

**IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
I ŌTEPOTI ROHE**

CIV-2021-412-000089

UNDER an application under the Declaratory
Judgements Act 1908

BETWEEN **OTAGO REGIONAL COUNCIL**
Plaintiff

AND **ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INC**
First Defendant

AND **ERNSLAW ONE LIMITED,
MATARIKI FORESTS LIMITED
AND OTHERS**
Section 301 parties

**SUBMISSIONS OF COUNSEL FOR ERNSLAW ONE LIMITED
AND MATARIKI FORESTS LIMITED**

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MAY IT PLEASE THE COURT

1. INTRODUCTION AND SUMMARY

1.1 Two questions lie at the heart of this proceeding:

Question A: What is a “freshwater planning instrument”?

Question B: Is the proposed Otago Regional Policy Statement (“**pORPS**”) notified by Otago Regional Council (“**ORC**”) a “freshwater planning instrument”?

1.2 The context in which these questions arose concerned the preparation by ORC of a regional policy statement (“**RPS**”) in accordance with s 60 Resource Management Act 1991 (“**RMA**”), and ORC’s decision that the entire pORPS was a “freshwater planning instrument” that should be prepared using the newly introduced “freshwater planning process” provided for in s 80A and Part 4 Sch 1 RMA.

1.3 ORC says that “freshwater underpins life” and all parts of the environment are interconnected, so every provision in the pORPS is therefore either “for the purpose of giving effect to” the National Policy Statement for Freshwater Management 2020 (“**NPSFM**”) or “otherwise relates to freshwater”. On this basis it has classified all 220 pages of the pORPS as a “freshwater planning instrument”.

1.4 This interpretation of s 80A(2) is wrong. Consequentially, classification of the entire pORPS as a “freshwater planning instrument” is also wrong.

1.5 The correct answers are:

Question A

1.6 A “freshwater planning instrument” is a RPS or regional plan (excluding a regional coastal plan):

- a. “for the purpose of giving effect to” the NPSFM (s 80A(2)(a)); or
- b. “otherwise relates to freshwater” (s 80A(2)(b)).

- 1.7 Correctly interpreted, s 80A(2) only captures those parts of a RPS or regional plan that meets one of the following options:
- a. The instrument is designed with the deliberate intention of implementing the NPSFM. This means that the scope and text of the NPSFM determines whether a RPS or regional plan (or only part of one) meets s 80A(2)(a). The NPSFM is squarely focused on “freshwater management”. RPS or regional plan provisions that have relevance to “freshwater management” other than by virtue of the general interconnectedness of the environment are not “for the purpose of giving effect to” the NPSFM.
 - b. The instrument has a “causal connection” with “freshwater”. The statutory and factual context confirms that this requires that a RPS or regional plan provision is implementing a regional council function relating to freshwater. Any lesser connection is too “remote” or “obscure”.
- 1.8 The consequences of applying the “freshwater planning process” more broadly are significant. Appeal rights would be curtailed in respect of all resource management matters. Implementation of other RMA instruments, including the Resource Management (National Environmental Standards for Plantation Forestry) 2017 (“**NESPF**”) would be undermined. This is of significant concern to Ernslaw One Ltd and Matariki Forests Ltd (“**Forestry Companies**”). The NESPF is intended to provide a set of nationally consistent rules managing the environmental effects of plantation forestry. There will be significant consequences for the efficiency and effectiveness of forestry operations if that is undermined. These consequences were clearly not intended and support a narrow interpretation of s 80A RMA.

Question B

- 1.9 It is clear on the face of the pORPS that some parts do not meet the definition of “freshwater planning instrument” when correctly interpreted and applied.
- 1.10 This means the pORPS is not a “freshwater planning instrument” and ORC’s classification of it as one is wrong in law. Therefore, ORC needs to undertake a comprehensive review of the pORPS applying the correct

meaning of s 80A(2). ORC must also determine which parts of the pORPS comprise a “freshwater planning instrument” and which do not, to ensure it is classifying and preparing its RPS lawfully. There is no jurisdiction for the entire pORPS to be prepared using the “freshwater planning process”.

- 1.11 These submissions respond to and are intended complement those of Forest and Bird. They are structured as follows:
- a. Legislative and planning context (Section 2).
 - b. Question 1: what is a “freshwater planning instrument” (Section 3).
 - c. Council discretion (Section 4).
 - d. Question 2: is the pORPS a “freshwater planning instrument” (Section 5).
 - e. Conclusion and relief (Section 6).

2. LEGISLATIVE AND PLANNING CONTEXT

2.1 The pORPS is an RPS.

2.2 Before examining whether the pORPS is also a “freshwater planning instrument”, it is important to understand the statutory scheme in which both RPSs and “freshwater planning instruments” sit. In particular, the hierarchy of planning instruments, the different processes available for preparing an RPS, and the functions of a regional council.

Hierarchy of planning documents

2.3 The RMA is concerned with “managing the use, development, and protection of natural and physical resources”¹, in a way that promotes “the sustainable management of natural and physical resources”. Sustainable management is defined.²

2.4 To do this, it provides for a tiered management system made up of a hierarchy of planning documents – national, regional, district - providing

¹ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 (“**King Salmon**”).

² s 5(2) RMA.

direction on how, when, and where use, development, and protection of resources can occur. The hierarchy comprises:

- a. National environmental standards³ (“**NES**”) which are created by central government and have national application. NESs are technical in nature and contain regulations that apply as rules controlling activities. Resource consent for an activity must be sought under any relevant NES rule, as well under any relevant rules in regional or district plans. Where a resource consent is required, regard must be had to relevant provisions of policy instruments, including RPSs.
- b. At the same level as NESs are national policy statements⁴ (“**NPS**”). NPSs set objectives and policies not rules. There must be a New Zealand coastal policy statement (“**NZCPS**”). Other NPSs are optional. The NPS that specifically applies to freshwater is the NPSFM.
- c. RPSs, like the pORPS, which are mandatory for each region. These must state the region’s significant resource management issues, objectives and policies for those issues, and then methods (excluding rules) for implementing the policies.⁵
- d. Regional plans, the purpose of which is to assist a regional council to carry out its functions. Regional plans must include objectives and policies, and rules if any are needed to implement the policies.⁶
- e. District plans prepared by the district authority for the purpose of carrying out its functions. District plans contain objectives, policies, and rules or other methods.⁷

2.5 Each planning document is required to “give effect to” (meaning implement) those above it.⁸

³ ss 43-44A RMA.

