

Section 42A Hearing Report

Proposed Otago Regional Policy Statement 2021

Chapter 9:

LF – Land and freshwater

Felicity Boyd

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NOTE TO READERS

Grey shading added (7 October 2022)

This report was first published on 4 May 2022 and it covered all provisions included in the *LF – Land and freshwater* chapter. As a result of the High Court declaration and subsequent renotification of the Freshwater Planning Instrument (explained below), this report now contains analysis that no longer has any legal weight.

On 4 October 2022 this report was amended so that all analysis that relates to provisions that are now contained in the Freshwater Planning Instrument is shaded grey.

Background

In June 2021, ORC publicly notified its proposed regional policy statement. At that time, the Council had determined that the whole of the PORPS was a freshwater planning instrument. In its Judgment (Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Incorporated [2022] NZHC 1777) dated 22 July 2022, the High Court declared that the Council’s determination that the whole of the PORPS is a freshwater planning instrument was wrong.

The High Court instructed the Council to satisfy itself as to which parts of the proposed regional policy statement qualify are part of a freshwater planning instrument because they relate directly to the maintenance or enhancement of freshwater quality or quantity.

Since receiving the Judgment of the High Court, the ORC has applied the approach set out in the Judgment, and at its meeting on 15 September 2022 Council determined which parts of the Proposed Otago Regional Policy Statement 2021 directly relate to the maintenance or enhancement of the quality or quantity of freshwater as defined in Section 80A (2) of the Resource Management Act 1991 and therefore comprise a freshwater planning instrument. Those provisions were re-notified on 30 September 2022 and can be found on the Council’s website:

<https://www.orc.govt.nz/news-and-events/news-and-media-releases/2022/september/public-notice-fpirps-21>

9. LF – Land and freshwater

9.1. Introduction

1. Otago is home to significant water resources, as surface water in roto (lakes) and awa (rivers), as groundwater, and as wetlands. Much of Otago’s distinctive character is derived from its water bodies. The context for Otago’s water resources is high rainfall in the Southern Alps alongside occasional very low rainfall in the semi-arid Central Otago valleys. While there are large volumes of water present in the region, some parts of Otago are among the driest in the country and as a result a number of rivers are characteristic as being “water short”, with some small stream reaches drying up during summer.
2. Approximately 23% of New Zealand’s lake surface area occurs in Otago.¹ The Clutha Mata-au is the largest river in New Zealand by volume and its catchment is the largest in the region. Most of the water in the river is sourced from the catchments of Lakes Hāwea, Wānaka, and Wakatipu which adjoin the boundary between the Otago, West Coast and Southland regions, but a number of rivers also feed into the Clutha Mata-au, including the Kawarau, Cardrona, Lindis, Shotover, Nevis, Fraser, Manuherekia, and Teviot rivers. One of the larger tributaries in the lower reaches is the Pomahaka River which begins in the mountains near Tapanui on the border between the Otago and Southland regions.
3. The second largest catchment in Otago is that of the Taieri (Taiari) River which originates in Central Otago and follows a meandering path through mountain ranges before passing through a gorge and crossing the Taieri (Taiari) Plain, joining the waters of Lake Waipoori (Waipōuri) and Waihola catchments. In its lowest reaches, the Taieri (Taiari) River becomes tidal before making its way through another gorge to the sea at Taieri (Taiari) Mouth. There are a number of other rivers in the region with smaller catchments. In North Otago, this includes the Kakanui, Waianakarua, Shag, and Waikouaiti Rivers that originate in the high country and pass through largely dry downlands. In South Otago, the Tokomairiro River drains rolling country between the Taieri (Taiari) and Clutha Mata-au catchments. In the Catlins area, rivers emerge from wetter, more forested hills.
4. Water plays a significant role in Kāi Tahu spiritual beliefs and cultural traditions. Kāi Tahu have an obligation through whakapapa to protect wai and all the life it supports. Kāi Tahu describe the significance of wai māori as follows:²

“Like all things, water has a whakapapa. All water is seen to have originated from the separation of Rakinui and Papatūānuku and their continuing tears for one another. Rain is Rakinui’s tears for his beloved Papatūānuku and mist is regarded as Papatūānuku’s tears for Rakinui.

From Rakinui and Papatūānuku came the offspring who were responsible for creating the elements that constitute our total world today, both animate and inanimate - the mountains, rivers, forests and seas, and all fish, bird and animal

¹ The water resources of Otago, Regional Plan: Water for Otago

² Wai Māori, Resources of significance to Kāi Tahu, Mana Whenua, pORPS.

life. The realm of atua such as Rakinui and his many wives and offspring overarches and informs the Kāi Tahu whānui world view, values and beliefs.

Water plays a significant role in Kāi Tahu spiritual beliefs and cultural traditions. Kāi Tahu have an obligation through whakapapa to protect wai and all the life it supports, as ko te wai te ora o kā mea katoa (water is the life giver of all things). The condition of water is seen as a reflection of the condition of the people. Toitū te Marae o Tane, toitū te Marae o Takaroa, toitū te Iwi (Protect and strengthen the realms of the land and sea, and they will protect and strengthen the people). When the natural environment is strong and healthy, the people are strong and healthy and so too is their mana.”

5. Otago’s communities have a long history of using water to support their social, economic, and cultural well-being, including historically using water bodies as transport routes and for gold mining. In parts of Otago, freshwater is facing significant pressure. Population growth and land-use intensification in urban and rural environments has increased demand for water for drinking water, irrigation and other economic uses. It has also impacted on the quality of water, increasing levels of contaminants such as nutrients and sediment, and harming ecosystems. In Otago, there are particular challenges arising from extensive and unregulated historic water use associated with mining privileges.
6. Collectively, agriculture, forestry and fishing is the second largest industry in Otago at 6.6% of GDP.³ Otago’s primary sector⁴ is relatively big compared to New Zealand average. In 2020, 11.2% of the region’s GDP was attributable to the primary industry; in comparison the figure was 6.2% for New Zealand. When measured by employment, 7.9% of total employment in Otago was attributable to the primary industries; in comparison the figure was 5.7% for New Zealand. Primary industries rely heavily on land, soil and water resources, but can have adverse effects on them.
7. In May 2019, the Minister for the Environment appointed Professor Peter Skelton under section 24A of the RMA to investigate whether ORC was adequately carrying out its functions under section 30(1) of the RMA in relation to freshwater management and allocation of resources. In his report dated 1 October 2019, Professor Skelton concluded that a new planning framework was required for Otago. His recommendation, which was accepted by the Minister for the Environment, included a series of short-term and longer-term planning processes to deliver this new framework, including the notification of a new regional policy by November 2020. After the release of the Government’s *Essential freshwater* policy package in August 2020, that deadline was extended to June 2021 to allow ORC to develop freshwater visions in consultation with communities and mana whenua.
8. The NPSFM sets out the national direction for managing freshwater and is underpinned by the concept of Te Mana o te Wai. Clause 1.3(1) of the NPSFM states that:

Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and

³ Sourced from infometrics data portal as at March 2021

⁴ Primary industries include agriculture, forestry, fishing, and mining.

well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.

9. This is the conceptual framework that has guided the development of the *LF – Land and freshwater* chapter and is a significant shift in thinking from historic freshwater management in Otago.
10. The other driver for the development of this chapter is the requirements of the National Planning Standards, which require land and freshwater to be managed in an integrated way that is not currently reflected in Otago’s planning documents. This chapter has four sections:
 - LF-WAI – Te Mana o te Wai,
 - LF-VM – Visions and management,
 - LF-FW – Freshwater and
 - LF-LS – Land and soils
11. The LF-WAI chapter sets out the requirements for giving effect to Te Mana o te Wai in Otago and was co-developed by ORC and Kāi Tahu. This section is strategic and sits ‘above’ the remaining three sections, which must be implemented in a way that gives effect to the objectives and policies in the LF-WAI section. This is in accordance with Policy 1 of the NPSFM which requires freshwater management to give effect to Te Mana o te Wai.
12. There are a number of general submissions on the *LF – Land and freshwater* chapter as well as some common themes that have emerged out of the evaluation of provision or section-specific submissions.

9.2. Author

13. My full name is Felicity Ann Boyd and I am an Associate employed by Incite, a planning consultancy. I hold a Bachelor of Social Science and a Master of Environmental Policy (First Class Honours) from Lincoln University. I am a full member of the New Zealand Planning Institute and an accredited decision-maker under the Making Good Decisions programme.
14. I have over ten years of resource management and planning experience, largely in the public sector (including most recently in the private sector but primarily working for public sector clients). During this time, I have specialised in policy planning, including drafting provisions for regional policy statements, plans, and plan changes, along with associated section 32 evaluation reports, section 42A reports and reporting officer roles. I also have experience participating in Environment Court processes such as expert conferencing, mediation, and hearings on plans and plan changes. While I have a particular focus on freshwater management, I have a broad range of experience including coastal and air resources as well as urban planning.
15. I have been involved in the review of the Partially Operative ORPS 2019 and the preparation of the pORPS since January 2020. I have provided technical oversight for

provision drafting, the section 32 evaluation report, and the suite of section 42A reports as well as being a technical lead for particular chapters, most recently the *LF – Land and freshwater* and *IM – Integrated management* chapters.

9.3. General themes

16. This section of the report addresses the following topics:

- The Greenpeace form submissions
- Habitats of trout and salmon
- Other general submissions

9.3.1. Greenpeace form submissions

17. There are a large number of submissions on the pORPS received in a standard form produced by Greenpeace New Zealand. Many of those submissions (which are listed in Part B of the SODR) are considered to be invalid as discussed in section 1.3.1 in *Report 1: Introduction and general themes*. The remaining submissions in this form that are considered to be valid are addressed in this section.

9.3.1.1. Submissions

18. The valid form submissions focus primarily on the management of land and freshwater and seek the following:

- Prioritise Te Mana o te Wai first, so that all other objectives in the pORPS are informed by the priority to care for water and keep it healthy,
- Tackle the climate crisis by lowering cow stocking rates and phasing out synthetic nitrogen fertiliser,
- Consider cumulative effects of pollution such as intensive dairying and too much synthetic nitrogen fertiliser, rather than simply in each individual catchment,
- Act according to the national plan, which identifies limits based on environmental impacts,
- Apply the precautionary principle to freshwater management, and
- Invest in regenerative organic farming to help mitigate the climate crisis and prevent water degradation.

9.3.1.2. Analysis

19. In my opinion, Te Mana o te Wai is a water-centric concept that is not appropriate to apply across the entire pORPS, which manages all resource management in Otago. Other parts of the environment also have national direction which must be given effect to, which can mean different approaches to managing either different resources or resources in different parts of the region. I consider that Te Mana o te Wai has been prioritised in the management of freshwater and land through the structure of the *LF – Land and freshwater* chapter, whereby LF-WAI sits ‘above’ the other three sections in this chapter, which must give effect to the objective and policies in LF-WAI.

20. While I agree with the submitters that the expansion of dairy farming in Otago has contributed to degradation in some water bodies, I consider that decisions about restricting or promoting particular activities (including stocking rates and use of synthetic nitrogen fertiliser) should be made through the regional plan, rather than the pORPS. The process for implementing the NOF, as set out in the NPSFM, provides a comprehensive step-by-step approach to identifying values, developing environmental outcomes, and setting limits on resource use that will provide a forum for these types of conversations to occur with Otago's communities, including mana whenua. I note that the application of synthetic nitrogen fertiliser to pastoral land is presently managed under the NESF. While I acknowledge that the Council may choose to be more stringent than the NESF regulations, whether stringency is justified and in what forms is a matter for the LWRP and its accompanying section 32 evaluation report to consider as that is the place where stringency is provided for.⁵
21. Cumulative effects are, and will continue to be, difficult to manage. However, I consider that there are requirements in the NPSFM (to be implemented through ORC's LWRP and science programme) that will assist with managing cumulative effects as they relate to freshwater. For example, there are comprehensive monitoring and freshwater accounting requirements set out in the NPSFM that will require regular monitoring of water quality and quantity which is supported by a requirement to take action when deteriorating trends are detected. In my opinion, the provisions of the LF chapter set out an integrated approach to managing freshwater that requires considering the various interactions and interconnections in the environment that can lead to cumulative effects, such as the impacts of land uses in upper catchments on the health of coastal water bodies in lower reaches. In particular, I note that LF-WAI-P3(3) requires managing freshwater and land using an integrated approach that has regard to cumulative effects.
22. I am unsure what the submitters mean when they refer to "the national plan" or the limits that plan identifies. I am not aware of a national plan of this nature, but acknowledge that various national direction instruments include 'limits' as they are commonly understood, such as the NOF in the NPSFM. In my opinion, those instruments have been given effect to in the pORPS.
23. In regard to the precautionary principle, I note that LF-WAI-P3(7) requires managing freshwater and land using an integrated approach that has regard to the need to apply a precautionary approach where there is limited available information or uncertainty about potential adverse effects. In my view, that is an appropriate use of the precautionary approach.
24. The pORPS cannot directly promote investment in activities, including regenerative organic farming, however I acknowledge that the direction in the pORPS provisions may influence a range of investment decisions in the region. In my view, decisions about particular land uses are best addressed through the LWRP in the context of implementing the NOF. Rather than focusing on particular activities, the pORPS guides decision-making

⁵ Regulation 6(1) of the NESF states that a district rule, regional rule, or resource consent may be more stringent than these regulations.

on land uses, including in relation to their effects on freshwater, through the LF-FS section. In particular, that section requires:

- That the use of land maintains soil quality and contributes to achieving environmental outcomes for freshwater. (LF-LS-O12)
- Minimising soil erosion and the associated risk of sedimentation in water bodies resulting from land use activities by implementing a series of actions. (LF-LS-P18)
- Promoting changes in land use or land management practices that improve the sustainability and efficiency of water use, resilience to the impacts of climate change, or the health and quality of soil. (LF-LS-P20)
- Achieving the improvement or maintenance of fresh water quantity or quality to meet environmental outcomes set for FMUs or rohe by reducing direct and indirect discharges of contaminants to water from the use and development of land and managing land uses that may have adverse effects on the flow of water in surface water bodies or the recharge of groundwater. (LF-LS-P21)

25. For these reasons, I recommend accepting these submission points in part.

9.3.1.3. Recommendation

26. I do not recommend any specific amendments to provisions, however note that throughout this chapter amendments have been made to provisions that, in part, may respond to the relief sought by submitters.

