is consistent with s6(a) of the RMA.

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<sup>53</sup> The list includes approximately 64 bird species, 53 plants or trees and 27 fish or shellfish.

<sup>54</sup> Report and Recommendations of the Hearing Panel, para 137.

*The natural character values of wetlands, rivers and lakes and their margins<sup>55</sup> including channel and bed form, ~~bed~~ rapids, seasonably variable flows and natural habitats, are protected from inappropriate use and development.*

- 177 Forest and Bird is appealing the amendments to Objective 17, as they consider the failure to add the words “preserved and” to the Objective does not reflect s6(a) of the RMA. The change requested is:

*The natural character values of wetlands, rivers and lakes and their margins including channel form, bed rapids, seasonably variable flows and natural habitats, are preserved and protected from inappropriate use and development.*

- 178 There are six s274 notices lodged in response to Forest and Bird’s appeal. Two support the changes sought on the basis that it would give effect to s6(a) of the RMA. The remaining parties oppose the appeal as being inappropriately restrictive and difficult to quantify.
- 179 The RMA requires the preservation of the natural character of the specified environments and the protection of them from inappropriate use, development and subdivision. Therefore, there may be merit in the relief sought by Forest and Bird. However, in my opinion, “preserved” and “protected” appear to be very closely aligned, such that the outcome is not likely to realistically be different if either or both words were used. In this, I tend to agree with the reasoning of Meridian in its s274 notice which states that the decision version of the Objective allows for reasonable decisions to be made on a case by case basis as to the level of appropriate protection of natural values to be applied, ranging from preservation where the values are very high, to little protection where the natural character values are very low.
- 180 I am not in particular agreement with the s274 notice from Federated Farmers that states that the term “preserved” is difficult to quantify in terms of habitat quality when that habitat is not significant, and that the term introduces uncertainty. As I understand it, s6(a) issues have been addressed at length in the Environment Court, and there is an established body of caselaw on natural character values and preservation, such that uncertainty is less likely to arise.

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<sup>55</sup> Hearing Report: pSWLP (S42A) para 5.213.

## Objective 18

181 As notified, Objective 18 read:

*All activities operate at “good (environmental) management practice” or better to optimise efficient resource use and protect the region’s land, soils, and water from quality and quantity degradation.*

182 Objective 18 received 53 submissions, with 14 in support, seeking that the Objective be retained as notified. Many submitters who opposed Objective 18, or sought amendment, found the high-level concept challenging. Some sought a definition of “good environmental management practice”, while others, particularly those with industrial discharges, sought alignment with the RMA concept of best practicable option.

183 These matters were addressed in some detail in the S42A Hearing Report, where the Reporting Officers recommended retaining Objective 18 as notified stating that the Objective recognises an overall aim of the pSWLP to encourage good practice by all water and land users in the region, irrespective of activity status under the pSWLP<sup>56</sup>.

184 In the Section 42A Reply Report, the Reporting Officers maintained their general view that this policy is a high-level statement of intent – an aspirational outcome for the region. On that basis, the simple and clear concept of “good management practice” continued to be supported by the Officers. Officers recommended the addition of the concept of “life supporting capacity” as it is a core element of both Section 5 of the RMA and the RPS.<sup>57</sup>

185 The Hearing Commissioner’s adopted the recommendations, such that the decisions version of Objective 18 reads:

*All activities operate in accordance with at “good (environmental) management practice” or better to optimise efficient resource use, safeguard the life supporting capacity of ~~and protect the region’s land~~ and soils, and maintain or improve the water from ~~quality and quantity of the region’s water resources.~~ ~~degradation~~*

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<sup>56</sup> Hearing Report: pSWLP (S42A) para 5.220.

<sup>57</sup> Section 42 Reply Report, para 4.65.

- 186 There are three appeals to Objective 18.
- 187 Alliance seeks that the Objective be amended in part to recognise that the phrase 'good management practice' is too vague a term for industrial and trade processes, and that the factsheets that set out good management practice (as per the definition in the pSWLP) are too easy to change as no Schedule 1 process is required to create, update or change what 'good management practices' are. Alliance considers that industrial and trade processes should be managed using the term best practicable option.
- 188 Fish and Game seek to amend Objective 18 in totality, introducing best practicable option management for all activities, to achieve soil conservation, and the maintenance or improvement of water quantity, water quality and ecosystems in freshwater.
- 189 Ngāi Tahu seek to retain the Objective as notified, primarily due to uncertainty about what good management practice aims to achieve.
- 190 Eleven parties lodged nineteen s274 notices in relation to the three appeals.
- 191 Overall, there appear to be three areas of concern in relation to Objective 18:
1. The suitability and clarity of the term 'good management practice';
  2. The suitability of the term 'best practicable option'; and
  3. The need for a distinction in the required management practice for industrial and trade processes.
- 192 Use of the term "good management practice", along with definition of that term, has potentially created an inadvertent narrowing of the Objective to relate to farming activities only. The definition of good management practices reads:
- Good management practices include, but are not limited to, the practices set out in the various Good Management Practices factsheets available on the Southland Regional Council's webpage.*
- 193 At the time of drafting this evidence there were five such factsheets, all providing farming-specific information, particularly to inform Farm

Environmental Management Plans, on topics such as artificial drainage, deep drainage of nitrogen and overland flow.

- 194 Some adjustment of the Objective (or definition) may be warranted, if it is considered that this inadvertent narrowing has occurred. “Good environmental practice” may better convey the overall concept, with the higher level of specificity that some appellants seek.
- 195 The objective was drafted as one that would apply to all activities, urban, rural and industrial. That is captured in the first few words: “All activities operate...”. In my opinion, the Objective is deliberately general and high level, as it outlines an expectation of behaviour, rather than compliance with specific standards or processes.
- 196 In my opinion, using best practicable option for point-source discharges and industrial activities would detract from the uniform expectation expressed in the objective that applies to all people and communities. In my opinion, the Objective is flexible, and will lead to increased expectations over time, which in my view is appropriate. For these reasons, I do not support the extensive changes to the objective requested by Fish and Game, or different treatment of industry, as sought by Alliance.