⁴ ss 45-58A RMA.

⁵ ss 59-62 RMA.

⁶ ss 63-70 RMA.

⁷ ss 72-77 RMA.

⁸ ss 62(3), 67(3), 65(3) RMA; *King Salmon* [14]. Except for NESs which essentially sit alongside regional and district plan rules.

Planning processes

- 2.6 There are currently three planning processes that could apply to a RPS:⁹
- a. the ‘standard process’ in Part 1 Sch 1;
 - b. the “freshwater planning process” applying only to regional policy statements that are also “freshwater planning instruments” in Part 4 Sch 1; and
 - c. the streamlined planning process in Part 5 Sch 1.

Standard process

- 2.7 Under the standard planning process the regional council prepares and publicly notifies a proposed RPS for public submission. The regional council must prepare a summary of the submissions received and publicly notify that summary. People are then able to lodge a further submission, commenting on the points raised in others’ submissions.
- 2.8 The local authority must then hold a hearing on the proposed regional policy statement or plan.¹⁰ Generally, the hearing is overseen by an independent panel appointed by the local authority to make decisions on the final form of the proposed RPS on its behalf. Submitters are allowed to present technical expert evidence in support of their submission.
- 2.9 The regional council or the commissioners appointed must then make and publicly notify its decision on the final content of the proposed RPS, and it must provide written reasons for rejecting or accepting submissions. The scope of decisions is limited to the content of the proposed RPS as notified and the submissions on it.
- 2.10 Any person who made a submission on the proposed RPS may then appeal any aspect of the decisions version (including both matters included and excluded) to the Environment Court on its merits. The only constraints are that the appeal must relate to provisions or matters raised by that person in their submission, and the appeal does not seek the withdrawal of the RPS as

⁹ s 60 RMA.

¹⁰ A hearing is not held if no submissions are received or no submitter indicates they wish to be heard: cl 8C, Part 1, Sch 1.

a whole.¹¹ It is then possible to appeal the Environment Court’s decision to the High Court, Court of Appeal, and Supreme Court on questions to law (provided leave is granted where required).¹²

Freshwater planning process

- 2.11 The “freshwater planning process” must be adopted for preparation of “freshwater planning instruments”. It cannot be used in any other circumstances. It was introduced in July 2020 by the Resource Management Amendment Act 2020 as part of the Government’s Essential Freshwater Package.¹³
- 2.12 The first steps of the “freshwater planning process” are the same as for the standard process. The regional council must publicly notify the “freshwater planning instrument” and provide for opportunity for submissions and further submissions.¹⁴ After that, things change.
- 2.13 The regional council must submit the “freshwater planning instrument” and required support documents to the Chief Freshwater Commissioner¹⁵, who must then convene a freshwater hearings panel (“**Panel**”). Panel members must collectively have knowledge about:¹⁶ judicial processes and cross examination; freshwater quality, quantity, and ecology; the RMA; tikanga Māori and mātauranga Māori, Te Mana o te Wai, water use in the local community, subject areas likely to be relevant to the work of the Panel.
- 2.14 The Panel must hear the submissions on the “freshwater planning instrument”, and after the hearing make recommendations to the local authority on those submissions and changes that should be made to the freshwater planning instrument. Again, submitters can present technical

¹¹ Overall section summary of steps in Part 1 Schedule 1 RMA.

¹² ss 299 and 308 RMA.

¹³ This also saw the introduction of the NPSFM, the National Environmental Standards for Freshwater 2020, regulations relating to exclusion of stock from waterways, and regulations relating to reporting of water takes.

¹⁴ s 80A(4)(a) and (b), (6), (10) RMA.

¹⁵ Who must be an Environment Court Judge or a retired Environment Court Judge: cl 65(3) Part 4, Sch 1.

¹⁶ Cl 59(6) Part 4, Sch 1.

expert evidence to support their submission and the Panel may direct that expert caucusing or mediation takes place.¹⁷

- 2.15 In contrast to decision-making scope under standard process, the Panel is able to make recommendations outside the scope of submissions on the freshwater planning instrument; it may make recommendations on “other matters relating to the freshwater planning instrument identified by the panel or any other person during the hearing”. The Panel must provide its recommendations to the regional council in a written report which must include recommendations on the provisions of the “freshwater planning instrument”, recommendations on the matters raised in submissions with reasons for accepting or rejecting them and must identify any recommendations outside the scope of submissions.¹⁸
- 2.16 The regional council must then decide to accept or reject the Panel’s recommendations. If it rejects a recommendation, it can decide an alternative solution that may be within or outside the scope of submissions. The regional council must publicly notify its decision on the recommendations of the Panel and the “freshwater planning instrument”.¹⁹
- 2.17 Appeal rights are extremely limited when compared with the standard process.
- 2.18 Appeal to the Environment Court is only available in relation to recommendations made by the Panel and rejected by the regional council that related to a matter the person raised in their submission, and recommendations made by the Panel outside the scope of submissions rejected by the regional council. Decisions to accept the recommendations of the Panel can only be appealed to the High Court on points of law, regardless of whether the recommendation was within or outside the scope of the submissions.²⁰ Further appeal to the Supreme Court is prohibited.²¹

Streamlined planning process

¹⁷ Summary of cl 39-48 Part 4, Sch 1.

¹⁸ Cl 49 Part 4, Sch 1.

¹⁹ Cl 50 Part 4 Sch 1.

²⁰ Cl 55 and 56 Part 4, Sch 1.

²¹ Cl 54(2) Part 4, Sch 1.