9.3.2. Habitats of trout and salmon

9.3.2.1. Introduction

27. Fish and Game considers that the pORPS fails to give effect to the directions regarding the habitats of trout and salmon set out in section 7 of the RMA and Policies 9 and 10 of the NPSFM. Fish and Game notes that sports fish and game birds are highly valued by many New Zealanders and international tourists as sources of food and recreational opportunities. The submitter states that these species are also highly valued by some Māori, who see them as an expression of evolving culture in the wake of diminished traditional mahinga kai resources.

28. Fish and Game seeks a range of amendments to both the LF and ECO chapters of the pORPS. For that reason, the amendments sought have been addressed in section 1.4.9 of *Report 1: Introduction and general themes*. However, given the analysis and recommendations are relevant to the LF chapter, I have summarised these below.

9.3.2.2. Submissions

29. Fish and Game considers that there are cases where the protection of trout and salmon habitat is consistent with protection of habitat of indigenous species. For example, the protection of an area that is habitat to both trout and eel will improve water quality and

quantity of habitat for both species. Therefore, Fish and Game seeks relief that achieves two key points:⁶

- protects water bodies and freshwater ecosystems (including the habitat of trout and salmon) from the impacts of land use and restores them where they are degraded, and
- develops a framework for considering when protecting the habitat of trout and salmon is consistent with protecting the habitat of indigenous species and assists in managing species interactions where they are of concern.

30. In conjunction with the above general relief, Fish and Game seek a suite of specific amendments for the LF – Land and freshwater chapter, as follows:

- insert a new clause in LF-WAI-P3:⁷

(3a) sustains and restores the habitats of trout and salmon species associated with the water body, insofar as this is consistent with ECO-P11,
- insert an overarching vision for all of Otago, LF-VM-OA2, which includes the following clause:⁸

(7) the habitat of trout and salmon is protected and restored, and trout and salmon are able to migrate easily within and between catchments, insofar as each goal is consistent with that of indigenous species
- insert a new clause in LF-FW-O8:⁹

(4a) trout and salmon can migrate easily and their habitats are protected and restored, insofar as this is consistent with that of indigenous species,
- insert a new clause in LF-FW-P7:¹⁰

(2a) the habitats of trout and salmon associated with water bodies are protected and restored, including by providing for fish passage, insofar as it is consistent with ECO-P11
- Amend clause 1(b)(iv) of LF-FW-P9:¹¹

the effects of the activity on indigenous biodiversity and the habitat of trout and salmon are managed by applying ~~either~~ ECO – P3, ECO – P6 or ECO-P11 (whichever is applicable), and

⁶ 00231.002 Fish and Game, 00231.003 Fish and Game

⁷ 00231.047 Fish and Game

⁸ 00231.05 Fish and Game

⁹ 00231.053 Fish and Game

¹⁰ 00231.055 Fish and Game

¹¹ 00231.056 Fish and Game

- Insert a new clause in LF-FW-P10:¹²
(1a) an increase in the extent and quality of habitat for trout and salmon, insofar as it is consistent with ECO-P11
- Amend clause (1)(b)(i) in LF-FW-P13:¹³
(1)(b)(i) for effects on indigenous biodiversity and the habitat of trout and salmon, either ECO-P3, or ECO-P6 or ECO-P11 (whichever is applicable), and
- Insert a new clause in LF-FW-P14:¹⁴
(3a) restore the habitat of trout and salmon, insofar as it is consistent with ECO-P11,
- Insert a new clause in LF-FW-M6(4):¹⁵
(ca) the protection, including the potential for restoration, of trout and salmon habitat, insofar as it is consistent with ECO-P11,

31. The submitter also seeks amendments to the ECO chapter which are detailed in section 1.4.9 of *Report 1: Introduction and general themes*.

9.3.2.3. Analysis

32. My detailed analysis of these submission points is set out in section 1.4.9.2 of *Report 1: Introduction and general themes*. In summary, section 6(c) of the RMA requires recognising and providing for the protection of significant habitats of indigenous fauna, whereas section 7(h) requires that particular regard is given to the protection of the habitat of trout and salmon. This differentiation is reflected in Policies 9 and 10 of the NPSFM, which require:

- Protecting the habitats of indigenous freshwater species (Policy 9), and
- Protecting the habitat of trout and salmon insofar as this is consistent with Policy 9 (Policy 10).

33. I agree with Fish and Game that the pORPS as notified does not specifically refer to the habitats of trout and salmon and it is unclear how the distinction above is provided for through the pORPS provisions.

34. The amendments sought by Fish and Game seek variously to sustain, protect, and/or restore the habitats of trout and salmon. The direction in section 7(h) of the RMA and in Policy 9 of the NPSFM is to protect these habitats. I do not consider that there is a statutory basis for requiring restoration of these habitats. I note that this distinction is highlighted in the further submissions of Kāi Tahu ki Otago, Te Rūnanga o Ngāi Tahu,

¹² 00231.057 Fish and Game

¹³ 00231.058 Fish and Game

¹⁴ 00231.059 Fish and Game

¹⁵ 00231.060 Fish and Game

Contact, Meridian, and OWRUG who variously point out that the amendments sought go beyond the requirements of Policy 10 of the NPSFM.¹⁶

35. That said, I consider there are other provisions in the LF chapter that will contribute to the restoration of the habitats of trout and salmon. For example:
- LF-WAI-P1 requires prioritising, first, the health and well-being of water bodies and freshwater ecosystems in all management of freshwater,
 - The freshwater visions in LF-VM set out a range of long-term outcomes for Otago's FMUs that would assist with protecting the habitats of trout and salmon,
 - LF-FW-P7(1) requires maintaining or, where degraded, improving the health and well-being of water bodies,
 - LF-FW-P12 requires protecting the significant and outstanding values of outstanding water bodies (noting that one of the criteria for identifying these values relates to recreation),
 - LF-FW-P13 requires preserving the natural character of lakes and rivers and their beds and margins, and
 - LF-FW-P14 requires promoting actions to restore natural character where this has been reduced or lost
36. In my opinion these provisions, while not specifically providing for the habitats of trout and salmon, will indirectly have benefits for those habitats as a result of generally maintaining or improving the health and well-being of water bodies.
37. I have addressed the specific submission points by Fish and Game on the LF provisions in section 1.4.9.2 of *Report 1: Introduction and general themes*. Broadly, I do not recommend accepting those submission points except for the submission points on LF-FW-O8 and LF-FW-P7.
38. There are two parts to the new clause sought to be included in LF-FW-O8: fish passage and habitat protection and restoration. Regarding fish passage, clause 3.26 of the NPSFM requires regional plans to include a mandatory policy regarding fish passage. This policy is not limited to native fish and therefore I agree that it is appropriate to provide for the migration of trout and salmon. However, for the reasons I have set out previously, I do not consider it is appropriate to both protect and restore the habitats of trout and salmon as sought by the submitter. In my opinion, the level of detail sought by the submitter is not appropriate in an objective (particularly the distinction between habitats of trout and salmon and habitats of indigenous species). Instead, I recommend amending clause (4) so that the outcome sought for fish migration applies to all fish, not only native fish. I therefore recommend accepting this submission point in part. I acknowledge that this objective does not specifically refer to the habitats of trout and salmon, however it does set out the outcome sought for the health of water generally which, in my opinion, includes the habitats of trout and salmon.

¹⁶ FS00226 Kāi Tahu ki Otago, FS00234 Te Rūnanga o Ngāi Tahu, FS00318 Contact, FS00306 Meridian, FS00235 OWRUG

39. I agree with Fish and Game that LF-FW-P7 is the appropriate place to recognise the habitats of trout and salmon. I do not agree with the submitter’s wording. I agree that protection is required by the NPSFM but not restoration., I consider that the qualification on protecting the habitats of trout and salmon should align with Policies 9 and 10 of the NPSFM and therefore should reference LF-FW-P7(2). I recommend accepting this submission point in part.

9.3.2.4. Recommendation

40. I recommend the following amendments:

- a. Deleting “native” in LF-FW-O8(4),
- b. Including a new clause (2a) in LF-FW-P7 as follows:

(2a) the habitats of trout and salmon are protected, including by providing for fish passage, insofar as protection is consistent with (2),¹⁷

9.3.3. Other general submissions

9.3.3.1. Introduction

41. Many submitters have made general submissions on the LF chapter that canvas a range of topics. This section outlines and evaluates the relief sought in those submission points.

9.3.3.2. Submissions

42. Kāi Tahu ki Otago seeks to retain the strong focus on Te Mana o te Wai and on sustaining the relationship of mana whenua with Wai Māori.¹⁸ The submitter also supports the provisions to protect remaining wetlands and reverse the degradation that has occurred.¹⁹ Ngāi Tahu ki Murihiku seeks to retain the content of the LF chapter, subject to the amendments sought elsewhere in its submission, and consistent with the amendments recommended in the submissions by Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu.²⁰

43. Central Otago Winegrowers Association seeks that a requirement for engagement with primary industry, landowners, representative association, and related parties forms part of the overriding context of the pORPS.²¹

44. Gavan James Herlihy seeks to rewrite the LF chapter to reflect the role of and contribution to the “wider community” of the use of water, which is a vital resource if the pORPS is going to create a future of opportunity and security for all people.²²

¹⁷ 00231.055 Fish and Game

¹⁸ 00226.007 Kāi Tahu ki Otago

¹⁹ 00226.012 Kāi Tahu ki Otago

²⁰ 00223.078 Ngāi Tahu ki Murihiku

²¹ 00302.001 Central Otago Winegrowers Association

²² 00104.004 Gavan James Herlihy

45. McArthur Ridge and Strath Clyde Water and others consider the pORPS fails to provide direction on how Otago’s land and water planning framework should provide for the needs of different primary sector producers, and in particular direction on how to address water allocation for consumptive uses (such as frost fighting and irrigation) in over-allocated catchments like the Manuherekia.²³ These submitters also seek unspecified amendments to:
- provide greater direction on promoting and providing for land and water uses that are efficient, have minimal impact on the environment, and provide significant economic and social benefits, such as viticulture, orchards and other uses, and²⁴
 - better address the issues identified in SRMR-15 by providing better direction on how the competing needs of freshwater-reliant industries should be prioritised, especially in water short catchments.²⁵
46. OWRUG seeks unspecified amendments to set out a framework for setting timeframes to achieve long-term visions over a transition period for ORC to use when developing regional plan provisions to achieve the visions. The submitter considers this framework should allow the food and fibre sector time to adjust at a rate that accounts for the potentially significant impacts on their social, economic, and cultural well-being.²⁶
47. Wise Response seeks unspecified amendments to focus on improving all water bodies, including by rebuilding biophysical capacity and ecosystem function, rather than outstanding water bodies and the values people decide are important.²⁷
48. Wise Response seeks amendments to adopt an “Integrated Landscape Management approach” that includes treating catchments as water retention vessels whose nutrient and water holding capacity can be enhanced rather than as drainage areas with largely fixed hydrological characteristics.²⁸
49. Ngāi Tahu ki Murihiku seeks to recognise that over-allocation is a significant issue of concern for mana whenua in the region and to provide further clarification in the pORPS regarding the management of over-allocation (both water quality and quantity), including how to recognise over-allocation when limits have not been set in an FMU or part of an FMU.²⁹ Ngāi Tahu ki Murihiku seeks further clarification within the pORPS regarding the management of dams and weirs.³⁰
50. Mark Kramer seeks unspecified amendments to clarify or recognise that suction dredging is an activity that will be carried out in the wet bed of some rivers and that when

²³ 00403.001 McArthur Ridge, 00404.001 Strath Clyde Water and others

²⁴ 00403.002 McArthur Ridge, 00404.002 Strath Clyde Water and others

²⁵ 00403.003 McArthur Ridge, 00404.003 Strath Clyde Water and others

²⁶ 00235.003 OWRUG

²⁷ 00509.005 Wise Response

²⁸ 00509.007 Wise Response

²⁹ 00223.004 Ngāi Tahu ki Murihiku

³⁰ 00223.005 Ngāi Tahu ki Murihiku

considering effects, reasonable parameters are set such as those in section 13.5.1.5 of the Water Plan.³¹

51. Fish and Game seeks unspecified amendments to explicitly knowledge that water bodies that support recreation and amenity values are highly valued feature³² and to acknowledge and ensure consistent protection of the water bodies recognised in the Kawarau WCO.³³
52. Kit Girling seeks to ensure that the existing groundwater protection zone is extended to include all residential areas including new subdivisions in and around Outram.³⁴
53. Shaping Our Future seeks that the policies in the pORPS require ORC to establish funding and a group of Kāi Tahu, key experts, local, regional and central government, key stakeholders, and community members to follow through the recommendations contained in the Shaping Our Future Wakatipu Water report and prepare a plan of direct community and stakeholder actions.³⁵
54. Toitū te Whenua submits that the definition of “pollutant/waste” is unclear in relation to herbicide and seeks leeway for herbicide usage to treat aquatic pests such as lagarosiphon as well as ensuring the use of hessian is not prohibited.³⁶ The submitter states that the LF chapter does not talk much about prevention of new species getting into water bodies but does not seek specific relief.³⁷
55. Yellow-eyed Penguin Trust seeks to ensure that the waters of Otago are safe to drink, swim in, and provide for mahika kai.³⁸
56. WAI Wānaka seeks a range of amendments in relation to the management of Otago’s deepwater lakes:
 - Establish a formal lakes management decision-making process with stakeholders to guide future research, monitoring and lakes’ management actions,³⁹
 - Increase understanding of lakes’ ecosystems and hydrodynamic processes, water quality monitoring including buoys, deepwater sampling and remote sensing of surface water,⁴⁰
 - Build on existing data from ORC’s NPSFM required attribute sampling to address key questions about the lakes’ ecosystems and processes,⁴¹