## Ngāi Tahu Policies

### Policy 1

197 As notified, Policy 1 read:

*Enable papatipu rūnanga to effectively undertake their kaitiaki responsibilities in freshwater and land management through Environment Southland:*

1. *providing copies of all applications that may affect a Statutory Acknowledgement area, tōpuni, nohoanga, mātaimai or taiāpure to Te Rūnanga o Ngāi Tahu and the relevant papatipu rūnanga;*
2. *identifying Ngāi Tahu interests in freshwater and associated ecosystems in Southland/Murihiku;*
3. *reflect Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Southland/Murihiku, consistent with the Charter of Understanding.*

198 Federated Farmers submitted that it opposed Policy 1 in part. Federated Farmers requested that within part (3) of Policy 1, the wording “*and interests*” be deleted because those “interests” may include commercial interests which may give rise to a conflict of interest when Ngāi Tahu interests are afforded greater weighting in resource management decisions.<sup>58</sup>

199 Eight other submissions on Policy 1 were in support of the Policy, with one neutral submission.

200 In response to this submission, the Reporting Officer stated that Ngāi Tahu values and interests in the management of and decision making on freshwater ecosystems is guided by the Charter of Understanding which sets out the relationship between district and regional councils of Southland and tangata whenua.<sup>59</sup> The Reporting Officer recommended the Policy be retained as notified.<sup>60</sup>

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<sup>58</sup> pSWLP Summary of Decisions Requested Sub point 265.32 pg 118.

<sup>59</sup> A copy of the signed Charter of Understanding is appended to my evidence as Attachment 1.

<sup>60</sup> Hearing Report: pSWLP (S42A) para 6.15.

- 201 The Hearing Panel accepted the recommendation by the Reporting Officer.<sup>61</sup> Any changes to the policy have been to provide clarity or through Clause 16(2) amendments.<sup>62</sup> These changes included the insertion of the English translation of te reo and correcting the naming of the Southland Regional Council.
- 202 The Federated Farmers appeal on Policy 1 is seeking to again remove reference to “*and interests*” within the Policy as Federated Farmers considers this may include commercial interests, creating a potential conflict in the management and decision-making on freshwater and freshwater ecosystems.
- 203 Ngāi Tahu have joined this appeal point as a s274 party in opposition to Federated Farmers, stating that the deletion sought by Federated Farmers does not provide for Te Mana o te Wai and that Objective D1<sup>63</sup> of the NPS-FM requires that the values and interests of tangata whenua are identified and reflected in the management of freshwater.<sup>64</sup>
- 204 The wording “tangata whenua values and interests” is used in Objective D1 and Policy D1 of the NPS-FM and this Policy closely reflects the intent of Objective D1 and Policy D1. Further, the wording of Objective D1 and Policy D1 of the NPS-FM is directive and is the superior document that the pSWLP is required to give effect to. Therefore, I do not support the change to this Policy sought by Federated Farmers.

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<sup>61</sup> Hearing Report: pSWLP (S42A) para 6.16.

<sup>62</sup> RMA, Schedule 1, of 16(2).

<sup>63</sup> NPS-FM Objective D1: *To provide for the involvement of iwi and hāpu, and to ensure that tangata whenua values and interests are identified and reflected in the management of freshwater including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.*

<sup>64</sup> S274 notice of Ngāi Tahu.

### Policy 3

205 As notified, Policy 3 read:

*To manage activities that adversely affect taonga species, identified in Appendix M.*

206 Fish and Game submitted that it supported the Policy and that it should be retained as worded.<sup>65</sup>

207 Twelve submissions were received on Policy 3 with six of those in support. Federated Farmers sought to have the policy deleted on the basis the effects being managed through Policy 3, and the relationship with Council's RMA functions, were unclear.<sup>66</sup> The remaining submitters sought to have this Policy amended to be implemented only when a resource consent was required for an activity affecting any taonga species.

208 The Reporting Officers recommended that the Policy be retained as notified.<sup>67</sup> The Hearing Panel accepted this recommendation. As the specific change sought by Fish and Game in the appeal was not raised at the time of submissions, it was not addressed by the Reporting Officer in the Section 42A Hearing Report.

209 Fish and Game now seek to broaden the Policy through their appeal:

*To manage activities that adversely affect taonga species, identified in Appendix M and their related habitats.*

210 While Fish and Game did not seek a specific change to Policy 3 in their submission, they did lodge an overarching submission that opposed region-wide policies where they are inconsistent with the purpose and principles of the RMA. The relief sought was to retain, delete or amend those policies, rules and schedules in the PSWLP to ensure they achieve the objectives sought by Fish and Game in their submission.

211 Forest and Bird and Ngāi Tahu have lodged s274 notices supporting Fish and Game's appeal. They state that the change is necessary to ensure water quality is maintained and improved and ecosystems are safeguarded. Federated Farmers has lodged a s274 notice opposing the Fish and Game appeal, outlining that while land use activities may affect

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<sup>65</sup> pSWLP Summary of Decisions Requested Sub point 752.47 p 121.

<sup>66</sup> pSWLP Summary of Decisions Requested Sub point 265.34 p 121.

<sup>67</sup> Hearing Report: pSWLP (S42A) para 6.33.



Appendix M species it is unclear how fish and game birds, which adversely affect Taonga species and their habitats, will be managed.

212 Policy 3 gives effect to Objective 15. Objective 15 states:

*Taonga species, as set out in Appendix M, and related habitats, are recognised and provided for.*

213 As Objective 15 clearly includes “related habitats”, it may be appropriate to include those “related habitats” within Policy 3. As the related habitats of taonga species need to be recognised and provided for in the objective, in my opinion, it would be appropriate for the same to be included at the policy level.

214 In response to the particular issue raised by Federated Farmers in their s274 notice, I note that the management of fish and game birds is not one of the issues that the pSWLP seeks to address.

### **Physiographic Zones – General and Policies**

215 Southland’s physiographic zones were developed to better understand the region’s water, how it moves across the landscape and why water quality varies across the Region. The physiographic zones science, and the way contaminants are transported through the landscape underpins the array of management approaches outlined in the pSWLP. The science underpinning the policy position is outlined in the evidence of Dr Snelder and Mr Rodway.