2.19 The streamlined planning process was inserted in 2017. It provides local authorities with the ability to apply to the Minister for the Environment for preparation of a bespoke planning process for the specific planning instrument being prepared. The bespoke process must at a minimum provide for consultation with affected parties, public notification and submissions, a report showing how submissions have been considered and changes to the proposed planning instrument made, and preparation of an evaluation report. There is no requirement for a hearing. The local authority must then submit the planning instrument to the Minister for approval. The Minister may approve or decline the instrument, or send it back for further consideration, amendment, and resubmission by the local authority. There are no appeal rights available against any decision by the Minister or local authority.²²

Functions of regional councils

2.20 The functions of regional councils like the ORC are set out in s 30 RMA.

2.21 A regional council must prepare its RPS and regional plan(s) in accordance with those functions.²³

2.22 Some of the functions in s 30 RMA relate to freshwater and some do not. Those that do are underlined:

“30 Functions of regional councils under this Act

(1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:

(b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:

(ba) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in relation to housing and business land to meet the expected demands of the region:

(c) the control of the use of land for the purpose of—

(i) soil conservation:

²² Summary of Part 5, Sch 1.

²³ ss 61(1)(a) and 66(1)(a) RMA.

- (ii) the maintenance and enhancement of the quality of water in water bodies²⁴ and coastal water²⁵:
- (iii) the maintenance of the quantity of water in water bodies and coastal water:
- (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:
- (iv) the avoidance or mitigation of natural hazards:
- (v)[Repealed]
- (ca) the investigation of land for the purposes of identifying and monitoring contaminated land:
- (d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
 - (i) land and associated natural and physical resources:
 - (ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material from, the coastal marine area, to the extent that it is within the common marine and coastal area:
 - (iii) the taking, use, damming, and diversion of water:
 - (iv) discharges of contaminants into or onto land, air, or water and discharges of water into water:
 - (iva) the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:
 - (v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards:
 - (vi) the emission of noise and the mitigation of the effects of noise:
 - (vii) activities in relation to the surface of water:
- (e) the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—
 - (i) the setting of any maximum or minimum levels or flows of water:
 - (ii) the control of the range, or rate of change, of levels or flows of water:
 - (iii) the control of the taking or use of geothermal energy:
- (f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:
- (fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:
 - (i) the taking or use of water (other than open coastal water):
 - (ii) the taking or use of heat or energy from water (other than open coastal water):
 - (iii) the taking or use of heat or energy from the material surrounding geothermal water:
 - (iv) the capacity of air or water to assimilate a discharge of a contaminant:
- (fb) if appropriate, and in conjunction with the Minister of Conservation,—
 - (i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
 - (ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:

²⁴ Waterbodies are defined in s 2 RMA to exclude the coastal marine area (and so coastal water) and means “freshwater fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.

²⁵ “Freshwater” is defined in s 2 to exclude coastal water. “Coastal water” is “seawater within the outer limits of the territorial sea and includes a) seawater with a substantial freshwater component; and seawater in estuaries, fiords, inlets, harbours, or embayments”.

(g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—

- (i) soil conservation:
- (ii) the maintenance and enhancement of the quality of water in that water body:
- (iii) the maintenance of the quantity of water in that water body:
- (iv) the avoidance or mitigation of natural hazards:
- (ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:
- (gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:
- (h) any other functions specified in this Act.

(2) A regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), and (vii) to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996.
 ...”

2.23 Section 30(1)(a) warrants further analysis. It imposes on regional councils a function of establishing, implementing, and reviewing objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region. There is little direct consideration of this provision by the Courts, but it has been held that “... integrated management of resources may not be fully achievable under the Act, [but] it is intended to be more than an empty slogan. Establishing and implementing objectives, policies, and methods for its achievement are important functions of regional councils”²⁶ and that it involves “... generic integration of broadly defined resources at a wide regional level. The concept recognises that the protection of one resource may have positive or negative effects on the other”.²⁷

2.24 The freshwater planning process strains the concept of integrated management, because it requires that a distinction is made between provisions that implement the NPSFM/relate to freshwater, and other provisions, and that separate processes are used to develop each. That is the consequence of s 80A. The provisions can be read together by recognising that integrated management requires integration of resource management within and across planning instruments, despite their development through separate processes. But to the extent that there is any conflict between s 80A

²⁶ *Re an Application by North Shore CC* [1995] NZRMA 74(PT), *Auckland RC v North Shore CC* [1995] 3 NZLR 18; [1995] NZRMA 424(CA)

²⁷ *NZ Shipping Federation v Marlborough DC EmC W038/06*.

and s 30(1)(a), the specific, later in time s 80A must prevail. The Council's integrated management function does not override the requirement of s 80A to deal with freshwater planning instruments separately.

2.25 Section 30(1)(ga) also warrants additional analysis. Biological diversity is defined as: “the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems” which includes biological diversity in terrestrial, freshwater and marine domains. This function therefore applies more broadly than to just freshwater indigenous biological diversity. Thus, some provisions included in an RPS to implement this function will “relate to freshwater”; others will not. RPS provisions introduced to implement this function will “relate to freshwater” if they relate to biological diversity of freshwater species. Provisions concerned with terrestrial species or marine species' biodiversity will not “relate to freshwater”. To the extent that terrestrial or marine biodiversity-specific provisions are part of a RPS, they are not part of a “freshwater planning instrument” merely because they implement s 30(1)(ga).

3. QUESTION 1: WHAT IS A “FRESHWATER PLANNING INSTRUMENT”?

Approach to interpretation

- 3.1 The starting point is s 10 Legislation Act 2019: meaning must be ascertained from text, in light of purpose and context.
- 3.2 The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment. Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

Text

- 3.3 “Freshwater planning instrument” is defined in s 80A(2):

“(2) A freshwater planning instrument means—
(a) a proposed regional plan or regional policy statement for the purpose of giving effect to any national policy statement for freshwater management:

- (b) a proposed regional plan or regional policy statement that relates to freshwater (other than for the purpose described in paragraph (a));
- (c) a change or variation to a proposed regional plan or regional policy statement if the change or variation—
 - (i) is for the purpose described in paragraph (a); or
 - (ii) otherwise relates to freshwater.”