³¹ 00417.001 Mark Kramer

³² 00231.01 Fish and Game

³³ 00231.011 Fish and Game

³⁴ 00312.001 Kit Girling

³⁵ 00013.001 Shaping Our Future

³⁶ 00101.062 Toitū te Whenua

³⁷ 00101.063 Toitū te Whenua

³⁸ 00120.005 Yellow-eyed Penguin Trust

³⁹ 00222.007 WAI Wānaka

⁴⁰ 00222.008 WAI Wānaka

⁴¹ 00222.009 WAI Wānaka

- Support a substantial bid for a six-year Ministry of Business, Innovation and Employment-funded Otago deepwater lakes research project to match the scale of the research questions necessary for evidence-based management for the three lakes environments,⁴²
- Align the research needs of the Upper Lakes rohe and requirements of freshwater environmental policy documents from the Ministry for the Environment, with Ministry for Primary Industry and Kāi Tahu freshwater aspirations,⁴³
- Use WAI Wānaka’s deepwater lakes strategy and Community Catchment Plan as templates for all three deepwater lakes,⁴⁴
- Enhance preparedness for modelling and managing effects of climate change on the lakes’ hydrodynamics and health, and⁴⁵
- Increase public awareness, understanding and engagement in the challenges to the health of Otago deepwater lakes by bringing experts to present to public meetings and school groups.⁴⁶

9.3.3.3. Analysis

57. I consider that the amendments I have recommended to the LF chapter retain the focus on Te Mana o te Wai and protecting wetlands. I therefore recommend accepting the submission points by Kāi Tahu ki Otago. Insofar as I have recommended accepting other submission points by Ngāi Tahu ki Murihiku, Kāi Tahu ki Otago, and Te Rūnanga o Ngāi Tahu throughout this chapter, I recommend accepting in part that submission point.
58. I consider that the provisions of the LF chapter recognise the engagement required with communities in managing land and freshwater. For example, LF-VM-M3 (which is applicable to all sections of the LF chapter) states that ORC must work with communities to achieve the objectives and policies of that section, including by (among other things) engaging with communities. I do not recommend accepting the submission point by Central Otago Winegrowers Association.
59. The submission points by Gavan James Herlihy, McArthur Ridge, and Strath Clyde Water and others seek to emphasise the importance of the use of water to the social, economic, and cultural well-being of Otago’s communities. I do not disagree with this sentiment, however I do not consider that the type of policy framework sought by these submitters gives effect to Te Mana o te Wai. In my opinion, it is clear from the objective of the NPSFM (and from LF-WAI-P1) that there is a hierarchy of obligations to be applied in decision-making and the types of economic uses of water highlighted by the submitters fall into the third priority, behind the health and well-being of water bodies and freshwater ecosystems, and the health needs of people. Decisions about allocations for particular types of uses or activities is a matter for the LWRP to address, in the context of values,

⁴² 00222.010 WAI Wānaka

⁴³ 00222.011 WAI Wānaka

⁴⁴ 00222.012 WAI Wānaka

⁴⁵ 00222.013 WAI Wānaka

⁴⁶ 00222.014 WAI Wānaka

environmental outcomes, flow and level regimes, and limits on resource use. I do not recommend accepting these submission points.

60. I agree with OWRUG that it will be important for there to be clarity about interim timeframes or goals on the journey to achieving the freshwater visions set out in the LF-VM section. I do not consider that the pORPS is the appropriate vehicle for this. There is considerable work to be done to prepare the LWRP, including developing environmental outcomes, identifying baseline states for attributes and target attribute states where necessary. This information will provide a much clearer picture about the 'gap' between current state and, at minimum, achieving the national bottom lines in the NPSFM. That information will assist with understanding what further work is required to meet the long-term freshwater visions and the rate and scale of change that will be required. In my opinion, there are other planning processes and non-regulatory mechanisms that will provide more appropriate vehicles for the type of framework sought by OWRUG. I do not recommend accepting this submission point.
61. I consider that the provisions of the LF chapter include direction on ecological health, as well as the wider health and well-being of water bodies and freshwater ecosystems. In addition, there is specific direction on the management of outstanding water bodies and their significant values in the NPSFM which the pORPS must give effect to. I do not recommend accepting the submission point by Wise Response.
62. I am unsure what an Integrated Landscape Management approach is or what amendments would be required to the LF chapter to implement such an approach. Without further evidence, I do not recommend accepting the submission point by Wise Response.
63. I agree with Ngāi Tahu ki Murihiku that over-allocation is a significant issue for the region. I consider that the provisions in the LF chapter address this in a number of ways. Firstly, the LF-WAI sets out how to give effect to Te Mana o te Wai in Otago, which will not be possible as long as there is over-allocation of resources. Similarly, the freshwater visions in LF-VM will not be achieved as long as over-allocation is present. The LF-FW section contains more specific direction, including in LF-FW-P7(5) to phase out existing over-allocation and avoid future over-allocation as well as in LF-FW-M6(5)(b) to include methods and timeframes for phasing out over-allocation. I acknowledge that this likely does not provide the level of detail or certainty sought by the submitter, however in my experience resolving over-allocation is a highly complex and contentious matter that takes time to resolve. The methods and timeframes for resolving over-allocation will depend on the circumstances of each situation, which I consider is recognised by the pORPS. I therefore do not recommend accepting the submission point by Ngāi Tahu ki Murihiku.
64. I understand the concerns of Ngāi Tahu ki Murihiku in relation to dams and weirs and acknowledge that damming is referenced in a number of places in the pORPS. I am unsure exactly what is sought by the submitter and note that the submitter may wish to clarify this in evidence. At this stage, subject to further evidence on the relief sought, I do not recommend accepting this submission point.

65. Suction dredging is a specific activity that is managed through the Water Plan at present. I consider that a regional plan is the appropriate planning document for this level of detail, and for managing such a specific activity, and therefore do not recommend accepting the submission point by Mark Kramer.
66. I agree with Fish and Game that water bodies support recreation and amenity values. In my view, those values are largely dependent on the physical health of those water bodies. For example, clean water provides good habitat for fish and therefore supports the use of water bodies for recreational fishing. In my opinion, the pORPS has appropriately focused on these health aspects of freshwater management, with the view that these 'primary values' will support other types of values, including recreation and amenity values. I do not recommend accepting the submission point by Fish and Game.
67. I note that the Kawarau WCO is used as a basis for identifying the Kawarau River and relevant tributaries as outstanding water bodies in LF-FW-P11(1) and that LF-FW-P13(5) requires recognising and implementing the restrictions in WCOs. I am unsure what further relief is sought by Fish and Game in relation to the Kawarau WCO and, without further evidence, do not recommend accepting this submission point.
68. I note that the Outram Groundwater Protection Zone is mapped and referenced in the Water Plan, not the pORPS 2021, so any amendments to the extent of that zone is outside the scope of this process. I do not recommend accepting the submission point by Kit Girling.
69. I am aware of the work done through the Shaping Our Future project and consider that this is a valuable community initiative that will assist ORC, and the territorial authorities, to achieve the desired outcomes for their communities. The establishment and funding of groups as sought by Shaping our Future is not a matter for the pORPS – these types of decisions are made by councils under the provisions of the LGA and particularly as part of their long-term plan and annual plan processes. I have read the *Shaping our Future Whakatipu Water Report 2020/21* (Shaping Our Future, 2021) and consider that this document will provide the Queenstown-Lakes district communities with a clear foundation for engaging in the development of the LWRP, which I understand is underway. This will be the appropriate vehicle for implementing many of the recommendations and actions listed in the report, alongside non-regulatory methods. Insofar as this submission point seeks relief that is outside the scope of the pORPS, I do not recommend accepting the submission point.
70. The level of detail sought by Toitū te Whenua with regard to herbicides is, in my view, best addressed through the regional plan which contains rules on managing the use of these types of substances. I acknowledge that the pORPS does not contain a lot of direction on managing pest species and note that this is deliberate. The Biosecurity Act 1993 is the primary statute for managing biosecurity, including pest species. That Act sets out the regulatory responsibilities of the relevant agencies, including councils, and the framework for managing pest species. I do not recommend accepting the submission points by Toitū te Whenua.

71. The environmental outcomes sought by Yellow-eyed Penguin Trust for Otago’s water bodies are more stringent than the national bottom-lines set in the NPSFM. I consider that the appropriate avenue for identifying these types of outcomes is through implementing the NOF process in the NPSFM, which requires engagement with communities on identifying values and developing associated environmental outcomes. I do not recommend accepting the submission point by Yellow-eyed Penguin Trust.
72. Most of the relief sought by WAI Wānaka is outside the scope of the pORPS. For example, a formal decision-making process, monitoring, research, and supporting funding applications. This type of action would be more appropriately included in ORC’s long-term plan or annual plan. I do not recommend accepting the submission points by WAI Wānaka.

9.3.3.4. Recommendation

73. I do not recommend any amendments.

9.4. Definitions

74. There are a range of submissions relating to defined terms used in this section, some of which are addressed in other parts of this report. In summary:

- Defined terms used throughout the pORPS, including in this section, are addressed in *Report 3: Interpretation (Definitions and abbreviations)*.
- Defined terms used only in the LF chapter, but across two or more of the sections within the LF chapter, are addressed in this section of this report.
- Defined terms used only in one section (i.e. LF-WAI, LF-VM, LF-FW, or LF-LS) are addressed in those sections of the report.

75. In relation to the second matter above, there is one relevant term: “degraded.”

9.4.1. Degraded

9.4.1.1. Submissions

76. DOC seeks to amend the definition of “degraded” or amend the use of the term within the LF chapter to ensure it is not applied outside the specific NPSFM 2020 context.⁴⁷

9.4.1.2. Analysis

77. I have reviewed all uses of the term “degraded” throughout the pORPS. The term is used in the chapeau of LF-WAI-O1 and in APP2(a) and italicised, but I do not consider the defined term is applicable in those instances. In the former, the term is used in relation to the degradation of mauri and the definition is not entirely relevant to that concept. In the latter, the term is used in relation to biodiversity and the definition is not relevant outside the context of the NPSFM. “Degraded” is also used in LF-FW-O9(3) and the

⁴⁷ 00137.008 DOC

chapeau of LF-FW-P10 but not italicised. In both cases, the term is not italicised but given the provisions apply to freshwater, I consider the definition is relevant and therefore the term should be italicised.

78. Mandatory direction 6 in *14: Definitions Standard* of the National Planning Standards states that if a term is used in more than one context, local authorities must, in their *Definitions* chapter, add the context in which the term is defined in brackets after the term name. For example, “bed (in relation to lakes, rivers, and the sea)”. I consider that this direction is relevant because “degraded” is being used in a defined and undefined way. To comply with the National Planning Standards, I recommend including the context after the term name in the *Definitions* chapter as follows: “degraded (in relation to freshwater)”. In my opinion this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.

9.4.1.3. Recommendation

79. I recommend the following:
- a. Removing italicising of the term “degraded” in LF-WAI-O1 and APP2(a),
 - b. Italicising the term “degraded” in LF-FW-O9(3) and LF-FW-P10,
 - c. Including “in relation to freshwater” after the term “degraded” in the *Definitions* chapter.

9.5. LF-WAI – Te Mana o te Wai

9.5.1. Introduction

80. This section of the *LF – Land and freshwater* chapter expresses what Te Mana o te Wai means in Otago, and what it requires of any resulting freshwater management framework. This chapter responds directly to the direction in the NPSFM, particularly the objective and Policy 1, and the fundamental concept of Te Mana o te Wai. Objective LF-WAI-O1 sets out the Kāi Tahu expression of Te Mana o te Wai in Otago, in accordance with policy 1 and clause 3.2(1) of the NPSFM, by requiring that the mauri of waterbodies is protected, reflecting on the key values associated with wai.

81. Policy LF-WAI-P1 reflects the prioritisation required in freshwater management and builds on the foundation set by the objective in the NPSFM. Policy LF-WAI-P2 describes how Kāi Tahu rakatirataka will be exercised in freshwater management, guided by the 6 principles encompassed by Te Mana o te Wai. LF-WAI-P3 details the concept of ki uta ki tai, being a holistic approach to managing freshwater resources, recognising the wider environment they are in. It captures several matters covered by policies in the NPSFM, including Policy 3 (integrated management) and Policy 4 (integrated response to climate change). LF-WAI-P4 sets out that the preceding objective and policies and fundamental to upholding Te Mana o te Wai, and must be given effect to when making decision affecting freshwater. LF-WAI-P4 specifically identifies that the LF-WAI provisions must be given effect to when interpreting and applying the provisions of the LF chapter. LF-WAI-

M1 provides guidance for the regional council on the partnership with Kāi Tahu, while LF-WAI-M2 provides similar guidance as LF-WAI-P4, although is specific to methods in the LF chapter.

82. The relevant provisions for this section are:

LF-WAI-O1 – Te Mana o te Wai
LF-WAI-P1 – Prioritisation
LF-WAI-P2 – Mana whakahaere
LF-WAI-P3 – Integrated management / ki uta ki tai
LF-WAI-P4 – Giving effect to Te Mana o te Wai
LF-WAI-M1 – Mana whenua involvement
LF-WAI-M2 – Other methods
LF-WAI-E1 – Explanation
LF-WAI-PR1 – Principal reasons
LF-WAI-AER1
LF-WAI-AER2

9.5.2. General themes

83. This section addresses a number of submission points by Waitaki Irrigators that have been made consistently across a number of provisions as well as the general submissions made on the LF-WAI provisions.

9.5.2.1. Rakatirataka

Introduction

84. The term “rakatirataka” is used in four provisions in the LF-WAI section and one submitter has concerns about the term.

Submissions

85. Waitaki Irrigators seeks the deletion of the term “rakatirataka” in from the following provisions:

- LF-WAI-O1(5),⁴⁸
- LF-WAI-P2,⁴⁹
- LF-WAI-P4,⁵⁰ and
- LF-WAI-AER1.⁵¹

86. The reasons for seeking this relief are that the term is not defined and not required to be implemented through any national planning instruments. The submitter considers that the meaning of rakatirataka is critical in how Te Mana o te Wai will be implemented in

⁴⁸ 00213.007 Waitaki Irrigators

⁴⁹ 00213.008 Waitaki Irrigators

⁵⁰ 00213.009 Waitaki Irrigators

⁵¹ 00213.010 Waitaki Irrigators

lower order planning instruments, given the direction provided by LF-WAI-P4 in respect of LF-WAI-P2. LF-WAI-P2 provides guidance on what is meant by rakatirataka, but the submitter notes that it is unclear whether this meaning should be applied throughout the pORPS. If this is the intention, Waitaki Irrigators seek that this should be expressly stated in the definition.