216 The nine physiographic zones in the pSWLP as notified were described as follows:

*The Alpine physiographic zone includes all land above 800 metres elevation and is mainly found in northern and western parts of Southland. This zone is characterised by steep slopes with thin soils or bare bedrock. Its high elevation results in high snowfall and rainfall, which provides large volumes of pristine water to downstream physiographic zones. Overland flow (surface runoff) is the key transport pathway, however contaminant loss is limited due to low intensity of land use. Key transport pathway for contaminants:*

- *Overland flow – nitrogen, phosphorus, sediment and microbes to streams.*

*The Central Plains physiographic zone extends across flat to gently undulating terraces in the lower reaches of the Aparima and Ōreti catchments in Central Southland. This zone has many small streams and has an extensive underlying aquifer system. Soils are characteristically rich in clay, which means they swell when wet and crack when dry. When soils are wet, contaminants move quickly through artificial drainage networks to surface waterways. When soils are dry, cracks allow water and contaminants to rapidly drain down through the soil to groundwater. Key transport pathways for contaminants:*

*Artificial drainage – nitrogen, phosphorus, sediment and microbes to streams;*

- *Deep drainage – nitrogen to aquifers.*

*The Gleyed physiographic zone extends across flat to gently undulating land across the plains of both northern and southern Southland. It is generally found in areas that were once wetlands, has a dense network of streams and has a high water table during winter. Soils are prone to waterlogging and have some denitrification ability, which reduces build-up of soil nitrogen. However, an extensive network of artificial drainage rapidly transports contaminants to surface water, particularly during heavy rain. The zone also has an overland flow or (o) variant, which means that in parts of the zone overland flow is also a key transport pathway for contaminants. Key transport pathways for contaminants:*

- *Artificial drainage – nitrogen, phosphorus, sediment and microbes to streams;*
- *Overland flow (in some parts of the zone - (o) variant) – nitrogen, phosphorus, sediment and microbes to streams.*

*The Bedrock/Hill Country physiographic zone is the largest in Southland Region, covering half the mapped area (approximately 1.6 million hectares). It is characterised by rolling to steep land below 800 metres elevation. This zone has high rainfall due to elevation, which results in a dense network of streams that flow to lowland areas. This zone contains an overland flow or (o) variant, as*

*well as an artificial drainage or (a) variant, which means that in some parts of the zone, overland flow is a key transport pathway, and in some parts variant which are areas within a zone where either overland flow or artificial drainage is the key contaminant transport pathway. This means that streams in developed areas of these variants are at risk of receiving contaminants from surface runoff and artificial drainage. Key transport pathways for contaminants:*

- *Overland flow (in some parts of the zone - (o) variant) – nitrogen, phosphorus, sediment and microbes to streams;*
- *Artificial drainage (in some parts of the zone – (a) variant) – nitrogen, phosphorus, sediment and microbes to streams.*

*The Lignite-Marine Terraces physiographic zone is distributed along Southland's south coast and in areas of Eastern and Western Southland where the underlying geology has elevated organic carbon (such as lignite or coal). There is little nitrogen build-up in soils and aquifers due to high denitrification potential. Phosphorus build-up in soils is also low where lignite and marine sediments are close to the surface. Like Bedrock/Hill Country, this zone contains an overland flow or (o) variant, as well as an artificial drainage or (a) variant. Key transport pathways for contaminants:*

- *Overland flow (in some parts of the zone - (o) variant) – nitrogen, phosphorus, sediment and microbes to streams;*
- *Artificial drainage (in some parts of the zone – (a) variant) – nitrogen, phosphorus, sediment and microbes to streams.*

*The Old Mataura physiographic zone is located on the older, high terraces in the Mataura catchment. Soils and aquifers in this zone have high risk of nitrogen build-up due to low denitrification potential. The combination of flat land and well drained soils results in high rates of nitrogen leaching (deep drainage) to underlying aquifers. Groundwater in this zone discharges into springs, streams and aquifers in lower parts of the Mataura catchment, adding to their contaminant levels. Key transport pathway for contaminants:*

- *Deep drainage – nitrogen to aquifers.*

*The Oxidising physiographic zone is located on intermediate terraces along the margins of major river systems. Many surface waterways draining this unit originate from headwaters in neighbouring physiographic zones. Soils and aquifers in this zone have high risk of nitrogen build-up due to low denitrification potential. The combination of flat land and well drained soils results in high rates of nitrogen leaching (deep drainage) to underlying aquifers. Like Bedrock/Hill Country and Lignite-Marine Terraces, this zone contains an overland flow or (o) variant, as well as an artificial drainage or (a) variant. Key transport pathways for contaminants:*

- *Deep drainage – nitrogen to aquifers;*
- *Overland flow (in some parts of the zone – (o) variant) – nitrogen, phosphorus, sediment and microbes to streams;*
- *Artificial drainage (in some parts of the zone – (a) variant) – nitrogen, phosphorus, sediment and microbes to streams.*

*The Peat Wetlands physiographic zone was once extensive across Southland. However, today it accounts for is less than 2% of the total land area. This zone is characterised by highly acidic peaty soils and a naturally high water table. Developed areas have an extensive artificial drainage network, comprised of open and mole-pipe drains. There is little nitrogen build-up in soils and aquifers due to high denitrification potential. However, acidic conditions result in elevated concentrations of soluble phosphorus in both soils and aquifers. Key transport pathways for contaminants:*

- *Deep drainage – phosphorus to aquifers;*
- *Artificial drainage – nitrogen, phosphorus, sediment and microbes to streams;*
- *Lateral drainage – microbes and phosphorus to streams.*

*The Riverine physiographic zone occurs along the margins of Southland's major river systems. Rivers and streams within this zone carry large volumes of pristine alpine water to the coast. However, river water in this zone also contains soil water drainage from adjacent land. Soil water drains quickly through shallow, stony soils to underlying shallow aquifers, which are highly connected to*

rivers. This, combined with the low denitrifying potential of soils and aquifers, results in aquifers and adjacent rivers being at risk of nitrogen build-up from soil leaching (deep drainage). Therefore, nitrogen loss from aquifers can contribute significant nitrogen loads to downstream environments. Like Gleyed, this zone has an overland flow or (o) variant. Key transport pathways for contaminants:

- Deep drainage – nitrogen to aquifers;
- Overland flow (in some parts of the zone - (o) variant)) - nitrogen, phosphorus, sediment and microbes to streams.