- 3.4 Further direction about what a “freshwater planning instrument” is and is not, is found in s 80A(3) and (8).
- 3.5 Section 80A(3) confirms that “part” of a RPS or regional plan may be a “freshwater planning instrument”, while part may not.²⁸ The part that is must be prepared using the “freshwater planning process”²⁹ and that part that is not must (generally) be prepared using the standard process.
- 3.6 Section 80A(8) confirms that for the purposes of s 80A(2), a regional coastal plan cannot be a “freshwater planning instrument”.

Requirement 1: correct planning instrument

- 3.7 The first requirement for classification as a “freshwater planning instrument” is that the planning document being prepared must be a RPS or a regional plan, or part of a RPS or regional plan. RPSs or regional plans that are in the process of being prepared are called a proposed RPS or proposed regional plan.
- 3.8 A “freshwater planning instrument” can also be a change or a variation to a RPS or regional plan. A change is where an amendment to an existing RPS or regional plan is proposed, as opposed to preparing an entirely new RPS or regional plan.³⁰ A variation is an alteration to a proposed RPS or regional plan or a proposed change to a RPS or regional plan.
- 3.9 Regional coastal plans and district plans cannot, by definition, be “freshwater planning instruments”.³¹

Requirement 2: “for the purpose of giving effect to the NPSFM”

²⁸ The term “instrument” in s 80A(3) must logically refer to the instrument being prepared e.g. the RPS or the regional plan. To interpret it as referring to a “freshwater planning instrument” it would have the effect of saying that a “freshwater planning instrument” doesn’t have to “relate to freshwater”, which by definition it does.

²⁹ s 80A(1) and (3) RMA.

³⁰ s 43AA RMA.

³¹ s 80A(2) and (1) RMA.

- 3.10 For a RPS or regional plan to then be a “freshwater planning instrument” it must meet one of two requirements. The first is that it is “for the purpose of giving effect to any national policy statement for freshwater”. The current national policy statement for freshwater is the NPSFM.
- 3.11 Commonly understood, if something is “for the purpose of” something, it has been designed “with deliberate intention” of achieving the outcome specified.³²
- 3.12 Here, this means that the RPS or regional coastal plan must have been designed with the deliberate intention of “giving effect to” the NPSFM.
- 3.13 The direction to “give effect to” a planning document superior in the hierarchy of planning documents is a “strong directive”.³³ It requires plan-makers to look carefully at the words used in the provisions of the superior document (here the NPSFM) and apply them in the lower order according to their terms (here the pORPS).³⁴
- 3.14 It is therefore the scope and text of the NPSFM which determines whether a RPS or regional plan (or only part of one) meets s 80A(2)(a) RMA.
- 3.15 Clause 1.5 NPSFM defines the scope of the NPSFM. It is tightly focused:
- “This National Policy Statement applies to all freshwater (including groundwater) and, to the extent they are affected by freshwater, to receiving environments (which may include estuaries and the wider coastal marine area).”
- 3.16 “Freshwater” is “all water except coastal water and geothermal water”.
- 3.17 All of the NPSFM’s following clauses must be read in light of clause 1.5.
- 3.18 The focus of the NPSFM is squarely on “freshwater management”. This is clear on the face of the NPSFM’s policies, which the NPSFM’s following clauses are designed to implement:
- “Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.**
Policy 2: Tangata whenua are actively involved in freshwater management (including decision making processes), and Māori freshwater values are identified and provided for.

³² Definition of “purpose” Pocket Oxford Dictionary, 4th Ed, pg 649: “design of effecting something”, “think that is designed to effect”, “serving to advance”, “with deliberate intention”.

³³ *King Salmon* at [77]-[80].

³⁴ *King Salmon* at [80], [126]-[130].

Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

Policy 4: Freshwater is managed as part of New Zealand’s integrated response to climate change.

Policy 5: Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

Policy 7: The loss of river³⁵ extent and values is avoided to the extent practicable.

Policy 8: The significant values of outstanding water bodies³⁶ are protected.

Policy 9: The habitats of indigenous freshwater species are protected.

Policy 10: The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.

Policy 11: Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.

Policy 12: The national target (as set out in Appendix 3) for water quality improvement is achieved.³⁷

Policy 13: The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.

Policy 14: Information (including monitoring data) about the state of water bodies and freshwater ecosystems, and the challenges to their health and well-being, is regularly reported on and published.

Policy 15: Communities are enabled to provide for their social, economic, and cultural wellbeing in a way that is consistent with this National Policy Statement.”

3.19 Of the NPSFM’s 15 policies four are expressly about how “freshwater is managed”³⁸; seven state specific outcomes for “freshwater”, specific types of freshwater bodies, or for freshwater species³⁹; two address “freshwater” monitoring and information reporting⁴⁰, and one requires that tangata whenua are actively involved in “freshwater management” and that “Māori freshwater values are identified and provided for”⁴¹.

³⁵ Defined in s 2 RMA as: “a continually or intermittently flowing body of freshwater”.

³⁶ These are defined in cl 1.4 as “a water body, or part of a water body, identified in a regional policy statement, regional plan, or a water conservation order as having one or more outstanding values”. A “water body” is defined in s 2 RMA as “fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area”.

³⁷ Which is “to increase proportions of specified rivers and lakes that are suitable for primary contact recreation”. River is defined in fn 35 above. Lakes are defined as: a body of fresh water that is entirely or nearly surrounded by land”.

³⁸ Pols 1,3,4,5.

³⁹ Pols 6,7,8,9,10,11,13.

⁴⁰ Pols 13 and 14.

⁴¹ Pol 2.

3.20 Clauses that use broad terms or concepts like managing “natural and physical resources”^{42, 43}, recognizing “the interconnected nature of the whole environment”⁴⁴, or recognizing “interactions” between different environmental spheres⁴⁵, cannot be relied on to say a RPS or regional plan provision that on its face has nothing to do with “freshwater” and “freshwater management” (such as managing discharges of PM₁₀) is needed to, and has been designed with the intention of, giving effect to the NPSFM. Such provisions are not within the scope of the NPSFM so cannot give effect to it.