Analysis

87. As identified by Kāi Tahu ki Otago in their further submission on this point:

“The right of Kāi Tahu to exercise their mana and rakatirataka in relation to te taiao is guaranteed under Article 2 of Te Tiriti o Waitangi and recognised in the Ngāi Tahu Claims Settlement Act 1998. Recognition of rakatirataka is consistent with the requirements of s. 8 of the RMA.”⁵²

88. I agree with Kāi Tahu ki Otago and therefore do not recommend accepting the relief sought by Waitaki Irrigators.

Recommendation

89. I do not recommend any changes.

9.5.2.2. General submissions

90. Fish and Game seeks to retain the LF-WAI section subject to their relief sought elsewhere.⁵³ DCC requests amendments to the pORPS to align the CE chapter more closely with the LF-WAI section where appropriate.⁵⁴ The submitter considers that aspects of the LF-WAI section that are relevant to the coastal environment and coastal waters should be clearly articulated in the CE chapter to provide clarity.

91. I consider the amendments sought by DCC are to the CE chapter. Accordingly, this matter is addressed in *Chapter 6: Coastal environment*.

9.5.3. Definitions

92. There are a range of submissions relating to defined terms used in this section, some of which are addressed in other parts of this report. In summary:

- Defined terms used throughout the pORPS, including in this section, are addressed in *Report 3: Interpretation (Definitions and abbreviations)*
- Defined terms used only in the LF chapter, but across two or more of the sections within the LF chapter, are addressed in section 9.4 of this report.
- Defined terms used only in the LF-WAI section are addressed in this section of the report.

⁵² FS00226.548 Kāi Tahu ki Otago

⁵³ 00231.044 Fish and Game

⁵⁴ 00139.079 DCC

93. There are no submissions on definitions used only in the LF-WAI section, so no further discussion is required.

9.5.4. LF-WAI-O1 – Te Mana o te Wai

9.5.4.1. Introduction

94. As notified, LF-WAI-O1 reads:

LF-WAI-O1 – Te Mana o te Wai

The mauri of Otago’s *water bodies* and their health and well-being is protected, and restored where it is *degraded*, and the management of *land* and *water* recognises and reflects that:

- (1) *water* is the foundation and source of all life – na te wai ko te hauora o ngā mea katoa,
- (2) there is an integral kinship relationship between water and Kāi Tahu whānui, and this relationship endures through time, connecting past, present and future,
- (3) each *water body* has a unique whakapapa and characteristics,
- (4) *water* and *land* have a connectedness that supports and perpetuates life, and
- (5) Kāi Tahu exercise rakatirataka, manaakitaka and their *kaitiakitaka* duty of care and attention over wai and all the life it supports.

9.5.4.2. Submissions

95. There are fifteen submissions on LF-WAI-O1. Six submitters seek it be retained as notified.⁵⁵ The remaining submitters seek a range of general and specific amendments to the objective.

96. OWRUG and Federated Farmers have concerns that the focus on mauri in the objective is incorrect, does not accurately reflect the requirements of the NPSFM and is difficult to assess in practice. These submitters seek different amendments (respectively):

- Delete the chapeau in its entirety and replace it with:⁵⁶

The health and wellbeing of Otago’s water bodies is protected, and improved where is it [sic] degraded, and the management of the land and water recognises and reflects that:

- (1) Protecting the health of water protects the wider environment and the mauri of water; ...

⁵⁵ 00230.073 Forest and Bird, 00138.046 QLDC, 00409.002 Ballance, 00407.029 Greenpeace and 1259 supporters, 00014.039 John Highton, 00139.080 DCC.

⁵⁶ 00235.077 OWRUG

- Amend the chapeau as follows:⁵⁷

The mauri of Otago’s significant and highly-valued natural resources are identified and protected, or enhanced where water bodies and their health and well-being is protected, and restored where it is degraded, and the management of land and water recognises and reflects that restores the balance between water, the wider environment, and the community, by recognising that: ...

97. OWRUG considers that the chapeau of the objective is not a faithful articulation of the fundamental concept of Te Mana o te Wai as set out in the NPSFM, which recognises that protecting the health of freshwater protects the health and wellbeing of the wider environment and protects the mauri of the water – a “water-centric” concept. OWRUG considers that mauri is an inappropriate measure for the achievement of LF-WAI-O1 because of the difficulties in assessing it. The submitter also states that the term “restore” is not used in the same way as it is used in the NPSFM and creates uncertainties regarding the point in time restoration must ‘go back to’.
98. Trojan and Wayfare seek that the direction in the chapeau to “protect” mauri should be replaced with “maintain”, to ensure consistency with LF-FW-P7.⁵⁸
99. Ngāi Tahu ki Murihiku, Te Rūnanga o Ngāi Tahu, and Ngāi Tahu ki Murihiku seek to include reference to coastal waters in clause (4) to ensure that connectedness to coastal waters is clearly recognised in the objective.⁵⁹ As a consequential amendment, Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu also seek to change “water” to “freshwater” at the start of clause (4) so the relationship between freshwater, land, and coastal water is clear.⁶⁰
100. Waitaki Irrigators seek to delete the reference to rakatirataka in clause (5) on the basis that it is not defined and is not required to be implemented through any national planning instruments.⁶¹
101. Fish and Game considers that the way people connect with water bodies should be recognised and provided for in the pORPS and seeks the addition of a new clause as follows:⁶²

(6) people are enabled to use, enjoy and connect meaningfully with water bodies to further their amenity and well being, including through recreation and harvesting food.

9.5.4.3. Analysis

102. I consider there are two main consequences of Federated Farmers’ proposed amendments to the chapeau of LF-WAI-O1 that would result in the provision not giving

⁵⁷ 00239.069 Federated Farmers

⁵⁸ 00206.027 Trojan, 00411.039 Wayfare

⁵⁹ 00223.079 Ngāi Tahu ki Murihiku, 00234.024 Te Rūnanga o Ngāi Tahu, 00226.158 Kāi Tahu ki Otago

⁶⁰ 00226.158 Kāi Tahu ki Otago, 00234.024 Te Rūnanga o Ngāi Tahu

⁶¹ 00213.007 Waitaki Irrigators

⁶² 00231.045 Fish and Game

effect to the NPSFM. Firstly, the amendments would restrict the application of Te Mana o te Wai to only “significant and highly-valued natural resources”. That is not consistent with the objective of the NPSFM which is to “ensure that natural and physical resources are managed in a way that...” [my emphasis added]. There is no significance test in the objective of the NPSFM that would narrow its application to only significant or highly-valued natural resources and it is clear that the management of physical resources is also a component of giving effect to Te Mana o te Wai.

103. Secondly, while I accept that clause 1.3 of the NPSFM refers to “restoring and preserving the balance between the water, the wider environment, and the community”, it uses this phrasing to describe the outcome of Te Mana o te Wai. In my view, that is more holistic than identifying and protecting or enhancing significant and highly-valued natural resources. For these reasons, I do not agree with the amendments proposed by Federated Farmers.

104. I agree with OWRUG’s interpretation of the “water-centric” nature of Te Mana o te Wai and note that clause 1.3(1) of the NPSFM states:

“Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai.”

105. I understand mauri to be a broader concept than just health and well-being, although clearly that is a considerable part. The Kāi Tahu ki Otago IMP states that:

“The primary management principle for Māori is the protection of mauri or life-giving essence of an ecosystem from desecration.” (section 3.2, p.27).

106. Given the fundamental importance of water to Kāi Tahu culture, and that mauri is the primary management principle, I do not consider that the amendments sought by OWRUG capture the intent of this objective appropriately. I do not recommend accepting this submission point. For the same reasons, I do not agree with the amendments sought by Trojan and Wayfare to refer to “maintaining” mauri rather than “protecting.” It is evidence from the NPSFM that one of the outcomes of Te Mana o te Wai is to protect mauri.

107. I agree that the term “restore” is used in the NPSFM in a different context to LF-WAI-O1 and that Policy 5 uses the term “improved” in a comparable way to this objective. As a result, I agree with OWRUG’s proposed amendments.

108. Te Rūnanga o Ngāi Tahu, Ngā Rūnanga and Kāi Tahu ki Otago seek to replace the reference to “water” in clause (4) with “freshwater” and to include specific reference to “coastal waters”. The definition of “water” from the RMA includes fresh water and coastal water, so while I consider that the amendments sought are not technically necessary, I appreciate that the amendments sought would clarify that the clause is referring to both fresh and coastal waters without needing to refer to the definition of “water”. I therefore recommend accepting the amendments sought.

109. Fish and Game seeks to include a new clause (6) focused on enabling people to use, enjoy and connect meaningfully with water bodies. They consider that it is important for the

pORPS to recognise the ability for people to interact with water bodies in a meaningful way and highlight in their submission that when the environment is healthy, people are able to contribute to their health and well-being needs by connecting with the environment. Fish and Game also state that if the environment is unhealthy, these opportunities diminish and many water bodies in Otago now fail to provide for those opportunities that are valued by New Zealanders.

110. Water plays a significant role in Kāi Tahu spiritual beliefs and cultural traditions. Kāi Tahu have an obligation through whakapapa to protect wai and all the life it supports. LF-WAI-O1 describes the fundamental principles that contribute to this relationship, and in doing so, describes how Te Mana o te Wai will be given effect to through the management of land and water. I am not convinced that a new clause providing for use of water bodies by people accurately reflects the tenor and intent of the objective, however I agree with the points made by Fish and Game that the health of the environment, including fresh water, affects the health and well-being of people and communities and their ability to connect with water. I recommend accepting this submission in part and aligning the wording more closely with the principles set out in clause 1.3 of the NPSFM so that the objective retains its overall intent and does not stray into the outcomes of managing freshwater.

9.5.4.4. Recommendation

111. I recommend the following amendments to LF-WAI-O1:

LF-WAI-O1 – Te Mana o te Wai

The mauri of Otago’s *water bodies* and their health and well-being is protected, and ~~restored~~ improved⁶³ where it is *degraded*, and the management of *land* and *water* recognises and reflects that:

- (1) *water* is the foundation and source of all life – na te wai ko te hauora o ngā mea katoa,
- (2) there is an integral kinship relationship between water and Kāi Tahu whānui, and this relationship endures through time, connecting past, present and future,
- (3) each *water body* has a unique whakapapa and characteristics,
- (4) fresh water, ~~and~~ land and coastal water⁶⁴ have a connectedness that supports and perpetuates life, ~~and~~

⁴⁷ In matters of mana, the associated spiritual and cultural responsibilities connect natural resources and mana whenua in a kinship relationship that is reciprocal and stems from the time of creation.

⁶³ 00235.077 OWRUG

⁶⁴ 00223.079 Ngāi Tahu ki Murihiku, 00234.024 Te Rūnanga o Ngāi Tahu, 00226.158 Kāi Tahu ki Otago, 00226.158 Kāi Tahu ki Otago

- (4A) protecting the health and well-being of water protects the wider environment and the mauri of water,⁶⁵
- (5) Kāi Tahu exercise rakatirataka, manaakitaka and their kaitiakitaka duty of care and attention over wai and all the life it supports- and
- (6) all people and communities have a responsibility to exercise stewardship, care, and respect in the management of *fresh water*.⁶⁶

9.5.5. LF-WAI-P1 – Prioritisation

9.5.5.1. Introduction

112. As notified, LF-WAI-P1 reads:

LF-WAI-P1 – Prioritisation

In all management of *fresh water* in Otago, prioritise:

- (1) first, the health and well-being of *water bodies* and *freshwater* ecosystems, te hauora o te wai and te hauora o te taiao, and the exercise of *mana whenua* to uphold these,⁶⁷
- (2) second, the health and well-being needs of people, te hauora o te tangata; interacting with *water* through ingestion (such as *drinking water* and consuming harvested resources) and immersive activities (such as harvesting resources and bathing), and
- (3) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

9.5.5.2. Submissions

113. There are 25 submissions on LF-WAI-P1. Eight submitters seek it be retained as notified.⁶⁸ The remaining submitters seek amendments, either general in nature or specific.

114. Some submitters either oppose the policy for the following reasons or have not stated their position but raise general concerns:

- the priorities do not weight correctly,⁶⁹
- the policy is not holistic and contradicts ki uta ki tai and integrated management,⁷⁰

⁶⁵ 00235.077 OWRUG

⁶⁶ 00231.045 Fish and Game

⁶⁷ In matters of mana, the associated spiritual and cultural responsibilities connect natural resources and *mana whenua* in a kinship relationship that is reciprocal and stems from the time of creation.

⁶⁸ 00014.040 John Highton, 00022.015 Graymont, 00121.048 Ravensdown, 00226.159 Kāi Tahu ki Otago, 00234.025 Te Rūnanga o Ngāi Tahu, 00236.056 Horticulture NZ, 00407.030 Greenpeace and 1259 supporters, 00409.003 Ballance

⁶⁹ 00126.031 Harbour Fish, Southern Fantastic and Fantastic Holdings

⁷⁰ 00321.029 Te Waihanga

- the policy should be deleted and replaced with a comprehensive suite of policies that addresses how Te Mana o te Wai applies to waterbodies and freshwater ecosystems, including the activities captured by each priority level, and how tensions between those are resolved,⁷¹
- the priorities should be removed and replaced with wording that accentuates the balance in managing freshwater.⁷²

115. The Minister for the Environment seeks that the chapeau be amended to refer to “all decision-making affecting freshwater” rather than “all management of fresh water”.⁷³

Priorities – general

116. DCC supports the policy but seeks clarification about how to apply the priorities where there is conflict between them.⁷⁴ QLDC supports the policy but seeks an additional policy on allocation and reallocation of water amongst the clause (3) matters.⁷⁵ No specific wording is provided. This is a common theme in submissions, with many submitters seeking clarity about the activities that are envisaged to be within the scope of either clause (2) or clause (3), or proposing amendments to either include or exclude specific activities from clause (2).

117. Several submitters seek changes to the wording to better reflect the NPSFM hierarchy of obligations in Te Mana o te Wai (Clause 1.3(5) of the NPSFM). These are generally in relation to the expression of each priority in the policy. In particular, Waitaki Irrigators seeks amendments to more closely align with the wording in Objective 1 of the NPSFM, particularly in LF-WAI-P1(1).⁷⁶

First priority

118. OWRUG seeks to remove references to te hauora o te wai and te hauora o te taiao from clause (1).⁷⁷ The submitter believes that the relationships between te hauora o te wai, te taiao and te takata have not been accurately expressed in clauses (1) or (2).