217 Policies in relation to each of the Physiographic Zones were also established:

*Policy 4 – Alpine In the Alpine physiographic zone, avoid, remedy, or mitigate erosion and adverse effects on water quality from contaminants, by:*

1. *requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow;*
2. *having particular regard to adverse effects of contaminants transported via overland flow when assessing resource consent applications and preparing or considering management plans;*
3. *prohibiting dairy farming, and intensive winter grazing and strongly discouraging the granting of resource consents for cultivation.*

*Policy 5 – Central Plains In the Central Plains physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

1. *requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage and deep drainage;*
2. *having particular regard to adverse effects on water quality from contaminants transported via artificial drainage and deep drainage when assessing resource consent applications and preparing or considering management plans.*

*Policy 6 – Gleyed In the Gleyed physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering management plans.*

*Policy 7 – Bedrock/Hill Country In the Bedrock/Hill Country physiographic zone, avoid, remedy, or mitigate erosion and adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow and artificial drainage where relevant;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via overland flow and artificial drainage where relevant when assessing resource consent applications and preparing or considering management plans.*

*Policy 8 – Lignite-Marine Terraces In the Lignite–Marine Terraces physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via overland flow and artificial drainage where relevant;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via overland flow and artificial drainage where relevant when assessing resource consent applications and preparing or considering management plans.*

*Policy 9 – Old Mataura In the Old Mataura physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via deep drainage when assessing resource consent applications and preparing or considering management plans;*
- 3. strongly discouraging the granting of resource consents for additional dairy farming of cows and additional intensive winter grazing.*

*Policy 10 – Oxidising In the Oxidising physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant when assessing resource consent applications and preparing or considering management plans;*

*Policy 11 – Peat Wetlands In the Peat Wetlands physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, deep drainage,*

- and lateral drainage when assessing resource consent applications and preparing or considering management plans;*
3. *strongly discouraging the granting of resource consents for additional dairy farming of cows and additional intensive winter grazing.*

*Policy 12 – Riverine In the Riverine physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

1. *requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant;*
2. *having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering management plans.*

- 218 The substantial majority of the 259 submitters opposed the zones, with many seeking that the physiographic zones be removed from the pSWLP or that the accuracy of the zones be verified (with some submitters seeking that a full peer review be undertaken).
- 219 After consideration of the issues raised in submissions, the Reporting Officers initially recommended that the Physiographic Zones be retained as notified<sup>68</sup>.
- 220 After listening to the evidence presented, in the S42A Reply Report<sup>69</sup>, the Reporting Officers continued to maintain the view that physiographic zones were a useful tool for the management of water quality in the region. However, given the significant concerns about the accuracy and implementation of the physiographic zones at a farm scale, the Reporting Officers recommended that:
- (a) The map series be deleted from, and sit outside of, the pSWLP;

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<sup>68</sup> Section 42A Report, para 4.110.

<sup>69</sup> Section 42A Reply Report, para's 4.19-4.29.



- (b) In general, the discussion and policy framework remain in the pSWLP; and
- (c) The rule framework no longer set an activity status based on physiographic zones.

221 Some further adjustments were also recommended to the Physiographic Zone Policies, primarily to provide clarity and reduce duplication. It was identified that three of the policies were essentially the same, and it was recommended that the policies for the Gleyed, Bedrock/Hill Country and Lignite-Marine Terraces physiographic zones be amalgamated into a single policy. Officers were also supportive of the term “strongly discourage” being replaced with “decision makers should generally not grant”, on the basis that this would provide explicit direction for resource consent decision-makers. In recognition of the evidence presented on farm-scale mapping issues a new policy, 12A, was recommended to be added to encourage ground-truthing and updated information in respect of the relevant physiographic zone or contaminant loss pathways.

222 The Hearing Commissioners adopted the Reporting Officers’ advice that the physiographic zones were fit for purpose at a regional scale. The Hearing Commissioners largely maintained the descriptions of each zone. They also agreed that the zones were less appropriate at a property specific level and agreed that the maps should be omitted from the pSWLP. They recommended that the zones not be referenced in the rules, other than for land above 800 metres above mean sea level; the reference in several policies to ‘strongly discouraging’ being amended to read ‘generally not’; the merging of Policies 6, 7 and 8 and the inclusion of Policy 12A were also adopted, such that decisions version of the Physiographic Zone Policies are:

*Policy 4 – Alpine*

*In the Alpine physiographic zone, avoid, remedy, or mitigate erosion and adverse effects on water quality from contaminants, by:*

1. *requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow;*
2. *having particular regard to adverse effects of contaminants transported via overland flow when assessing resource*

- consent applications and preparing or considering Farm Environmental Management Plans; and
3. prohibiting dairy farming, and intensive winter grazing and decision makers generally not granting strongly discouraging the granting of resource consents for cultivation.

*Policy 5 – Central Plains*

*In the Central Plains physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

1. *requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage and deep drainage;*
2. *having particular regard to adverse effects on water quality from contaminants transported via artificial drainage and deep drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and*
3. *decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.*

*Policy 6 – Gleyed, Bedrock/Hill Country and Lignite-Marine Terraces*

*In the Gleyed, Bedrock/Hill Country and Lignite-Marine Terraces physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

1. *requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and*
2. *having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.*

*Policy 7 – Bedrock/Hill Country*

~~In the Bedrock/Hill Country physiographic zone, avoid, remedy, or mitigate erosion and adverse effects on water quality from contaminants, by:~~

- ~~1. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow and artificial drainage where relevant;~~
- ~~2. having particular regard to adverse effects on water quality from contaminants transported via overland flow and artificial drainage where relevant when assessing resource consent applications and preparing or considering management plans.~~

~~Policy 8 – Lignite-Marine Terraces~~

~~In the Lignite-Marine Terraces physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:~~

- ~~1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via overland flow and artificial drainage where relevant;~~
- ~~2. having particular regard to adverse effects on water quality from contaminants transported via overland flow and artificial drainage where relevant when assessing resource consent applications and preparing or considering management plans.~~

Policy 9 – Old Mataura

In the Old Mataura physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:

1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage;
2. having particular regard to adverse effects on water quality from contaminants transported via deep drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
3. decision makers generally not granting ~~strongly discouraging the granting of~~ resource consents for additional dairy farming

*of cows ~~or and~~ additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.*

#### *Policy 10 – Oxidising*

*In the Oxidising physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and*
- 3. decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.*

#### *Policy 11 – Peat Wetlands*

*In the Peat Wetlands physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans and; and*
- 3. decision makers generally not granting ~~strongly discouraging the granting of~~ resource consents for additional dairy farming of cows or and additional intensive winter grazing where*

contaminant losses will increase as a result of the proposed activity.