Requirement 3: “otherwise relates to freshwater”

3.21 If a RPS or regional plan does not meet requirement 2, it can still be a “freshwater planning instrument” if it “otherwise relates to freshwater”.

Case law on meaning of “relates to”

3.22 The meaning of the phrase “relates to” was considered by the Environment Court in *Kivi Income Property Trust v Porirua City Council* (“***Kivi Income***”). The Court’s starting point was the Shorter Oxford definition “have a causal connection with”⁴⁶.

3.23 The approach taken by the Court to determining the level and nature of the connection required in that case is instructive and transferrable.

3.24 The Court was tasked with deciding if a generic sign advertising Steinlager beer met the permitted activity rule applying to signs: “Any sign provided it relates to the activities on the site”. The sign was located on the site of the North City Plaza which housed various retail shops, a cinema, and a food court. The only store on site that was licensed to sell liquor was an Indian restaurant. Steinlager was one of the beverages on offer.

⁴² s 2 RMA: “includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures”.

⁴³ E.g. Clause 2.1 NPSFM (Objective).

⁴⁴ E.g. Clause 3.5(1)(a) (Integrated management).

⁴⁵ E.g. Clause 3.5(1)(b) (Integrated management).

⁴⁶ *Kivi Income Property Trust v Porirua City Council* W 007/2004 at [15]. Aligns with ORC’s dictionary definition: “connection with”

- 3.25 The appellant said this was sufficient to meet the rule: the sign was about Steinlager, and one of the stores on the site sold Steinlager.
- 3.26 The Court disagreed with the appellant. In its view, the “causal connection” required for the sign to “relate to” the activities on site was defined by the context within which the rule sat, in particular, policy direction that “appropriate signage indicat[es] the location and nature of businesses operating from that site”.⁴⁷ In that context the connection between a general Steinlager advertisement and the activities on the site was “too remote and too obscure”.⁴⁸
- 3.27 Although the context differs, the Court’s approach aligned with s 10 Legislation Act 2019 and should be applied to the interpretation of s 80A(2)(b) and the meaning of “otherwise relates to freshwater”.

Context in which s 80A(2)(b) sits

- 3.28 In essence, ORC’s position is that “freshwater underpins life” and all parts of the environment are interconnected, so every provision in the pORPS therefore “relates to freshwater” even those about (for example) “advocating, promoting and supporting upgrading Otago’s housing stock” (AIR-M5). As a consequence, all of the pORPS’s provisions can form part of a “freshwater planning instrument”.
- 3.29 This interpretation is wrong. The similarities between ORC’s interpretative approach, and the approach rejected by the Environment Court in *Kivi Income* are obvious.
- 3.30 Analysis of the context in this case confirms that correctly interpreted, s 80A(2)(b) captures only those RPS or regional plan provisions necessary to carry out regional freshwater functions, over and above provisions required to implement the NPSFM.

Statutory context

⁴⁷ [21].

⁴⁸ Ibid.

3.31 First, the statutory context shows there is nothing unorthodox about splitting off management of “freshwater” from other parts of the environment and that this is intended where only “freshwater” is referred to:

- a. “Freshwater” is defined to exclude “coastal water” and “geothermal water”. It is axiomatic that RPS and regional plan provisions relating to these matters cannot “relate to freshwater” unless expressly addressing the interface between these water types.
- b. If RPSs and regional plans are intended to be “freshwater planning instruments” in their entirety by virtue of the general interconnectedness of the environment, there would have been no need to introduce and define “freshwater planning instruments”. The “freshwater planning process” would simply have been stated to apply to RPSs and regional plans.
- c. Where the phrase “relates to” is used elsewhere in the RMA it is expressly stated that if it is intended to capture multiple environmental domains. For example, per s 86B(3)(a), a rule in a proposed plan has immediate legal effect if it “protects or relates to water, air, or soil (for soil conservation)”. If s 80A(2)(b) was intended to capture RPS and regional coastal plan provisions that captured air, soil, etc. it would expressly say so.
- d. As Forest & Bird has pointed out, the underlying approach of the RMA is to separate out management of different parts of the environment (e.g. “freshwater” and the “coastal marine area”) and then bring them together at appropriate points:
 - Part 3 RMA which sets out the underlying duties and restrictions on use of resources separates out land, the coastal marine area, river and lake beds, water, and discharges, and treats them differently. Use of land is allowed unless restricted by a NES or plan⁴⁹. In contrast, most uses of beds of lakes and rivers are

⁴⁹ s 9 RMA.

prohibited unless expressly allowed by a NES, plan, or resource consent⁵⁰.

- Existing NPSs provide separate national direction on different parts of the environment. For example, the NPSFM “applies to freshwater” and the NZCPS relates to activities in the coastal environment.
 - Regional coastal plans and regional plans addressing other regional functions can be, and often are, separate.⁵¹
 - Responsibility for managing effects on “freshwater” is divided between regional councils and district councils.⁵² Those responsibilities are clearly defined.
- e. Separating different parts of a proposed RPS or regional coastal plan does not prevent integrated management of natural and physical resources. Each part of the proposed RPS or regional coastal plan will be required to meet the same statutory requirements, including in the RPS context:
- The requirement that the RPS is to provide an overview of the methods to achieve “integrated management of the natural and physical resources of the whole region”.
 - The requirement for the RPS to be prepared in accordance with the purpose and principles in Part 2 RMA.
 - It is mandatory for the “freshwater hearings panel” to consider and “be sure” that its recommendations would comply with the statutory requirements above and more broadly within the RMA provisions specifying the purpose and content of a RPS.⁵³ This must include ensuring alignment with any other part of the RPS being prepared using a different plan-making process.

⁵⁰ s 13 RMA.

⁵¹ s 64 RMA.

⁵² s 30(1)(c)(ii)-(iii) RMA, s 31(1)(e) RMA.

⁵³ Cl 50(d)(i), Part 4, Sch 1.