Second priority

119. Harbour Fish raises a general concern that there is no mention of commercial fishing in the term ‘harvesting resources’ in clause (2).⁷⁸ Forest and Bird and Meridian seek amendments to specify that the term applies to resources harvested from the water body, in order to clarify that crops indirectly benefitting from the water body (for

⁷¹ 00322.016 Fulton Hogan

⁷² 00101.026 Toitū Te Whenua

⁷³ 00136.003 Minister for the Environment

⁷⁴ 00139.081 DCC

⁷⁵ 00138.047 QLDC

⁷⁶ 00213.016 Waitaki Irrigators, 00239.070 Federated Farmers

⁷⁷ 00235.078 OWRUG

⁷⁸ 00126.031 Harbour Fish

example, irrigated crops) are not within the scope of this provision.⁷⁹ Fish and Game seeks to replace the term “bathing” with “recreation” on the basis that bathing is a term rarely used in modern English.⁸⁰

120. In conjunction with a similar change to clause (1), OWRUG seeks to remove reference to te hauora o te tangata from clause (2).⁸¹ They consider that clause (2) is an overly narrow articulation of the second priority as set out in the NPSFM. They also seek to amend the clause to read “immersive activities, including harvesting resources...”

121. Silver Fern Farms and Meridian seek to delete the reference to well-being and immersive activities in clause (2), on the basis that clause (2) otherwise conflates recreational and economic need with health needs, which differs from the hierarchy of obligations.⁸²

Lifeline utilities and hydroelectricity generation

122. There are conflicting views on how the policy should provide for lifeline utilities, including hydroelectricity generation. Meridian and Trustpower consider hydroelectricity generation should be explicitly provided for in clause (2) and therefore be a second priority under the hierarchy of obligations⁸³. They consider that electricity is a lifeline utility and without it there would be few to no medical services available to meet the health needs of people.⁸⁴ For clarity, and to ensure the provisions in the *EIT – Energy, infrastructure and transport* chapter are not misinterpreted, Forest and Bird seeks that hydroelectricity generation be included within (3), the third priority.⁸⁵

Additional clauses

123. AWA seeks the addition of two further priorities:

(4) fourth, the activities in (3) that deliver the best outcomes for the environment and local communities, as determined through consultation with iwi, mana whenua and local communities.

(5) fifth, the taking and use of water for water export will be a prohibited activity.

124. The submitter considers that clause (4) will provide for additional prioritisation, to achieve better environmental and community outcomes and that (5) will prevent the unacceptable environmental and cultural consequences of exporting bottled water and irrigation consents being repurposed for this use.

⁷⁹ 00230.074 Forest and Bird, 00306.031 Meridian

⁸⁰ 00231.046 Fish and Game

⁸¹ 00235.078 OWRUG

⁸² 00221.005 Silver Fern Farms, 00306.031 Meridian

⁸³ 0306.031 Meridian, 00311.013 Trustpower

⁸⁴ 00306.091 Meridian

⁸⁵ 00230.074 Forest and Bird

9.5.5.3. Analysis

125. Harbour Fish and Te Waihanga raise general concerns with LF-WAI-P1 but have not sought specific relief. I do not share their concerns, primarily because the policy closely follows the objective of the NPSFM. Without further clarification from the submitters about the amendments required to resolve their concerns, I do not recommend that their submission is accepted. Toitū te Whenua seeks to remove the priorities and replace them with wording that accentuates the balance in managing freshwater. I do not consider this reflects the direction in the objective of the NPSFM, which clearly requires prioritising some matters above others in decision-making.
126. The amendment to the chapeau proposed by the Minister for the Environment would mean that LF-WAI-P1 applies to any type of decision-making affecting fresh water, rather than only within freshwater management. I recommend accepting this submission point and agree that the amendment proposed is better aligned with the objective of the NPSFM, which requires “ensur[ing] that natural and physical resources are managed in a way that prioritises...”

Priorities – general

127. There are a range of submissions on the priorities set out in LF-WAI-P1. The wording in the policy differs to the priorities listed in the objective of the NPSFM. Many submitters oppose that variation, and/or seek amendments to clarify which activities are provided for within each priority. The most contention is between clauses (2) and (3).
128. Fulton Hogan considers that the policy provides very little additional guidance to that provided by the objective of the NPSFM and highlight, in particular, uncertainty about how the hierarchy will interact with other provisions (including LF-WAI-P2(3) which seeks to provide for customary use). They also point out that drinking and community water supplies often provide water for a range of uses that may be captured by both the second and third priorities and that practical policy guidance is required to address this tension.
129. Fulton Hogan seeks the inclusion of a comprehensive suite of policies that address how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region, including the activities that sit under each priority level and how tensions between these activities are to be resolved. No specific wording has been proposed and the submitter notes that Part 3 of the NPSFM places responsibility for this task on regional councils. Alongside Fulton Hogan, DCC and QLDC also seek guidance on how to apply the priorities where there is conflict between them and guidance on allocation and reallocation of water amongst priority three matters. In a similar vein, AWA seeks the inclusion of a fourth priority to clarify how decisions should be made amongst priority (3) matters.
130. The question of whether additional guidance is warranted, and if so, what specific guidance would be appropriate, is a matter that would benefit from further evidence from parties. At this stage, I consider that there may be merit in providing additional guidance as sought by these submitters. In the absence of any suggested wording, I am unsure what type of guidance the submitters seek and do not consider there is enough evidence in the submissions to draft the type of guidance requested by the submitters. I

am also unsure whether the pORPS is the appropriate place for this type of direction, or whether this more detailed type of direction in relation to particular types of activities is better addressed through the LWRP. At this stage, I recommend retaining the provisions as notified subject to evidence from submitters on this matter.

131. Waitaki Irrigators considers that “hauora” can be defined as meaning “health” and that te hauora o te taiao can be defined as the health of the environment as a whole, with te hauora o te wai (the health of the water) being nested within that concept. The submitter considers that including te hauora o te taiao in clause (1) of the policy may potentially be much broader than priority (1) from the NPSFM and seeks redrafting to mirror the hierarchy set out in the NPSFM. I agree that the wording of clause (1) as notified has the potential to be broadly interpreted (i.e. as requiring the prioritisation of the health and well-being of the wider environment, not only freshwater). I also agree with the submitter that the NPSFM describes Te Mana o te Wai as “recognis[ing] that protecting the health of freshwater protects the health and well-being of the wider environment.”⁸⁶

132. The relief sought by the submitter is to amend the priorities so that they match the hierarchy of obligations as set out in clause 1.3(5) of the NPSFM. I do not consider it is necessary to replicate the content of the NPSFM and would prefer instead to amend clause (1) to address the issue raised by the submitter. In my view, minor restructuring and amendment to clarify the role te hauora o te wai plays in te hauora o te taiao would retain the original intent of the provision and align with the amendments I have recommended to LF-WAI-O1, in particular the addition of new clause (4a). I note that Te Rūnanga o Ngāi Tahu, Kāi Tahu ki Otago, and Ngāi Tahu ki Murihiku did not make a further submission on this point. I would appreciate hearing from those parties about whether I have appropriately understood and referred to the concepts of hauora.

First priority

133. OWRUG considers that the references to te hauora o te wai and te hauora o te taiao in clause (1) are attempting to recognise that protecting the health of water will protect the health of the wider environment as set out in clause 1.3(1) of the NPSFM, however it does not achieve this as it does not refer to te hauora o te takata. They seek to delete the references to ta hauora o te wai, te hauora o te taiao, and te hauora o te tangata in clauses (1) and (2) entirely.

134. For the same reasons as I have set out in relation to the submission by Waitaki Irrigators, I agree that clause (1) has not accurately reflected the relationship between te hauora o te wai and te hauora o te taiao articulated in the NPSFM. However, I consider that deleting all reference to hauora goes beyond addressing this issue and would remove reference to concepts that are important for expressing Kāi Tahu values and beliefs. I consider that my recommended amendments to clause (1) in response to Waitaki Irrigators addresses OWRUG’s concern with that clause. I have discussed OWRUG’s amendments to (2) separately below as they relate to other submission points on that clause.

⁸⁶ Clause 1.3(1), NPSFM 2020

Second priority

135. The second priority set out in LF-WAI-P1 differs from the equivalent priority set out in the NPSFM because it seeks to provide more clarity on what is considered a health need. It also goes beyond the NPSFM priority by referring to the well-being of people in addition to health needs. Many submitters seek amendments to this clause, including general requests for greater clarity and specific requests for particular types of activities to be clearly within (or without) the scope of the second priority.
136. As set out in the previous section, OWRUG seeks to delete the reference to te hauora o te tangata from priority (2) but retain the reference to “well-being” in addition to health needs. Conversely, Silver Fern Farms considers that including the well-being of people in (2) conflates priorities (2) and (3) and inappropriately limits te hauora o te tangata to circumstances where there is ingestion or immersion in water. They seek to delete “well-being” and move the reference to immersive activities to priority (3), narrowing the scope of priority (2) to ingestion only. Federated Farmers seeks similar amendments to align with the objective of the NPSFM and opposes any alteration that strays beyond what is provided for by the NPSFM.
137. In my view, priority (2) as stated in the objective of the NPSFM relates to the health needs of people as they relate to physical contact with water. The example used in the NPSFM is drinking water, which is also used in this policy. This policy expands on that direction to include immersive activities where people are engaging in activities in, on, or near water that may pose risks to human health. I note that the reference to drinking water in priority (2) in the NPSFM is not exclusive: it is preceded by “such as...” indicating that drinking water is one example but that there may be others.
138. In my opinion, a desire for safe human contact with water is supported by the inclusion of “human contact” as a compulsory value in Appendix 1A of the NPSFM and the national targets for primary contact, as well as the specific direction around identifying and monitoring primary contact sites (which are now defined as including a range of water--based activities, not only swimming as was the case in the NPSFM 2014, amended in 2017).⁸⁷ I also note the importance of harvesting resources to mahika kai. I understand that for Kāi Tahu, it is not only the resources that are harvested that are important, but also the customary practices and tikaka involved in harvesting.
139. I agree with Silver Fern Farms that referring to well-being in clause (2) introduces uncertainty about whether the well-being of people is to be prioritised second or third in decision-making. I also agree that te hauora o te tangata is a more holistic concept than only the health and well-being implications arising from ingestion of or immersion in water. I therefore recommend accepting the amendments proposed by the submitter.

⁸⁷ The National Policy Statement for Freshwater Management 2014 made a distinction between primary and secondary contact sites. The term secondary contact related to Objective A1 which required the health of people and communities, at least as affected by secondary contact (eg, wading and boating), to be safeguarded. If a higher level of human health protection was desired (eg, for people swimming), then a more stringent freshwater objective could be assigned.

140. I recommend accepting OWRUG’s request to delete the term “te hauora te tangata” but for different reasons. I do not consider that it is an appropriate term to use in this context as it has a broader meaning than solely the health needs of people. As I understand their submission, OWRUG considers it is not appropriate to refer to te hauora o te wai and te hauora o te taiao without also referring to te hauora o te tangata. I note that the description of Te Mana o te Wai in clause 1.3(1) of the NPSFM recognises that protecting the health of fresh water protects the health and well-being of the wider environment. As the definition of “environment” in the RMA includes people and communities, I do not consider specific reference to people is necessary. Te Rūnanga o Ngāi Tahu, Kāi Tahu ki Otago, and Ngāi Tahu ki Murihiku may wish to comment on this matter in their evidence.
141. OWRUG also seeks to delete the differentiation between ingestion and immersive activities in favour of one list of examples. I do not consider this improves the clarity of the provision and recommend retaining the notified structure. Harbour Fish raises a concern that there is no mention of commercial fishing in priority (2). That is deliberate – commercial uses of water (including fishing) are (appropriately, in my view) provided for in priority (3). Forest and Bird seeks amendments to clarify that the reference to “consuming harvested resources” is in relation to resources harvested from the water body, not resources benefitting from the body water (such as irrigated crops). I agree that this is the intended interpretation of priority (2) and consider that this is consistent with the submission of Kāi Tahu ki Otago seeking general amendments to ensure mahika kai is safe to harvest and consume. I recommend accepting the amendments as proposed by Forest and Bird.
142. Fish and Game seeks that priority (2) refer to “recreation” instead of “bathing.” They consider that while this term is wider, it is limited by the term “immersive activities” earlier in the clause. As discussed above, I consider it is appropriate for recreational activities where there is a direct risk to people’s health arising from contact with water to be considered within priority (2) but do not agree that “recreation” is the appropriate substitution for “bathing”. This is particularly because of the need to refer to the earlier qualifier (“immersive activities”) in order to understand the scope of the term. Given the importance of this policy in decision-making I consider any wording should be as clear as possible and reduce the opportunity for different interpretations.
143. Clause 3.8(3)(b) of the NPSFM requires primary contact sites to be identified within each FMU. Primary contact sites are defined as:
- ... a site identified by a regional council that it considers is regularly used, or would be regularly used but for existing freshwater quality, for recreational activities such as swimming, paddling, boating, or watersports, and particularly for activities where there is a high likelihood of water or water vapour being ingested or inhaled*
144. I consider “primary contact” would capture the same types of activities envisaged by Fish and Game but provides greater certainty and clarity for interpretation given that there is additional guidance provided in the NPSFM.
145. I am somewhat reluctant to include wording that indicates that recreation, on its own, is intended to be a priority (2) matter, which may be an interpretation of “primary contact”.

To my mind, any activity that brings people into direct contact with water has an element of human health need and is therefore within the ambit of priority (2). For example, scientists who must be partly immersed in water in order to undertake environmental monitoring. I am satisfied that it is clear that these examples are not exclusive and that other 'like' activities, such as the example I have given, would also be captured by the provision as intended.

146. When considering priority (2), I have noticed that the grammar is somewhat unclear – in particular, the use of a semi-colon and the words that follow. I do not consider that it is sensible to “prioritise ... interacting with water”. I recommend replacing the semi-colon with a comma and “interacting” with “and their interactions”. I consider this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.