*Policy 12 – Riverine*

*In the Riverine physiographic zone, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by:*

- 1. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant;*
- 2. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and*
- 3. decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity.*

*Policy 12A – Improved physiographic zone information*

*Where site specific information is available that better identifies or delineates the relevant physiographic zones or contaminant loss pathways for a landholding or site, that information must be taken into account when undertaking activities, preparing Farm Environmental Management Plans or when determining resource consent applications for that landholding or site.*

223 Seven parties lodged appeals with regard to the physiographic zones, and twelve parties lodged s274 notices in response. Notwithstanding the evidence to be presented, there are nine identifiable issues which I have summarised:

- (a) Ngāi Tahu seek to reinstate the use of physiographic zones within the rules relating to discharges and the effect on water quality from agriculture. Five s274 parties oppose, and one supports, this relief.

- (b) Fish and Game question the use of physiographic zones in the pSWLP when there are no methods to apply them or implementation strategies provided.
- (c) Two parties have appealed the use of the term “good management practices”, across all of the physiographic zone policies, as being too vague. Alliance seeks to amend the term “good management practices” to apply to farming activities only, requiring a more stringent test for industrial and trade processes. Fish and Game argue that it should be replaced with the term “the best practicable option”. The s274 parties are divided in their consideration of this point. However, Fonterra and Dairy NZ suggest that “good management practices” does have an accepted meaning in diffuse discharge management, and Federated Farmers contends that the standard should be similar for all activities.
- (d) In relation to Policy 4, DoC considers that the wording “generally not” in relation to the granting of resource consent for cultivation is inappropriate for what is a non-complying activity subject to Rule 25(d), which states ‘*Despite any other rule in this Plan, the use of land for cultivation at an altitude greater than 800 metres above mean sea level is a non-complying activity*’. The Director General seeks that this wording be amended to “strongly discourage”. Three s274 parties support this appeal.
- (e) Ngāi Tahu and Fish and Game seek that the wording across Policies 4(3), 5(3), 9(3), 10(3), 11(3) and 12(3), which direct decision makers to “generally not” grant resource consents, be changed to direct them to be “strongly discouraged” from granting resource consents. In a similar vein, Forest and Bird seek the deletion of the word “generally” in this context. Several farming and industry s274 parties consider these amendments to be inappropriate. Fonterra considers that the term “strongly discourage” is uncertain and has no established meaning in water management. On the flip side, Federated Farmers’ appeal seeks to delete the policy paragraphs in question, arguing that they inappropriately aim to control activities rather than effects. DoC opposes this relief, considering that it would remove important policy guidance for decision makers.

- (f) Forest and Bird seek the complete prohibition of some farming activities, such as winter grazing, and seek that this is reflected in Policies 4, 9, 10 and 11. Several farming and industry s274 parties oppose this relief, considering that it is overly restrictive; has significant economic consequences and removes too much discretion from decision makers. Fonterra opposes this this relief on the basis that it is not an efficient way to manage environmental effects.
- (g) Fish and Game's appeal seeks to add the word "any" in front of all references to adverse effects across the suite of physiographic zone policies. Fonterra and Dairy NZ considers that this applies an overly strict test and creates an unrealistic policy framework.
- (h) Forest and Bird seek the reinstatement of Policies 7 and 8 but it is unclear what their reasoning is for this.
- (i) Wilkins Farming Company seek amendments to the Policies to better emphasise the focus on nutrient loss, rather than land use activity. Forest and Bird considers that, given the imperfect information currently available in relation to nutrient leaching, it is more appropriate to reference activities.

224 In relation to the first and second points above, for the notified version of the pSWLP, in some of the physiographic zones considered to be more sensitive, the activity status for new dairy farming and intensive winter grazing was more restrictive, with a non-complying activity status. The pSWLP also included a map series depicting the nine physiographic zones.

225 In my opinion, through the hearing process, particular issues were identified with the physiographic zone approach that discouraged this activity status approach. This included:

- (a) The use of the physiographic zones at a farm or even paddock scale, when the mapping and source data was much more coarse;<sup>70,71</sup>

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<sup>70</sup> The Decision Report states as paragraph 123 that, "...by the conclusion of the hearing the weight of evidence was that the physiographic zones were not always sufficiently accurate at a farm scale to enable them to be used in land use rules."

<sup>71</sup> Further addressed in the evidence of Dr Snelder.

- (b) The imperfect ability of the physiographic zones to project water quality risks from different land uses at a farm scale;<sup>72</sup> and
  - (c) A poor appreciation of the concept by landowners – for example much of the activity occurs below the top-soil and therefore it can't be seen, and in some cases zone names may conflict with surface features or geographic locations.
- 226 While I consider that the physiographic zone information is a useful tool to assist with decision-making on resource consent applications, and for the activities to be included in a farm environment plan, for the reasons set out above, I do not support the Ngāi Tahu position that the physiographic zones be used to determine the activity status of a farming activity.
- 227 The third point above, in relation to good management practices, has been discussed in relation to Objective 18, and many of the same points apply. I do agree with Fonterra and DairyNZ that good management practice is a well understood concept for farming<sup>73</sup>, and note that it is a key element of the Council's non-regulatory steps toward achieving the NPS-FM objectives, as outlined in its People, Water and Land Programme.
- 228 On the fourth point, DoC has appealed Policy 4 in relation to the Alpine Physiographic Zone. The relief sought is to reinstate the phrase "strongly discourage" rather than "generally not grant" in relation to cultivation in the Alpine Physiographic Zone, as cultivation over 800 metres in altitude is a non-complying activity. I note that the s274 parties all support this relief.
- 229 I understand that the Environment Court held in *Appealing Wanaka Inc v Queenstown Lakes District Council*<sup>74</sup> that strongly discourage is close to, but not, a directive policy. Therefore, in my opinion, the use of "strongly discourage" may better align with the associated rule and may be a more efficient and effective policy response to cultivation above 800m.

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<sup>72</sup> Further addressed in the evidence of Mr Rodway.

<sup>73</sup> In particular the primary sectors, regional councils and the Ministries for the Environment and Primary Industries have recently released a nationally recognised Good Farming Practice: Action Plan for Water Quality 2018.

<sup>74</sup> *Appealing Wanaka Inc v Queenstown District Council* [2015] NZEnvC 139.