Logically these will require those overseeing each process to keep abreast of progress on the other. It is artificial to suggest each process would occur in complete isolation from the other. The two parts of the RPS or regional plan will be able to be brought together at the end of each process. This is not uncommon. RPSs and regional plans are regularly subject to focused plan changes which sees one part of the plan prepared separately from another, and then the two parts brought together to form a cohesive whole.

Broader context

- 3.32 Secondly, the context driving the introduction of “freshwater planning instruments” confirms their scope was intended to be limited. This context is best shown through the documents produced as part of preparing the amendments to the RMA introducing “freshwater planning instruments” and the “freshwater planning process”:

Regulatory impact statement: A new planning process for freshwater, 19 June 2019

- a. The impact statement acknowledged the potential for practical difficulties with separating out provisions relating to freshwater “due to the interconnected nature of freshwater issues”. However, it still recommended “only requiring freshwater related plan changes” to be prepared using the “freshwater planning process” to limit the impact on other aspects of the resource management system making implementation more straightforward.⁵⁴

Resource Management Amendment Bill – Ministry for the Environment (departmental report, Resource Management Amendment Bill), 31 March 2020

- b. The department report confirms that the intention of the amendments was: “a new plan-making process that regional and unitary councils (carrying out regional freshwater functions) must use for proposed regional policy statements and regional plans (including changes) for freshwater.”⁵⁵

⁵⁴ Pg 17-18.

⁵⁵ Pg 81.

c. Local authority submissions on the Bill had requested that the scope of s 80A and Part 4 Sch 1 “extend to all RMA matters” in order to achieve integrated management.⁵⁶ Many councils wanted a “freshwater planning instrument” to capture all regional council functions.⁵⁷ Other submitters were opposed to this, and were concerned that the phrase “relates to freshwater” would mean, as ORC says it does, “that the entire regional policy statement and regional plan would become a freshwater planning instrument”.⁵⁸ The departmental report’s response was:

- Re s 80A(2)(a): “The phrase ‘giving effect to the NPS-FM’, captures all requirements that arise from the NPS-FM.”⁵⁹
- Re s 80A(2)(b): “Planning content will also be driven by regional council functions under section 30(1)(c) to control the use of land for the purpose of the maintenance and enhancement of the quality of water in water bodies and coastal water and the maintenance of the quantity of freshwater. The phrase “or otherwise relates to freshwater” is intended to be a catchall for any water related matter that might not be captured under the NPS-FM.”⁶⁰
- Re incorporating all regional council functions not just those relating to “freshwater”: “Including additional RMA matters that need to be developed and notified by 2023 would add further to the burden of reaching the notification date and ultimately may risk not having freshwater plans in place by 2025. We do not recommend a change to allow the hearings panel to address wider regional matters or district plan provisions at this time.”⁶¹

Consequences

⁵⁶ Pg 87-88.

⁵⁷ Pg 88.

⁵⁸ Pg 87-88.

⁵⁹ Pg 88.

⁶⁰ Pg 88.

⁶¹ Pg 89-90.

3.33 The consequences of a RPS or a regional plan being a “freshwater planning instrument” prepared using the “freshwater planning process” are significant, and in the Forestry Companies submission, were not intended. This supports a more limited interpretation of s 80A(2) than that advanced by ORC.

Implementation of the NES-Plantation Forestry

3.34 The NESPF provides a comprehensive suite of nationally consistent regulations to manage the environmental effects of plantation forestry.

3.35 Local authorities are required to remove rules in their plans that duplicate or conflict with a NES’s regulations.⁶² A plan rule conflicts with a NES regulation where it prohibits an activity the regulation authorises, restricts an activity in a different way to the regulation, or where it is more lenient than the regulation.⁶³

3.36 In short, the NES regulations take precedence.

3.37 The exception to this is if the NES says a rule in a plan can be more lenient or more stringent than a regulation.⁶⁴ A NES can specify the extent to which, or for what purposes, a plan rule may be more lenient or more stringent than its regulations.

3.38 In these circumstances, justification is required. If a proposal will impose a greater or lesser prohibition or restriction on an activity to which a NES applies than the existing prohibitions or restrictions in the NES, the mandatory s 32 evaluation report “must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect”.⁶⁵

3.39 The NESPF provides for the circumstances in which greater stringency is permissible. Regulation 6 says (relevantly):

“(1) A rule in a plan may be more stringent than these regulations if the rule gives effect to –
(a) an objective developed to give effect to the National Policy Statement for Freshwater Management.

⁶² s 44A RMA.

⁶³ ss 43B and 44A(2) RMA.

⁶⁴ ss 43B and 44A(2)(a)(i) and (b) RMA.

⁶⁵ s 32(4).

....

(2) A rule in a plan may be more stringent than these regulations if the rule recognises and provides for the protection of—

(a) outstanding natural features and landscapes from inappropriate use and development; or

(b) significant natural areas.”

3.40 Accordingly, there is discretion to be more stringent in respect of rules that give effect to objectives developed to give effect to the NPSFM, but when it comes to landscape protection the ability to be more stringent is limited to “outstanding natural landscapes”, and when it comes to biodiversity, the ability to be more stringent is limited to “significant natural areas”. These features have been identified as meeting particular criteria that makes them outstanding or significant, respectively. Where these criteria are met, protection of these features is a matter of national importance under s 6.

3.41 The NESPF’s standards have been designed to manage effects on indigenous terrestrial biodiversity in a manner considered appropriate across New Zealand. The NESPF deliberately affords limited ability to be more stringent only in respect of areas identified as “significant natural areas”. Similarly, a decision was made at a national level that councils would only have the discretion to include more stringent rules than those in the NESPF in relation to “outstanding natural landscapes” not all landscapes.

3.42 The question of whether RPS provisions implement the NPSFM, or are to implement another outcome such as biodiversity or landscape protection and in the latter case, whether they relate to the sub-categories of “outstanding natural landscapes” or “significant natural areas” is therefore determinative of whether regional plan rules to implement the RPS provisions may be more stringent than the NESPF.

3.43 If an entire RPS or regional plan is a “freshwater planning instrument” as ORC suggests, then:

- a. The scope of local authority power to include rules in plans that are more stringent than the NESPF will extend well beyond the intended reach of Regulation 6.