Lifeline utilities and hydroelectricity generation

147. There are different views amongst the submitters about whether lifeline utilities (including hydroelectricity generation) should be provided for in priority (2) or (3). Trustpower considers that the provision of lifeline utilities (including hydroelectricity generation) is important in meeting the health and well-being needs of people and communities and therefore that they should be included in (2). Meridian also seeks to include specific reference to renewable electricity generation in (2). Conversely, Forest and Bird seeks to make explicit reference to lifeline utilities in (3).
148. As I have set out above, in my view LF-WAI-P1(2) encompasses the health needs of people as they arise from direct contact with water. I accept that lifeline utilities support the well-being of people and communities, but this does not arise as a result of direct contact with water. I consider there is a risk in expanding priority (2) beyond this threshold that many other activities would also make the same argument regarding their importance. There are many indirect uses of water that are important to the health and well-being of people and communities. Food production, for example, could be argued to fulfil a similar role to lifeline utilities in terms of its indirect (but important) contribution to health and well-being, but in my view it would not be appropriate to include this within priority (2).
149. While I agree with Forest and Bird that lifeline utilities should be included within priority (3), I do not consider that specific reference is necessary. It is evident, to my reading, that the provision of lifeline utilities is not an ingestion or immersive activity provided for in (2) and therefore the activity would fall within (3).
150. Trustpower considers that it is important that recognition is made of the role of lifeline utilities in meeting the health and well-being needs of people and communities. I agree that these utilities are important to people and communities and note that other submitters have sought greater direction regarding the consideration of matters within priority (3) but have not proposed wording at this stage. There may be opportunities to consider the provision of lifeline utilities as part of that discussion. Trustpower and Meridian may wish to comment on this matter in their evidence.

Additional clauses

151. AWA seeks the inclusion of two additional clauses. I have addressed their proposed clause (4) above in section 9.5.5.2 (Priorities – general) of this report.
152. Proposed clause (5) as sought by AWA would require regional plans to make the taking and use of water for export a prohibited activity. This type of restriction requires robust analysis under section 32 as well as broader considerations of the Council’s functions under section 30, the purpose and principles of the RMA set out in Part 2, and the requirements for regional plans in sections 63, 65 and 67 of the RMA. I note in particular section 68 relating to regional rules which states that “[i]n making a rule, the regional council shall have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect.”⁸⁸ In my opinion, it would be inefficient for the pORPS to place requirements like this on a regional plan that have not been assessed against the relevant tests for those regional plans. For example, if the pORPS required prohibiting an activity in a regional plan, but the preparation of that regional plan determined that a prohibited activity could not meet the required legal tests, then then would be an incongruous outcome. I do not consider that sufficient information has been provided by the submitter to allow a full consideration of these requirements and therefore do not recommend including the clause sought by AWA.

9.5.5.4. Recommendation

153. I recommend the following amendments to LF-WAI-P1:

LF-WAI-P1 – Prioritisation

In all ~~management of~~ decision-making affecting⁸⁹ *fresh water* in Otago, prioritise:

- (1) first, the health and well-being of *water bodies, freshwater ecosystems, and te hauora o te wai, and te hauora o te taiao, and as well as the exercise of mana whenua* to uphold these⁴⁷ and provide for te hauora o te taiao,⁹⁰
- (2) second, the health and well-being needs of people, te hauora o te tangata, ~~interacting~~ and their interactions⁹¹ with *water* through ingestion (such as *drinking water* and consuming ~~harvested~~ resources harvested from the water body⁹²) and immersive activities (such as harvesting resources and ~~bathing~~ primary contact⁹³), and
- (3) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

⁸⁸ Section 68(3), RMA

⁸⁹ 00136.003 Minister for the Environment

⁹⁰ 00213.016 Waitaki Irrigators

⁹¹ Clause 16(2), Schedule 1, RMA

⁹² 00230.074 Forest and Bird

⁹³ 00231.046 Fish and Game

9.5.6. LF-WAI-P2 – Mana whakahaere

9.5.6.1. Introduction

154. As notified, LF-WAI-P2 reads:

LF–WAI–P2 – Mana whakahaere

Recognise and give practical effect to Kāi Tahu rakatirataka in respect of *fresh water* by:

- (1) facilitating partnership with, and the active involvement of, *mana whenua* in *freshwater* management and decision-making processes,
- (2) sustaining the environmental, social, cultural and economic relationships of Kāi Tahu with *water bodies*,
- (3) providing for a range of customary uses, including mahika kai, specific to each *water body*, and
- (4) incorporating mātauraka into decision making, management and monitoring processes.

9.5.6.2. Submissions

155. Six submitters support LF-WAI-P2 and seek its retention as notified.⁹⁴

156. Waitaki Irrigators seeks to remove the reference to ‘rakatirataka’ because this is not defined or required to be implemented by any national planning instruments,⁹⁵

157. Federated Farmers seeks to delete the specific types of relationships Kāi Tahu have with waterbodies within clause (2),⁹⁶ and

158. Te Rūnanga o Ngāi Tahu seeks to amend clause (3) to specify that customary uses may require instream and out-of-stream allocations and also seeks to include a new clause (5) as follows: ⁹⁷

- (5) Managing wai and its connections with whenua in a holistic and interconnected way – ki uta ki tai.

159. The submitter considers this recognises that to achieve rakatirataka, instream and out of stream allocations may be required for mahika kai.

160. Fulton Hogan considers it is unclear how providing for customary uses in clause (3) of this policy aligns with the hierarchy set out in LF-WAI-P1. The submitter seeks that a

⁹⁴ 00014.041 Highton, 00138.049 QLDC, 00139.082 DCC, 00226.160 Kāi Tahu ki Otago, 00407.031 Greenpeace and 1259 supporters, 00409.004 Ballance

⁹⁵ 00213.008 Waitaki Irrigators

⁹⁶ 00239.071 Federated Farmers

⁹⁷ 00234.026 Te Rūnanga o Ngāi Tahu

comprehensive suite of policies be drafted that addresses the activities captured by each priority level, and how tensions between those are resolved.⁹⁸

9.5.6.3. Analysis

161. I have addressed the relief sought by Waitaki Irrigators in relation to rakatirataka in section 9.5.2.1 of this report. In summary, I do not agree with the submitter’s reasoning and do not recommend accepting this submission point.
162. Federated Farmers seeks to delete the specific types of relationships of Kāi Tahu with water bodies and has a particular concern about the reference to economic relationships. They consider the specific types of relationships are a matter to be addressed at the catchment level. I recommend accepting the relief sought as it would retain the intentionally broad scope of clause (2) without precluding consideration of particular types of relationships in future planning processes.
163. Clause (3) as notified provides broad discretion for the provision of customary uses (which may include allocation) and it is appropriate for decisions on the specific methods to occur through the regional plan process. I do not recommend accepting the amendment sought by Te Rūnanga o Ngāi Tahu to (3) for this reason.
164. I understand that integrated management, *ki uta ki tai*, is fundamental to Kāi Tahu rakatirataka and consider the additional clause proposed by Te Rūnanga o Ngāi Tahu is therefore appropriate. I recommend accepting this submission point and including the additional clause as clause (5).
165. I have previously addressed the issuing regarding tensions within priorities in relation to LF-WAI-P1 (see section 9.5.5 of this report) and therefore do not separately address them here.

9.5.6.4. Recommendation

166. I recommend the following amendments to LF-WAI-P2:

LF-WAI-P2 – Mana whakahaere

Recognise and give practical effect to Kāi Tahu rakatirataka in respect of *fresh water* by:

- (1) facilitating partnership with, and the active involvement of, *mana whenua* in *freshwater* management and decision-making processes,
- (2) sustaining the ~~environmental, social, cultural and economic~~⁹⁹ relationships of Kāi Tahu with *water bodies*,
- (3) providing for a range of customary uses, including ~~māhika kai~~ *māhika kai*,¹⁰⁰ specific to each *water body*, ~~and~~

⁹⁸ 00322.017 Fulton Hogan

⁹⁹ 00239.071 Federated Farmers

¹⁰⁰ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

- (4) incorporating mātauraka into decision making, management and monitoring processes-, and
- (5) managing wai and its connections with whenua in a holistic and interconnected way – ki uta ki tai.¹⁰¹

9.5.7. LF-WAI-P3 – Integrated management/ki uta ki tai

9.5.7.1. Introduction

167. As notified, LF-WAI-P3 reads:

LF–WAI–P3 – Integrated management/ki uta ki tai

Manage the use of *fresh water* and *land* in accordance with tikaka and kawa, using an integrated approach that:

- (1) recognises and sustains the connections and interactions between *water bodies* (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),
- (2) sustains and, wherever possible, restores the connections and interactions between *land* and *water*, from the mountains to the sea,
- (3) sustains and, wherever possible, restores the habitats of mahika kai and indigenous species, including taoka species associated with the *water body*,
- (4) manages the *effects* of the use and development of *land* to maintain or enhance the health and well-being of *fresh water* and *coastal water*,
- (5) encourages the coordination and sequencing of regional or urban growth to ensure it is sustainable,
- (6) has regard to foreseeable *climate change risks*, and
- (7) has regard to cumulative *effects* and the need to apply a precautionary approach where there is limited available information or uncertainty about potential adverse *effects*.

9.5.7.2. Submissions

168. Four submitters support LF-WAI-P3 and seek it be retained as notified.¹⁰² Some submitters raise general concerns with the policy, as follows:

- Te Waihanga considers that the policy contradicts LF-WAI-P1,¹⁰³
- DCC submits that clarification is needed on situations where it may be acceptable for the health and well-being of water not to be maintained (for example,

¹⁰¹ 00234.026 Te Rūnanga o Ngāi Tahu

¹⁰² 00121.049 Ravensdown, 00235.025 OWRUG, 00407.032 Greenpeace and 1259 supporters, 00321.030 Te Waihanga

¹⁰³ 00321.030 Te Waihanga

necessary development for housing that may make it difficult to maintain the health and well-being of water),¹⁰⁴ and

- John Highton submits that the policy should require protection of eels, freshwater crayfish, whitebait and migratory smelt through partnership with other regulatory bodies.¹⁰⁵

169. Wise Response and OWRUG seek amendments to the chapeau of the policy, including (respectively):

- Clarifying that the policy applies in addition to meeting the provisions in the *IM – Integrated management* chapter,¹⁰⁶ and
- Deleting the references to tikaka and kawa on the basis that the policy applies to all resource users, not only Māori.¹⁰⁷

170. Alluvium and Stoney Creek, and Danny Walker and Others seek to replace “sustain” with “maintain” in clause (1).¹⁰⁸ Te Rūnanga o Ngāi Tahu seeks to include restoration in addition to recognising and sustaining connections and interactions.¹⁰⁹

171. Kāi Tahu ki Otago seeks to amend the references to “connections” in clauses (1) and (2) to “natural connections” so that the policy does not capture artificial connections established by water infrastructure development.¹¹⁰

172. Alluvium and Stoney Creek, Danny Walker and Others seek to replace “sustain” with “maintain” in clause (2).¹¹¹ The submitters consider that this policy is more stringent than is required by the NPSFM. Te Rūnanga o Ngāi Tahu seeks the same amendment but does not provide reasons.

173. Te Rūnanga o Ngāi Tahu also seeks to replace “and, wherever possible, restores” with “or, where modified or lost, restores” in clause (2) but does not provide reasons.¹¹²

174. Fish and Game seeks to delete “where possible” from clause (2) on the basis that the language is unclear and it is preferable for all provisions to be directive and unambiguous.¹¹³ Conversely, Alluvium and Stoney Creek Mining, Danny Walker and Others and Meridian seek to amend the phrase “where possible” to “where practicable”.¹¹⁴ These submitters consider that is not always practicable to enhance connections and

¹⁰⁴ 00139.083 DCC

¹⁰⁵ 00014.042 John Highton

¹⁰⁶ 00509.070 Wise Response

¹⁰⁷ 00235.080 OWRUG

¹⁰⁸ 00016.005 Alluvium and Stoney Creek, 00017.004 Danny Walker and others

¹⁰⁹ 00234.027 Te Rūnanga o Ngāi Tahu

¹¹⁰ 00226.161 Kāi Tahu ki Otago

¹¹¹ 00016.005 Alluvium and Stoney Creek, 00017.004 Danny Walker and others, 00234.027 Te Rūnanga o Ngāi Tahu

¹¹² 00234.027 Te Rūnanga o Ngāi Tahu

¹¹³ 00230.075 Forest and Bird, 00231.047 Fish and Game

¹¹⁴ 00016.005 Alluvium and Stoney Creek, 00017.004 Danny Walker and others, 00306.032 Meridian

interactions and that amendments are required to allow a degree of flexibility in the application of the policy.