- 230 Several appellants (and related s274 parties), including Ngāi Tahu, Forest and Bird, Federated Farmers, and Fish and Game seek different levels of directness from the policies. This often relates to the “generally not grant” part of some policies. Federated Farmers considers that “generally not grant” inappropriately fetters the consent authority’s discretion, and the policies are too directive and pre-empt the outcome of a broad policy analysis. Forest and Bird seeks a range of changes, including directing some prohibited activity status and relating the policies to existing activities.
- 231 In general, these matters were examined at length through the Section 42A Report, evidence of submitters and questioning at the hearing. This involved a delicate balance of providing clarity to all parties, including decision-makers, so that the general direction of a “no further decline in water quality” could be maintained with confidence.
- 232 The seventh and ninth appeal points above are related, in that Wilkins Farming and Fish and Game seek a broadening of the emphasis on effects. Wilkins Farming has outlined that focusing on dairy farming and intensive winter grazing is unfair and suggest that the focus should be on nutrient loss rather than land use. Fish and Game seek the consideration of “any” adverse effects.
- 233 In my opinion, this final part of each policy reflects the current positioning of the pSWLP, ahead of the FMU limit setting process. While there is merit in the appeals insofar as they seek to have a level playing field for all activities and that all effects are considered, the relief sought is problematic as there was considerable evidence throughout the hearings that many people simply do not know or measure their nutrient losses, thereby making the relief sought impractical and hard to implement, as “baselines” of nutrient losses are not well known in Southland. In particular, the addition of “any”, as sought by Fish and Game, does not appear to add any particular value to the policies.
- 234 Further, the evidence at the hearing and through submissions was that while water quality is under pressure from a range of activities, agricultural intensification, particularly in the dairy sector, is a key factor. Therefore, closely managing dairy farming and intensive winter grazing, as specific activities, was a deliberate, and in my opinion appropriate, response.

235 In relation to the reinstatement of Policies 7 and 8, given that the content has been fully merged into Policy 6, there appears little merit in this. In my opinion, and in the absence of other changes, the reinstatement of those policies would simply result in duplication and have no particular benefit.

## **FMU Policies**

### **Policy 45**

236 As notified, Policy 45 reads:

*In response to Ngāi Tahu and community aspiration and local water quality and quantity issues, FMU sections may include additional catchment-specific objectives and policies. These FMU objectives and policies will be read and considered together with the Region-wide Objectives and Region-wide Policies. Any policy on the same subject matter in the relevant FMU section of this Plan prevails over the relevant policy within this Regional Policies Section, 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 and will not deviate from the structure and methodology outlined in these Process Policies.*

**Note:** *As the FMU sections are developed in a specific geographical area, it is 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.*

237 Fish and Game submitted to amend the Policy to ensure that the FMU-specific policies are not more lenient or less protective of water quality, quantity or aquatic ecology than region-wide provisions.<sup>75</sup> Of the 26 other submissions received on Policy 45, 22 of those sought amendments or clarification.

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<sup>75</sup> pSWLP Summary of Decisions Requested sub point 752.85.

238 The final recommendations from the Hearing Panel rejected the submission by Fish and Game and noted that depending on the Council's NPS-FM Policy CA2 process (to progressively implement the NPS-FM), FMU-specific provisions could possibly be more lenient than the Region-wide Policies.<sup>76</sup> In response to other submissions, Policy 45 was amended to provide clarity, including inserting "values and attributes" to align the pSWLP with NPS-FM terminology.<sup>77</sup>

239 The Fish and Game appeal on Policy 45 seeks the same relief as their submission:

*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 Regionwide 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 not more lenient or 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."~~*

240 Nine s274 parties have joined this appeal. Forest and Bird and DoC have supported Fish and Game's appeal while the remaining seven are in opposition, stating that the purpose of the FMU process is not to support the implementation of region-wide objectives but rather to

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<sup>76</sup> Report and Recommendations of the Panel – Appendix A pg 74.

<sup>77</sup> Hearing Report: pSWLP (S42A) para 6.223.

develop freshwater objectives and limits consistent with Part CA of the NPS-FM.<sup>78</sup> Aratiatia noted that the relief sought by Fish and Game will significantly reduce the flexibility of communities and the Council to use the limit setting process to tailor water management to the specific needs of each catchment if the FMU objectives can only be more restrictive than the region wide objectives.<sup>79</sup> Horticulture NZ and Meridian both note their support of the decisions version of Policy 45 as it clearly sets out the relationship between the FMU sections and the region-wide provisions.<sup>80</sup>

- 241 In my opinion, the very purpose of the FMU processes is to develop local water quality and quantity limits and targets, and freshwater objectives, based on the identification of local values and uses. This is within a clear framework established by the NPS-FM, RPS and the pSWLP of maintaining water quality and improving it where it is overallocated and reducing any water quantity over allocation.
- 242 While at this point it might be speculative to suggest the outcomes of the FMU processes, there are may be situations where different objectives and policies are appropriate at a local scale. Whether these objectives and policies are indeed more or less lenient, or just different, could lead to frustrations with this process and the discounting of policy options that might otherwise be valid.
- 243 Any FMU objectives, policies, limits and rules are going to need to meet the higher-order direction of the RPS and NPS-FM, as well as any relevant objectives and policies of the pSWLP, and in my opinion, those tests and processes are the appropriate ones to apply.
- 244 The “note” at the end of the Policy is, in my opinion, a helpful indication to those undertaking FMU processes that the consultation processes could be localised to that FMU. Application outside of that FMU risks unintended consequences and goes against the intent of the inclusive consultation processes outlined by the Council for its FMU process.<sup>81</sup> I do note that if, as is currently intended, the Council’s FMU processes are

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<sup>78</sup> Section 274 notice of DairyNZ and Fonterra.

<sup>79</sup> Section 274 notice of Aratiatia Livestock Ltd.

<sup>80</sup> Section 274 notices of Meridian and Horticulture NZ.

<sup>81</sup> Environment Southland’s Progressive Implementation Programme.

run concurrently<sup>82</sup>, the risk of local consultation and changes having implications outside of the FMU in question is reduced.

#### **Policy 46**

245 As notified, Policy 46 reads:

*The FMU Sections of this Plan are based on the following identified Freshwater Management Units for Southland, as shown on Map Series 7: Freshwater Management Units:*

- *Fiordland and the islands;*
- *Aparima;*
- *Mataura;*
- *Ōreti; and*
- *Waiau.*

246 I have read and considered the evidence of Ms Robertson on behalf of the Council, who sets out how the identification of FMUs was undertaken and the outcomes of the Council process in paragraphs 15-18 of her evidence. Policy 46 clearly identifies that Council has given effect to Policy CA1 of the NPS-FM, which requires Council to identify FMUs.<sup>83</sup>

247 There were 37 submissions on this Policy, with the majority of those opposing the size of the FMUs and seeking to have them broken into smaller sub-catchments. The Reporting Officer noted that a range of water quality and quantity limits and targets can be set within each FMU and therefore the FMUs did not need to be broken up.<sup>84</sup>

248 Forest and Bird made a submission seeking to have Waituna included as a separate FMU with the maps series amended accordingly. In response to this submission, the Reporting Officer stated that the inclusion of Waituna within the broader Mataura FMU creates a manageable and efficient process from a management perspective, and will align with the Gorge Road community and existing community relationships and reflect groundwater connections.<sup>85</sup>

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<sup>82</sup> Environment Southland's October 2018 Progressive Implementation Programme does not show any difference in timeframes for each FMU, as was the case under the previous Progressive Implementation Programme.