- b. All its objectives must by definition have been developed “for the purpose of giving effect to” the NPSFM”.⁶⁶ As a result, a local authority could point to any objective in a RPS to justify more stringent controls on plantation forestry even when the objective is not squarely focused on freshwater management and the implementation of the NPSFM objectives.

3.44 This would allow rules in plans to be more stringent than the NESPF to implement broadly framed objectives, despite the NESPF carefully limiting the scope of councils’ discretion to be more stringent than the NESPF. Using examples from the pORPS (which ORC says is a “freshwater planning instrument” in its entirety):

- a. Objective ECO-O1 is to “Ensure Otago’s indigenous terrestrial biodiversity is healthy and thriving”. This is broader than protection of “significant natural areas”. If this objective is part of a freshwater planning instrument, and therefore implements the NPSFM, ORC’s approach would greatly expand the intended scope for councils to be more stringent in respect of any provisions aimed at ensuring Otago’s indigenous terrestrial biodiversity is healthy and thriving.
- b. Objective NFL-O1 is to “Maintain highly valued natural features and landscape”. As above, a decision was made at a national level that councils would only have the discretion to include more stringent rules than those in the NESPF in relation to “outstanding natural landscapes”. If objective NFL-O1 is considered an objective for the purpose of giving effect to the NPSFM it significantly extends that discretion where that was not intended by the NESPF.

3.45 For completeness: the fact a water body may be within an identified landscape does not mean this provision “relates to freshwater”. Natural

⁶⁶ The exception would be if a local authority expressly identified the objectives for this purpose and the objectives that only “otherwise relate to freshwater” more broadly, which ORC has not done.

feature and landscape provisions are designed to fulfil a different function: maintain areas that are important for human amenity.⁶⁷

- 3.46 If it was intended local authorities could introduce more stringent rules for landscapes or biodiversity purposes generally, the NESPF would specifically say so, as it does for “outstanding natural landscapes” and “significant natural areas”.
- 3.47 Section 80A RMA should be interpreted in such a way that it sits comfortably with existing RMA legislative instruments. The Forestry Companies’ interpretation of s 80A achieves this. ORC’s does not.

Reduced appeal rights

- 3.48 Appeal rights under the “freshwater planning process” are significantly reduced compared to the standard process in Part 1 Sch 1 RMA. There are valid policy reasons for this. The intention is that curtailment of appeal rights is balanced out by the heavily front-ended consultative process that occurs in respect of the freshwater National Objectives Framework⁶⁸.
- 3.49 The documents produced as part of the process of preparing the changes to the RMA to insert “freshwater planning instruments” and the “freshwater planning process” confirm that the reduction in access to the Courts was specifically legislated to speed up implementation of the NPSFM and “support the need for urgent action to improve freshwater outcomes”^{69, 70}. Parliament was aware of natural justice issues if restrictions on access to the Courts were excessive.⁷¹

⁶⁷ Per pORPS definition of “highly valued natural features and landscapes” in Part 1 Interpretation pg 24: “*highly valued natural features, landscapes and seascapes are areas which contain attributes and values of significance under Sections 7(c) and 7(f) of the RMA 1991, which have been identified in accordance with APP9*”. Section 7(c) RMA directs decision-makers to “have particular regard to... (c) the maintenance and enhancement of amenity values”.

⁶⁸ NPSFM, Clause 3.7 NOF process.

⁶⁹ Resource Management Amendment Bill – Ministry for the Environment (departmental report, Resource Management Amendment Bill), 31 March 2020, pg 80 section 4.1.

⁷⁰ For example see: Regulatory impact statement: a new planning process for freshwater, 19 June 2019 at pg 11-12 section 2.3, pg 35 section 5.1; Final report of Environment Select Committee (Resource Management Amendment Bill) 180-2, 30 March 2020, pg 4; Resource Management Amendment Bill – Ministry for the Environment (departmental report, Resource Management Amendment Bill), 31 March 2020, pg 80 section 4.1, pg 86-87.

⁷¹ Resource Management Amendment Bill – Ministry for the Environment (departmental report, Resource Management Amendment Bill), 31 March 2020, pg 121.

- 3.50 Against that background, it is clear the “freshwater planning process” and its restricted appeal rights intended to have limited reach.
- 3.51 The “freshwater planning process” was not intended to result in a blanket reduction of appeal rights and access to justice through the Courts across all parts of a RPS or regional coastal plan. This is the consequence of ORC’s interpretation of s 80A(2) and the meaning of “freshwater planning instrument”. ORC’s interpretation must be incorrect.
- 3.52 The practical implication for the Forestry Companies of ORC’s interpretation is that when they must seek resource consent under the NESPF regulations (for example, a change of species from radiata pine to douglas fir where the rules relating to wilding pine risk are not met⁷², or transfer of quarried material for more than 2 km on public roads⁷³, or disturbance of nesting falcon during harvesting⁷⁴), those applications fall to be considered against policies of planning instruments, including the pORPS. These regulations are not related to freshwater, yet they fall to be assessed against objectives and policies of a purported “freshwater planning instrument”.
- 3.53 The Forestry Companies have a direct interest in the tenor of those objectives and policies, in particular to ensure policies are consistent with the purpose of the NESPF. Because reduced participation rights apply in determining the content of policies in “freshwater planning instruments”, the Forestry Companies’ ability to ensure through their participation that policies are worded appropriately is reduced.

Decisions made by those not equipped to do so

- 3.54 The “freshwater planning process” is overseen by Panel. The expertise of the commissioners making up the Panel is squarely focused on “freshwater quality, quantity and ecology”⁷⁵, with broader expertise focused on ensuring proper process will be followed, the legislative context will be understood, and Māori interests will be understood and properly considered.

⁷² Reg 79.

⁷³ Reg 57(c).

⁷⁴ Regs 72 and 73.

⁷⁵ Cl 59(6) and Cl 65 Part 4 Sch 1.