175. As for clause (1), Kāi Tahu ki Otago seeks to refer to “natural connections” instead of only “connections”.¹¹⁵ Harbour Fish seeks to replace “restores” with “improves” in clauses (2) and (3) but does not provide reasoning.¹¹⁶
176. In clause (3), Te Rūnanga o Ngāi Tahu seeks to replace “restores” with “enhances” but does not provide reasoning.¹¹⁷
177. Forest and Bird and Fish and Game seek to delete “wherever possible” from clause (3) in order to improve the clarity of the language.¹¹⁸
178. DOC seeks to include a cross-reference to the ECO chapter in clause (3).¹¹⁹ The submitter considers that this clause fails to provide clear recognition of, or link to, the ECO policies that will be highly relevant when considering LF-WAI-P3.
179. Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu seek to amend “water body” to “water bodies” in clause (3) for consistency with the rest of the policy.¹²⁰
180. A number of submitters seek amendments to clause (4) which addresses the management of the effects of land use and development. Tōitu Te Whenua seeks that the term “development” is removed from the clause as it suggests the use of natural resources outside of their normal environmental capability. In addition, they consider the policy should give consideration to land and soil, as well as water.
181. Graymont and Ballance seek amendments to clarify that enhancing the health and well-being of fresh and coastal water is only required where the water is degraded to the point that it cannot achieve the applicable water quality standards.¹²¹ The submitter considers this is the direction provided by Policy 5 of the NPSFM.
182. Forest and Bird seeks to replace “or enhance” with “and restore” in clause (4) but does not provide reasoning.¹²²
183. DOC seeks that clause (4) includes reference to resilience which the submitter considers to be important when managing health and well-being.¹²³ QLDC considers that clause (4) should include reference to restricting the effects of land use and development on the basis that this may be required in order to avoid breaching bottom lines.¹²⁴ Kāi Tahu ki

¹¹⁵ 00226.161 Kāi Tahu ki Otago

¹¹⁶ 00126.032 Harbour Fish

¹¹⁷ 00234.027 Te Rūnanga o Ngāi Tahu

¹¹⁸ 00230.075 Forest and Bird, 00231.047 Fish and Game

¹¹⁹ 00137.063 DOC

¹²⁰ 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

¹²¹ 00022.016 Graymont, 00409.005 Ballance

¹²² 00230.075 Forest and Bird

¹²³ 00137.063 DOC

¹²⁴ 00138.052 QLDC

Otago and Te Rūnanga o Ngāi Tahu seek that clause (4) includes reference to associated ecosystems alongside freshwater and coastal water.¹²⁵

184. Fonterra seeks that clause (4) be amended to recognise that people use water, and will continue to do so for social, economic and cultural well-being. Fonterra also considers that it is unclear what the well-being of water means, given well-being is usually a term associated with people and communities. The submitter seeks the following wording:¹²⁶
- ensures that as people use and develop land and water they do so in a way and at a rate that maintains and enhances ~~manages the effects of the use and development of land to maintain and enhance the health and well-being of~~ freshwater and coastal water
185. QLDC considers the use of the term “sustainable” in clause (5) is open to interpretation and may not achieve environmental bottom lines. The submitter seeks that the term is replaced with “that sustainable extraction limits are not exceeded and freshwater quality is not adversely affected.”¹²⁷ Forest and Bird and Fish and Game seek to replace “encourages” with “requires” in clause (5).¹²⁸ Neither submitter provides clear reasoning for this.
186. Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu seek to amend clause (6) to include reference to the potential effects of climate change on the natural functions of water bodies (including, for example, effects on water flow and temperature) which they consider is an important integrated management consideration.¹²⁹ Horticulture NZ seeks to include reference to reducing emissions in this clause to align with IM-P9.¹³⁰
187. Fish and Game seeks to split clause (7) into two separate clauses: one regarding cumulative effects and one regarding applying a precautionary approach, to improve clarity.¹³¹
188. Federated Farmers seeks to delete everything after “has regard to cumulative effects”, citing a preference for the right information to be obtained prior to plans being released.¹³² The submitter also considers that without consideration of primary production, the policy does not give effect to LF-WAI-O1 and LF-WAI-P1.
189. Graymont and Ballance seek to amend clause (7) to clarify that applying a precautionary approach may include adopting adaptive management methods in order to assist with avoiding over-regulation or unnecessary restrictions on activities that may bring about potential adverse effects.¹³³ This aligns with their submissions on IM – P15.

¹²⁵ 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

¹²⁶ 00233.034 Fonterra

¹²⁷ 00138.052 QLDC

¹²⁸ 00230.075 Forest and Bird, 00231.047 Fish and Game

¹²⁹ 00234.027 Te Rūnanga o Ngāi Tahu, 00226.161 Kāi Tahu ki Otago

¹³⁰ 00236.057 Horticulture NZ

¹³¹ 00231.047 Fish and Game

¹³² 00239.072 Federated Farmers

¹³³ 00022.016 Graymont, 00409.005 Ballance

190. Graymont also seeks the addition of an explanation of the policy:¹³⁴
- Any decision that has been made based on limited information or partial data must be revisited as information becomes available / data is captured and analysed, and a plan change / variation advanced as necessary. This is required to ensure that the ultimate position does not come at the expense of people and communities' ability to provide for their social, economic and cultural wellbeing, and for their health and safety.
191. Tōitu Te Whenua seeks that clause (7) is deleted and replaced by adding cumulative effects to the definition of effects.¹³⁵
192. Many submitters seek the inclusion of additional clauses in LF-WAI-P3 but for various reasons. On the basis that clauses (4) and (5) deal with the effects of land use and development associated with what the submitters consider our current high carbon economy, rather than the underlying causes of these activities, COES and Lynne Stewart seek the addition of two new clauses:¹³⁶
- (x) avoid the adverse effects of certain land uses by preventing or controlling land use changes or activities such as conversion to dairying on unsuitable soils close to vulnerable rivers and streams.
- (y) contributes to the reduction of climate changing emissions with the aim of the region being carbon neutral by 2050.
193. Federated Farmers considers a new clause is required to address primary production, as follows:
- (4a) sustains primary production, to provide for the social and economic well-being of communities
194. Similar to Federated Farmers, OWRUG seeks the following additional clause:
- (3A) sustains food and fibre production to provide for the social, cultural, economic and health needs of the community
195. Fish and Game seeks the addition of four new clauses:
- (3a) sustains and restores the habitats of trout and salmon species associated with the water body, insofar as this is consistent with ECO-P11,
- (9) preferentially considers effects against the naturalised flow and unpolluted state of a water body when making flow and quality decisions about the health, well-being and resilience of water bodies and freshwater ecosystems, including when setting limits or environmental outcomes, and

¹³⁴ 00022.016 Graymont

¹³⁵ 00101.028 Toitū Te Whenua

¹³⁶ 00202.014 COES, 00202.015 COES, 00030.011 Lynne Stewart

(10) requiring all activities affecting water bodies to support the health, well-being and resilience of relevant water bodies and associated freshwater ecosystems.

(11) recognise and sustain the amenity and recreation values that people and communities derive from water bodies and their sources, including recreation in and around water and harvest food from water.

196. Their reasons for seeking these new clauses are:

- For consistency with Policy 9 (trout and salmon habitats) of the NPSFM,
- Activities relating to water should support the health, wellbeing and resilience of water bodies,
- Clarifying that adverse effects should be compared against the status quo or a naturalised flow or unpolluted state,
- To address a gap in the policy for direction on managing amenity and recreation values.

197. For similar reasons as Fish and Game, Forest and Bird seeks the following additional clause:

(x) considers effects against the naturalised flow and natural state of a waterbody when making decisions on flow, allocation, standards for water quality, and activities which may affect the health, wellbeing, and resilience of water bodies and freshwater ecosystems.

198. Meridian seeks to include three new clauses in order to recognise the role of freshwater management in responding to climate change, the national significance of renewable electricity generation, and the contribution of land and freshwater to the economic and social wellbeing of communities:¹³⁷

(x) recognises that New Zealand's integrated response to climate change includes the management of freshwater;

(y) recognises and provides for the national significance of developing, operating, maintaining and upgrading renewable electricity generation activities; and the benefits of renewable electricity generation in reducing greenhouse gas emissions and the associated effects of climate change,

(z) recognises that the use of freshwater and land contributes to the economic and social wellbeing of people and communities,

199. The submitter considers that the first clause is consistent with Policy 4 of the NPSFM, while the second clause is consistent with the Te Mana o te Wai obligation, on the basis that electricity is part of people's health needs. In terms of the third clause, they consider that recognition of the broader contribution the use of water and land make to economic and social wellbeing is required.

¹³⁷ 00306.032 Meridian

200. Similar to Meridian’s first new clause, OWRUG also seeks an additional clause as follows:¹³⁸

(6A) has regard to the need to reduce emissions that contribute to climate change including enabling changes to activities that will contribute to emission reductions.

201. AWA considers an additional clause is needed to expand on the reference to connections in clause (2):¹³⁹

(x) protects the structural integrity and capacity of aquifers

9.5.7.3. Analysis

General

202. Some submitters have raised general concerns or sought general amendments to LF-WAI-P3. Te Waihangā supports the policy but considers it contradicts with LF-WAI-P1. I do not agree that this is the case. LF-WAI-P1 sets out the hierarchy of obligations to be adopted in decision-making while LF-WAI-P3 sets out what an integrated approach to the management of freshwater and land requires.

203. DCC seeks clarification on situations where it may be acceptable for the health and well-being of water not to be maintained. I agree that the wording regarding maintaining or improving water quality in this policy is general in nature, however the visions in the LF-VM – Visions and management section set out more detail about the long-term outcomes sought in Otago’s FMUs and the provisions in the LF-FW – Freshwater section provide more specific direction on maintaining or improving the health and well-being of water bodies. I do not consider any further detail is necessary at the RPS level. The more specific activity-level management referred to by DCC is more appropriately managed through the regional plan.

204. John Highton seeks unspecified amendments to require the protection of eels, freshwater crayfish, whitebait, and migratory smelt in partnership with other regulatory bodies. I consider clause (3) regarding the habitats of mahika kai and indigenous species provides some of the protection sought by the submitter. As with the submission above by DCC, there are also freshwater visions and policies in other parts of the LF chapter that seek to achieve similar outcomes. As a result, I do not recommend accepting this submission point.

205. Wise Response seeks to clarify in the chapeau that the policy applies in addition to the IM – Integrated management chapter. I agree that this policy does apply alongside the IM chapter, however consider that is the case for all provisions of the pORPS. This is set out specifically in IM-P1 therefore I do not consider any amendments are necessary.

206. OWRUG seeks to delete the references to tikaka and kawa in the chapeau on the basis that this policy applies to all resource users, not only Māori. I understand that tikaka

¹³⁸ 00235.080 OWRUG

¹³⁹ 00502.003 AWA

refers to customary values and practices and kawa refers to the protocols or etiquette. I agree that there may be uncertainty amongst users about what these terms mean in practice and whether they are applicable to people who are not mana whenua. I do not recommend accepting the submitter's proposed deletion as tikaka and kawa are still important concepts to reference. I consider that it would be beneficial to hear from Kāi Tahu on their understanding of these concepts and their application in the context of this policy before considering whether any further amendments could clarify the interpretation of the policy.

207. Alluvium and Stoney Creek, and Danny Walker and Others seek to replace all references to "sustain" with "maintain" because they consider "sustaining" is more stringent than the NPSFM. I consider there is a subtle difference between sustaining and maintaining. In my view, sustaining has an ongoing and active requirement to continue to uphold or support something over time (despite changes in the broader environment or context) while maintaining something is keeping it at a particular level or state. The use of these terms needs to be considered within the context it is used in order to determine whether it is the most appropriate term. Accordingly, I have addressed this submission as it arises in each clause below. I do not share the submitter's view that "sustain" is always a more stringent requirement than the NPSFM, but even if that were the case, I note that clause 3.1(2)(a) of the NPSFM explicitly states that nothing in Part 3 of the NPSFM "prevents a local authority adopting more stringent measures than required by this National Policy Statement."

Clause (1)

208. Alluvium and Stoney Creek, and Danny Walker and Others seek to replace "sustain" with "maintain" in this clause. In this context term is used in relation to the connections and interactions between water bodies. I consider that "sustain" is the more appropriate term in this clause as the connections and interactions between water bodies are live and changing, rather than being fixed at a point in time.
209. Te Rūnanga o Ngāi Tahu seeks that this clause recognise and sustain "or restore" the connections and interactions between water bodies but do not provide specific reasoning for this change. Kāi Tahu ki Otago seeks to clarify that this clause relates to natural connections so that the policy does not capture artificial connections established by water infrastructure development. I consider both of these amendments are appropriate, noting that restoration is included in other clauses (2 and 3) that have similar direction in relation to the inter-connected nature of land and freshwater management. In other places where "restore" is used in this policy, I have recommended clarifying that restoration is required in response to degradation or loss. I consider this clarification should also apply in clause (1).
210. I consider minor grammatical changes to the wording proposed by Te Rūnanga o Ngāi Tahu would improve the readability of the provision and make it more consistent with other clauses in the policy. I recommend accepting this submission point in part.

Clause (2)

211. Alluvium and Stoney Creek, Danny Walker and Others, and Te Rūnanga o Ngāi Tahu seek to replace “sustain” with “maintain” in this clause. In this context the term is used in relation to the connections and interactions between land and water. For the same reasons as I have set out in relation to clause (1), I consider “sustain” is an appropriate term to use in this context.
212. Te Rūnanga o Ngāi Tahu seeks to replace “and, wherever possible, restores” with “or, where modified or lost, restores” to provide greater clarity to the drafting. Alluvium and Stoney Creek Mining, Danny Walker and Others, and Meridian seek to amend the phrase “where possible” to “where practicable”. They consider that is not always practicable to enhance connections and interactions and that amendments are required to allow a degree of flexibility in the application of the policy. Conversely, Forest and Bird and Fish and Game seek to delete “wherever possible” from clause (3) and Fish and Game also seeks its deletion from clause (2).¹⁴⁰
213. Managing resources in an integrated way, ki uta ki tai, is an important part of Te Mana o te Wai and required by the NPSFM.¹⁴¹ I note that in their submission, Kāi Tahu ki Otago states that (my emphasis added):
- “Kā Runaka strongly support the focus on integrated management in the PORPS. This is consistent with the Kāi Tahu understanding that all parts of the environment (te taiao) are interconnected, and that it is important to reflect this through holistic management. A holistic approach to managing te taiao must value all parts of the natural environment, including fresh and coastal waters, indigenous species and ecosystems, whenua/soil and air, and recognise and reflect the interconnectedness between these components.”*
214. While I agree that restoration may be difficult in some circumstances, Te Mana o te Wai will not be implemented by allowing the continuation of disconnections between parts of the environment. This is consistent with LF-WAI-O1(4) that requires the management of land and water to recognise and reflect that water and land have a connectedness that supports and perpetuates life.
215. I agree with the general intent of the amendments sought by Te Rūnanga o Ngāi Tahu to provide more clarity about the circumstances when restoration is required, but I do not agree entirely with the wording they have proposed (“where modified or lost”). I understand in this context that modification is assumed to be a negative action, however I consider that there may be circumstances where modifying a connection may improve it. For this reason, I consider “where degraded or lost” is a more appropriate amendment.
216. Harbour Fish seeks to replace “restores” with “improves”. The intent of this policy is to ‘fix’ connections and interactions that have been damaged or lost. I do not consider it is technically possible to “improve” a connection that does not exist (i.e. has been lost) and am reluctant to adopt wording that could lead to the clause being interpreted as being

¹⁴⁰ 00230.075, 00231.047

¹⁴¹ Clause 3.2(2)(e), NPSFM 2020

applicable only to existing connections or interactions, rather than restoring those where they have been lost. In my opinion, it is appropriate to refer to restoring a previously existing connection or interaction.

217. As discussed in relation to clause (1), I agree with the relief sought by Kāi Tahu ki Otago to refer to natural connections in this clause as well.