<sup>83</sup> Hearing Report: pSWLP (S42A) para 6.239.

<sup>84</sup> Hearing Report: pSWLP (S42A) para 6.239.

<sup>85</sup> Hearing Report: pSWLP (S42A) para 6.247.

- 249 The Hearing Panel adopted the in part the submission by Forest and Bird, in that a recommendation was made to amend Policy 47 to include reference to a catchment or sub-catchment.<sup>86</sup>
- 250 The appeal by Forest and Bird seeks the same relief as their submission on the notified pSWLP.<sup>87</sup> Four parties have lodged s274 notices to this appeal. Federated Farmers consider the FMUs are appropriate at a catchment level and do not support the appeal by Forest and Bird. DoC and Fish and Game both support Forest and Bird's appeal. Ngāi Tahu supports Forest and Bird's appeal as Waituna Lagoon is a Statutory Acknowledgment Area and notes that as the Lagoon is intermittently opened and closed to the sea it is a more sensitive environment and so should be treated separately from the Mataura FMU discussions.
- 251 After considering the evidence of Ms Robertson, it is my opinion that when the amendments to Policy 47 ("*including where appropriate at a catchment or sub-catchment level*") are considered alongside these identified FMUs, there remains potential for the Waituna area to be have values and freshwater objectives set at a local scale. Indeed, given the local actions underway and enhanced information available<sup>88</sup> for the Waituna area, sub-catchment freshwater objectives, and policies and rules that apply just to this area would seem likely.

### **Policy 47**

- 252 As notified, Policy 47 reads:

*The FMU sections will:*

1. *establish freshwater objectives for each catchment, 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;*

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<sup>86</sup> Report and Recommendations of the Hearing Panel, pg 74.

<sup>87</sup> pSWLP Summary of Decisions Requested sub point 279.52.

<sup>88</sup> In particular, the 5-year, \$13.3 million Whakamana te Waituna programme, which is a partnership between Te Rūnanga o Ngāi Tahu, Te Rūnanga o Awarua, Environment Southland, DoC, Fonterra, Living Water and the Southland DC, which aims to improve water quality and biodiversity, support cultural aspirations and support sustainable farming in the catchment.

2. *set water quality and water quantity limits and targets to achieve the freshwater objectives;*
3. *set methods to phase out any over-allocation, within a specified timeframe; and*
4. *assess water quality and quantity based on Ngāi Tahu indicators of health.*

- 253 Fish and Game submitted that it supported the notified version of Policy 47 with amendments to state that the FMU sections will “support the implementation of the region wide objectives by:” and include reference in Policy 47(1) to “specific” freshwater objectives, and within Policy 47(2) to achieve the “region wide and specific” freshwater objectives.<sup>89</sup>
- 254 There were 37 submissions on Policy 47, eight opposing, seven seeking to retain the Policy and the remaining either supporting in part or seeking amendments. Many of those submitters highlighted the reference to Ngāi Tahu indicators of health and sought their deletion.<sup>90</sup>
- 255 In response to submissions, the Reporting Officers recommended that the request from Meridian on Policy 46 (providing for sub-catchments where appropriate) was more appropriate to be included in Policy 47.<sup>91</sup> The submission point of Fish and Game was not supported by the Reporting Officers.<sup>92</sup>
- 256 The Hearing Panel did not accept the submission by Fish and Game<sup>93</sup>. The Hearing Panel noted in their recommendations that the FMU process is a matter for Council to decide and that FMU-specific values, freshwater objectives and limits will be developed as part of the FMU process, having regard to all relevant statutory instruments.<sup>94</sup>
- 257 Ngāi Tahu indicators of health have also been added to the Glossary of the pSWLP with a reference to Te Tangi a Taurira. This was added to the Glossary through a submission from Ngāi Tahu which was accepted by the Hearing Panel.<sup>95</sup>

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<sup>89</sup> pSWLP Summary of Decisions Requested sub point 752.87.

<sup>90</sup> Hearing Report: pSWLP (S42A) para 6.259.

<sup>91</sup> Hearing Report: pSWLP (S42A) para 6.239.

<sup>92</sup> Hearing Report: pSWLP (S42A) para 6.275.

<sup>93</sup> While Appendix A to the Council’s decision notes “accept in part” with respect to this submission, it is unclear how that has occurred in the tracked changes in Appendix B.

<sup>94</sup> Report and Recommendations of the Panel – Appendix A pg 73.

<sup>95</sup> Hearing Report: pSWLP (S42A) para 12.107 and 12.108.

258 In the Council's decision, the changes made to Policy 47 are relatively minor and generally improve the consistency of terminology with the NPS-FM, along with the amendment sought by Meridian, as noted above:

*The FMU sections will:*

1. ~~establish freshwater~~ identify values and establish freshwater objectives for each Freshwater Management Unit, including where appropriate at a catchment or sub-catchment level, catchment, 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 based on Ngāi Tahu indicators of health.*

259 The appeal by Fish and Game on Policy 47 seeks the same relief as their submission. Seven parties have joined this appeal under s274 of the RMA. Forest and Bird and DoC support the appeal as they consider it gives effect to the NPS-FM and ensure water quality is maintained and improved and ecosystems are safeguarded.

260 The s274 notices of DairyNZ and Fonterra note that the purpose of the FMU process is not to support the implementation of region-wide objectives but rather to develop freshwater objectives and limits consistent with Part CA of the NPS-FM and that to constrain the setting of Freshwater objectives, as sought by Fish and Game will be contrary to Part CA of the NPS-FM. It was noted by both Horticulture NZ and Meridian that the wording in both Policy 45 and Policy 47 clearly sets out the relationship between the FMU sections and the region-wide sections of the pSWLP.<sup>96</sup>

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<sup>96</sup> Section 274 notice by Horticulture NZ and Meridian.