- 3.55 The requirement that the Panel convened for a specific instrument have knowledge and expertise in relation to “subject areas likely to be relevant to the work of the panel”, does not extend potential members to include air quality, coastal, infrastructure, or urban design experts as ORC suggests. Those people would not have been appointed to the potential pool of commissioners in the first place. It is intended to ensure that if there are specific, thorny “freshwater” issues within a region, the Panel is equipped to deal with them.
- 3.56 The “freshwater hearings panel” is simply not equipped to consider proposed RPS or regional plan provisions that do not squarely relate to “freshwater”. Asking them to do so risks preparation of a RPS or regional plan that is not fit for purpose and does not meet statutory requirements.

4. COUNCIL DISCRETION

- 4.1 Section 80A(3) affords regional councils a discretion to determine if all of a RPS or regional plan is a “freshwater planning instrument”, or if only part of it is.
- 4.2 If the regional council “is satisfied that only part of the instrument relates to freshwater” then it must prepare that part using the “freshwater planning process” and the rest using the standard plan-making process (or the streamlined process if applicable – in this case it is not).
- 4.3 This discretion does not mean a regional council’s decision about whether a RPS or regional planning instrument is, or is not, a “freshwater planning instrument” is immune from challenge.
- 4.4 The regional council must apply the correct legal test, in this case, the definition of “freshwater planning instrument”. If it does not, and wrongly characterises a RPS or regional plan, or part of one, as a “freshwater planning instrument”, it is in error.

5. QUESTION 2: IS THE PORPS A “FRESHWATER PLANNING INSTRUMENT”

- 5.1 ORC says that there is no severable part of the pORPS which neither gives effect to the National Policy Statement for Freshwater Management nor relates to freshwater in some other way⁷⁶.
- 5.2 The analysis above shows that statement to be incorrect. It is based on the erroneous understanding that a very general and weak connection to “freshwater” is sufficient.
- 5.3 There are clearly provisions in the pORPS that are not “for the purpose of giving effect to the NPSFM or otherwise relate to freshwater” when those requirements are correctly interpreted.
- 5.4 Forest and Bird has identified numerous examples (e.g. direction on limits on discharge of contaminants like PM₁₀ to air; or public access to the coastal marine area). Its submissions on this point are respectfully adopted⁷⁷.
- 5.5 In the Forestry Operators’ submission, it is for ORC to review the pORPS, applying the correct interpretation of “freshwater planning instrument”, and to determine which provisions meet the requirements of s 80A(2) and which do not.
- 5.6 This is because the process is likely to be a highly technical and detailed one; the pORPS is 220 pages long, with five parts, covering nine domains and topics.
- 5.7 It may also necessitate some restructuring of the pORPS or rewriting of certain provisions.

6. CONCLUSION AND RELIEF

- 6.1 The two questions raised by this proceeding are:

Question A: what is a “freshwater planning instrument”

Question b: is the pORPS a “freshwater planning instrument”

- 6.2 ORC has wrongly defined a “freshwater planning instrument” to capture any RPS provision no matter its focus, because “freshwater sustains life” and because all parts of the environment are connected. It has therefore wrongly

⁷⁶ ORC submissions at [123].

⁷⁷ Forest and Bird submissions paras 100-139.

classified the entire pORPS as a “freshwater planning instrument”. This has significant implications for the Forestry Companies (and presumably for others who have joined this proceeding).

6.3 The correct answers are:

Question 1:

Despite requests from local authorities for these to be defined more broadly, “freshwater planning instruments” are tightly defined to be a RPS or regional plan (excluding regional coastal plan):

- a. “for the purpose of giving effect to” the NPSFM (s 80A(2)(a)); or
- b. “that otherwise relate to freshwater” (s 80A(2)(b)).

6.4 Correctly interpreted, these capture only those parts of a RPS or regional plan that meet one of the following options:

- a. The instrument is designed with the deliberate intention of implementing the NPSFM. This means that the scope and text of the NPSFM determines whether a RPS or regional plan (or only part of one) meets s 80A(2)(a). The NPSFM is squarely focused on “freshwater management”. RPS or regional plan provisions that have no connection to “freshwater management” other than through the general interconnectedness of the environment are not “for the purpose of giving effect to” the NPSFM.
- b. The instrument has a “causal connection” with “freshwater”. The statutory and factual context in which “freshwater planning instruments” and the “freshwater planning process” sit confirms this requires a RPS or regional plan provision to be necessary to carry out regional freshwater functions. Any lesser connection is too “remote” or “obscure”.

Question 2:

6.5 Parts of the pORPS comprise a “freshwater planning instrument” and parts do not. ORC needs to undertake a comprehensive review of the pORPS to determine which of its provisions fall where.

7.1 On that basis the Forestry Companies seek that declarations 1 and 2 be declined.

7.2 They support declaration 3 with one exception. If changes are made to the part of the pORPS that is a “freshwater planning instrument” then it must be publicly notified in accordance with s 80A(4)(a) RMA. If changes are made to the part of the pORPS that is not a “freshwater planning instrument” then it must be publicly notified in accordance with Cl 6 Sch 1 RMA.

7.3 The Forestry Companies do not seek costs.



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Statutes

Resource Management Act 1991: s 2, 5, 7, 9, 13, 30, 31, 32, 43AA, ss 43-44A, 43B, 45-58A, s 60, ss 59-70, 72-77, s 80A, 86B, ss 299, 308, Parts 1, 4 and 5 Schedule 1.

Resource Management Amendment Act 2020.

Legislation Act 2019: s 10.

Authorities

Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38, [2014] 1 NZLR 593.

Kiwi Income Property Trust v Porirua City Council W 007/2004.

Application by North Shore City [1995] NZRMA 74(PT).

Auckland Regional Council v North Shore City Council [1995] 3 NZLR 18; [1995] NZRMA 424.

NZ Shipping Federation v Marlborough District Council EnvC W038/06.

Other documents

Proposed Otago Regional Policy Statement.

National Policy Statement for Freshwater Management 2020.

Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.

Regulatory impact statement: A new planning process for freshwater, 19 June 2019.

Resource Management Amendment Bill – Ministry for the Environment (departmental report, Resource Management Amendment Bill), 31 March 2020.

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