- 261 In some ways, the submission and appeal of Fish and Game is related to their submission and appeal on Policy 45. On that Policy they sought primacy for the Region-wide objectives and policies. Therefore, the decision on that appeal point will influence the decision on this point and whether the wording changes that reflect the primacy of the Region-wide objectives and policies is appropriate.
- 262 On both appeal points, some s274 parties have noted that the purpose of the FMU process is “not to support the implementation of region-wide objectives”<sup>97</sup>. In my opinion, this statement is too strong, as part of the FMU processes will be to consider whether additional or different objectives and policies are appropriate in an FMU. In some cases that may not be necessary. I do not consider that the Council or the Southland community would benefit, from an effectiveness and efficiency point of view, from planning regimes that are wholly different between FMUs. On that basis, any changes made through FMU processes may well be seeking to better implement the Region-wide objectives and policies.

#### **Definition of wetland and natural wetland**

- 263 As notified the definitions of Wetland and Natural Wetland read:

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

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

- (a) wet pasture, damp gully heads, or where water temporarily ponds after rain or pasture containing patches of rushes;*
- (b) effluent ponds;*
- (c) artificial storage facilities and detention dams;*
- (d) artificial watercourses such as conveyance and drainage canals;*

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<sup>97</sup> Section 274 notice by Fonterra / Section 274 notice by DairyNZ.

- (e) *reservoirs for firefighting, domestic or community water supply; and*
- (f) *engineered soil conservation structures.*

- 264 Fourteen submissions were received on the definition of Wetland. Four of those requested that the definition be deleted as they consider it captures wetlands that do not have any ecological values such as paddocks that are periodically wet.<sup>98</sup>
- 265 Horticulture NZ opposed the definition in part and sought to include the list of exclusions in the definition of natural wetlands within the definition of wetland.<sup>99</sup>
- 266 The Reporting Officers noted within the S42A Report that the pSWLP refers to 'wetlands', 'natural wetlands' and 'regionally significant wetlands' and that each of those definitions has a specific purpose. The definition of a wetland is intended to be broad enough to capture all types of wet areas of land that support natural ecosystems of plants and animals.<sup>100</sup> The definition of 'wetland' is the definition from the RMA and the Reporting Officers did not recommend deviating from that definition.<sup>101</sup>
- 267 The Hearing Panel accepted the recommendations of the Reporting Officers and noted within the Decision Report that the submission by Horticulture NZ would unnecessarily complicate the pSWLP.<sup>102</sup>
- 268 There were 12 submissions on the definition of natural wetland, with three of those seeking to retain the definition as worded and three other submitters seeking clarification. The submission by Horticulture NZ sought to include sediment control measures or artificial wetlands within the exclusions of the definition.<sup>103</sup>
- 269 The Reporting Officers noted within the S42A Report that none of the submissions raised issues which would suggest any amendments to the definition, which originated from the Fourth Report of the Land and

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<sup>98</sup> pSWLP Summary of Decisions Requested sub points 285.34, 371.9 and 570.25.

<sup>99</sup> pSWLP Summary of Decisions Requested sub point 390.49.

<sup>100</sup> Hearing Report: pSWLP (S42A) para 11.69.

<sup>101</sup> Hearing Report pSWLP (S42A) para 11.70.

<sup>102</sup> Report and Recommendations sub point 390.49 pg 174.

<sup>103</sup> pSWLP Summary of Decisions Requested sub point 390.44.

Water Forum, would be more appropriate and recommended the definition be retained as notified.<sup>104</sup>

- 270 The Hearing Panel accepted the recommendations of the Reporting Officers.<sup>105</sup> The Hearing Panel noted that the definition already adequately addresses the amendments sought by Horticulture NZ.<sup>106</sup>
- 271 Horticulture NZ has appealed the definition of wetlands and natural wetlands and is seeking better alignment of these definitions in the pSWLP to reduce potential confusion. Horticulture NZ is seeking the exclusions in the natural wetland definition be included in the definition of wetland, or the reference to wetlands within the rules of the pSWLP are amended to natural wetlands to reduce potential confusion when applying the rules of the plan.
- 272 Ravensdown, in their s274 notice, have opposed the appeal by Horticulture NZ on the grounds that any amendments to the definitions of wetland or natural wetland will have implications on the application of Rule 14 – Discharge of fertiliser.<sup>107</sup>
- 273 The relief sought by Horticulture NZ has been opposed by DoC on the basis that it will have adverse effects on the management of wetlands and natural wetlands in the region, and is contrary to higher order documents such as the RPS, the NPS-FM and the RMA.<sup>108</sup> Forest and Bird have also opposed the relief sought by Horticulture NZ as they are not satisfied that the amendments will ensure that water quality is maintained or enhanced and that wetlands will be protected.<sup>109</sup>
- 274 Ngāi Tahu have joined the appeal by Horticulture NZ and are opposed to the amendments sought to the definitions as it may result in some sites of significance to Ngā Rūnanga for protection taonga species and/or mahinga kai being degraded.<sup>110</sup>
- 275 As noted earlier, the definition of wetland is directly from the RMA. Given that, I continue to be very hesitant to include a modification of this

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<sup>104</sup> Hearing Report: pSWLP (S42A) para 11.67.

<sup>105</sup> Report and Recommendations para 297.

<sup>106</sup> Report and Recommendations sub point 390.44 pg 161.

<sup>107</sup> Section 274 Notice of Ravensdown.

<sup>108</sup> Section 274 Notice of DoC.

<sup>109</sup> Section 274 Notice of Forest and Bird.

<sup>110</sup> Section 274 Notice of Ngāi Tahu.

definition in the pSWLP. If anything, deletion of the definition would be more appropriate, given that no other definitions from the RMA are directly quoted, and the clear statement that “the words in this Plan have the same meaning as in the Resource Management Act 1991, unless otherwise defined in this Plan or unless the context clearly requires otherwise” was added through the decision-making process.

- 276 In my opinion, the terms wetland and its subset, natural wetland, are used deliberately in a range of different policies and rules. In some circumstances it is appropriate to consider all wetlands, including minor wetlands, and any wetland components of drainage and detention systems, and in other situations the policies and rules are more focussed. Reducing to a single definition, being effectively the definition of natural wetland, would not, in my opinion, be consistent with higher order documents, such as Objective A2 of the NPS-FM.

**DATED** this 14<sup>th</sup> day of December 2018



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**Matthew McCallum-Clark**