Clause (3)

218. As with clause (2), Harbour Fish seeks to replace “restores” with “improves”. Similarly, Te Rūnanga o Ngāi Tahu seeks to replace “restores” with “enhances”. Neither submitter has explained in their submissions why they seek this specific amendment so at this stage I recommend retaining the wording as notified. The submitters may wish to address this matter in their evidence.
219. Forest and Bird and Fish and Game seek to delete “wherever possible” on the basis that it removes unclear language. Restore means to bring back to a former condition. I do not consider it would always be possible to restore habitats, for example where those habitats have not been lost or degraded. Whether there is a qualifier on the term “restore”, and what that qualifier is, depends on whether “restore” is the appropriate term to use in this clause. As discussed in the previous paragraph, this remains a live issue so until there is further evidence available from submitters, I recommend retaining the wording as notified.
220. DOC seeks to include a cross-reference to the *ECO – Ecosystems and indigenous biodiversity* chapter in this clause. It is normal practice in planning documents that all chapters are considered alongside each other unless expressly stated otherwise so I do not consider that the amendment sought is necessary. I do not recommend accepting this submission point.
221. I recommend accepting the amendments sought by Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago to change “water body” to “water bodies”.

Clause (4)

222. Toitū te Whenua considers that the term “development” indicates a use of natural resources outside their normal environmental capability. I do not share this interpretation and note that the Merriam-Webster dictionary defines the term as:
- (1) *the act or process of growing or causing something to grow or become larger or more advanced*
 - (2) *the act or process of creating something over a period of time*
 - (3) *the state of being created or made more advanced*
223. The submitter also seeks that the policy give equal weighting to the health and well-being of the land, specifically the soil. No specific amendments have been sought and I am unclear how the submitter would see this request borne out in the provision, noting that the *LF-LS-Land and soil* sub-section of this chapter is dedicated to the management of land and soil. For this reason, I do not recommend accepting the submission point.

224. To more closely align with policy 5 of the NPSFM, Graymont and Ballance seek to constrain the enhancement of water quality only to situations where water is degraded to the point that the applicable water quality standards are not met. I consider this direction is already provided through LF-FW – P7(1).
225. DOC considers that resilience is an important concept to refer to in this clause. I am unsure what the submitter means by resilience or how the management of land could contribute to the resilience of water. Without further clarification in evidence, I do not agree with the amendments proposed.
226. I agree with QLDC that some effects of land use and development may need to be restricted to meet water quality standards. In my view, that is a matter for the regional plan to determine through the development of environmental outcomes and limits on resource use. “Manage” in this clause requires whatever action is necessary to maintain or enhance the health and well-being of fresh and coastal water.
227. Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago seek to include reference to the associated ecosystems of fresh and coastal water on the basis that giving effect to Te Mana o te Wai requires managing effects on associated ecosystems as well as the water bodies themselves. Clause (a) of the objective of the NPSFM requires prioritising, “first, the health and well-being of water bodies and freshwater ecosystems” (my emphasis added).¹⁴² I do not agree that the amendment sought gives better effect to Te Mana o te Wai but recommend some minor changes to improve the grammar of the clause.
228. Fonterra seeks to largely replace clause (4). They consider that the policy as a whole provides no recognition that people use water and will continue to need to use water for social, economic, and cultural well-being. I disagree. In my opinion, this clause recognises the many uses of land by focusing on the effects of those activities and describing the outcome sought. Policy 3 of the NPSFM requires that (my emphasis added):
- 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.*
229. I acknowledge that “well-being” is a relatively new term when it is applied to freshwater bodies and their management, being introduced through the NPSFM 2020. However, I consider it is an important component of freshwater management, as evidenced by its inclusion in the description of the fundamental concept of the NPSFM, Te Mana o te Wai, in clause 1.3 and in the objective of the NPSFM. From what I understand, well-being refers to a broader concept than only the ecological health of a water body. It encompasses the connections people have with water and the connections between water and the wider environment. It is clear from the NPSFM that implementing Te Mana o te Wai protects the mauri of the water.¹⁴³ I understand mauri to be a broad concept, often distilled as “life-force”. In my view, it is appropriate for this clause to refer to well-being as well as

¹⁴² Objective, NPSFM

¹⁴³ Clause 1.3(1) of the NPSFM

health to ensure that resource management is cognisant of matters outside the ecological health of water.

Clause (5)

230. QLDC considers that “sustainable” in this clause is open to interpretation and may not efficiently or effectively achieve environmental bottom lines. They seek to refer instead to sustainable extraction limits not being exceeded and freshwater quality not being adversely affected. As I have set out in response to Fonterra above, it is the well-being of fresh water and associated ecosystems that must be front of mind, not only the health. In my view, the amendments proposed by QLDC inappropriately restrict this clause to only considering the physical health effects of regional or urban growth on water bodies.
231. That said, I appreciate it is not abundantly clear what “sustainable” means in this context. I read this clause in the context of section 5 of the RMA, which defines “sustainable management” in a way that provides a series of foundation principles to guide decision-making. What is sustainable, therefore, will depend on the context (i.e. the activities, water bodies, and wider environments in each situation). Despite the element of uncertainty, without further evidence I consider the notified provision is more appropriate than the amendments sought by the submitter.

Clause 6

232. Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu seek to amend clause (6) to include reference to the potential effects of climate change on the natural functions of water bodies. It is likely that climate change will affect water bodies in different ways, so I consider it is important for the management of land and water to consider these potential future changes. Although I understand, generally, what the submitters are referring to by the term “natural functions”, I am concerned that this may introduce ambiguity into the clause. Many water bodies in Otago are modified, including some that were modified a very long time ago, and it can be difficult to determine what a natural function may be in relation to a modified water body. I recommend changes that adopt the majority of the wording proposed by Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago, excluding “natural functioning”.

Clause 7

233. The reference to applying a precautionary approach in this clause has proven somewhat contentious. Federated Farmers seeks to delete this part of the clause, retaining only “has regard to cumulative effects”, while Graymont and Ballance seek amendments to clarify that a precautionary approach may include adopting adaptive management methods to avoid unnecessary restrictions on activities. I appreciate the submitters’ concerns about the uncertainty of what a precautionary approach entails and the potential for this to lead to “over-regulation” which I understand to mean overly conservative regulation. That said, I do not consider that deletion of the requirement is warranted. It is evident from the NPSFM that the health and well-being of freshwater bodies and their ecosystems must be at the forefront of decision-making. I consider it is appropriate to

exercise caution when managing activities where there is limited information available on or uncertainty about potential adverse effects. I also note that there is flexibility for lower order plans to be more discerning with their application of precautionary approach.

234. I am aware that there is relevant case law that has established the factors to consider when determining whether an adaptive management approach would or would not allow the activity to be undertaken, and on the matters to be satisfied for an adaptive management approach to sufficiently diminish the risk and uncertainty (Sustain our Sounds Incorporated v The New Zealand King Salmon Company Limited, 2014, p. [133]). I consider that the amendments proposed by Graymont and Ballance seek to get into a level of detail that is far greater than the rest of the policy, and do not ultimately change the outcome: as notified, the clause does not prevent the consideration of adaptive management methods.
235. Fish and Game seeks to split this clause into two: one for cumulative effects (retaining the wording as notified) and one for the precautionary approach (changing “the need to apply” to “applies”). I agree that the two parts of clause (7) are, as recommended, sufficiently different (in subject matter and direction) that separating them improves clarity and that “applies” is grammatically more correct when read with the chapeau. I recommend accepting this part of the submission point by Fish and Game.
236. Graymont also seeks an explanation to the policy which states that, in essence, decisions based on limited information must be revisited as information becomes available. I do not consider that there are provisions in the pORPS that require this action and it would be unhelpful for an explanation to attempt to set policy direction in the absence of provisions that support that direction. I am unsure that there are legal mechanisms for achieving this outcome. I do not recommend accepting this submission point.
237. Toitū te Whenua seeks to delete clause (7) and instead include cumulative effects to the definition of effects. I do not consider this is necessary as section 3 of the RMA defines “effect” and includes at (d) “any cumulative effect which arises over time or in combination with other effects.” I do not recommend accepting this submission point.

New clauses – land use

238. COES and Lynne Stewart seek an additional clause be added to the policy providing strong direction on managing particular land use changes or activities. I do not support the submitter’s proposal and consider that this type of direction is better included in regional plans alongside environmental outcomes and limits on resource use.

New clauses – primary production / food and fibre sector / community well-being

239. Federated Farmers and OWRUG seek an additional clause be added to recognise the importance of primary production (Federated Farmers) and/or the food and fibre sector (OWRUG) to the social and economic well-being of communities. LF-WAI-P3 is a high-level policy setting out the considerations required in order to manage land and water in an integrated way. I do not consider it would be appropriate for a strategic policy such as this to begin differentiating between activities or industries. I believe the reference to

community well-beings considerably broadens the intent of the policy, which is focused on the environmental aspects of managing resources in an integrated way, not on the use of those resources. The purpose of this sub-section is to set out the concept of Te Mana o te Wai in the Otago context, not to make directions about acceptable or unacceptable uses of resources.

240. Meridian seeks an additional clause recognising that the use of freshwater and land contributes to the economic and social well-being of people and communities. For the same reasons as I have set out in response to Federated Farmers and OWRUG, I do not consider that is consistent with the scope and intent of the policy.

New clauses – climate change

241. COES and Lynne Stewart seek an additional clause be added to recognise the contribution of land and water management to reducing climate change emissions, with an ultimate goal of Otago being carbon neutral by 2050. I note that responding to climate change is the focus of a number of provisions in the *IM* chapter of the pORPS. I am concerned that the new clause sought by the submitters suggests that the management of land and water will be the way the region achieves carbon neutral status. In reality, achieving net zero carbon emissions is likely to a function of a range of components working together, including urban form and development, agriculture and hydroelectricity. Given the IM – Integrated management chapter addresses climate change and reducing carbon emissions, I do not consider the amendment sought is necessary.
242. Meridian seeks an additional clause recognising that New Zealand’s integrated response to climate change includes the management of freshwater. Similarly, OWRUG seeks an additional clause requiring regard to be had to the need to reducing emissions, including enabling changes to activities that will reduce emissions. I acknowledge that Policy 4 of the NPSFM requires freshwater to be managed as part of New Zealand’s integrated response to climate change, and I accept that the LF – Land and freshwater chapter as a whole has not specifically addressed that policy. However, I do not consider this is the right place to introduce this consideration. The focus of this sub-section of the chapter is on Te Mana o te Wai and this policy, as I have set out previously, focuses on the environmental aspects of managing resources in an integrated way, not on the use of those resources.
243. In my opinion, the recognition sought by Meridian is more appropriately provided through the LF-FW section. Policy 4 of the NPSFM states that “freshwater is to be managed...” (my emphasis added). Policy LF-FW-P7 outlines a number of requirements for the setting of environmental outcomes, attribute states, environmental flows and levels, and limits. In my view, this is the type of ‘management’ envisaged by Policy 4 of the NPSFM rather than the much more general, strategic nature of LF-WAI-P3. I recommend accepting this submission point in part and including a new clause (7) in LF-FW-P7 recognising the contribution of freshwater management to New Zealand’s integrated response to climate change.

New clause – renewable electricity generation

244. Meridian seeks an additional clause that recognises and provides for the national significance of developing, operating, maintaining and upgrading renewable electricity generation activities and the benefits of renewable electricity generation in reducing greenhouse gas emissions. While I recognise the national significance of renewable electricity generation activities, for the same reasons I have set out previously I do not consider this is the correct place to address this matter. I note Kai Tahu ki Otago shares this view in its further submission. I note that EIT-EN-P2 requires decisions on the allocation of resources, including fresh water, to recognise the national, regional and local benefits of existing renewable electricity generation activities, and take into account the need to at least maintain generation capacity. Additionally, some renewable electricity generation facilities are identified as regionally significant infrastructure and therefore also managed under the provisions of the EIT-INF sub-section. I do not recommend accepting this submission point.

New clauses – Fish and Game / Forest and Bird

245. Fish and Games seeks to include four new clauses. The first new clause sought relates to the habitats of trout and salmon. The submitter has sought a range of amendments to the pORPS across a number of chapters to address this issue. I have discussed this range collectively in section 1.4.9 of *Chapter 1: Introduction and general themes*.
246. The second new clause sought would require flow and quality decision-making to consider effects against the naturalised flow and unpolluted state of a water body. Forest and Bird seeks broadly the same additional clause. Fish and Game states in their submission that whether effects should be compared against the status quo or a naturalised flow / unpolluted state is a long-running issue with the RPW and the pORPS should resolve it. Forest and Bird seeks the inclusion of a largely similar clause for the same reasons.
247. I understand the intent of the changes sought by the submitters and appreciate the clarity it would bring to assessing the significance of adverse effects. I am not convinced that it would always be practical or appropriate to consider effects against the naturalised flow or natural/unpolluted state of a water body. Unless there is comprehensive monitoring information available, it will be difficult to determine what natural state is where a water body is no longer in that state. I understand that there is no 'standard methodology' for naturalising flows – there are differences in the approaches adopted across the country – and the submitters have not specified the methodology they wish to see adopted.
248. My preliminary view is that the framework of the pORPS, which will underpin the LWRP and its allocation frameworks, is a significant shift away from the philosophical basis of the Water Plan and will set a 'higher bar' in terms of environmental outcomes, primarily because of the requirement to manage freshwater through the framework of Te Mana o te Wai. In that way, the problems of the Water Plan do not necessarily need to be addressed through the pORPS. In addition, the pORPS should not contain methods so specific that the development of the freshwater plan becomes unduly constrained. That

said, I would appreciate having an opportunity to consider further information from the submitters on their reasoning for this clause and how they see it being implemented.

249. The third new clause sought would require all activities affecting water bodies to support the health, well-being and resilience of water bodies and associated ecosystems and the fourth would require recognising and sustaining amenity and recreation values. While I am not opposed to the direction in these clauses, for reasons I have set out previously, I do not consider it would be appropriate to include their consideration in this policy.

New clause – aquifers

250. AWA seeks to include a new clause requiring the protection of the structural integrity and capacity of aquifers. I do not consider this is the appropriate place for such direction. This policy sets out how the interconnections between land and water (including aquifers) must be considered to achieve a ki uta ki tai approach. There is very limited reasoning provided in the submission and so I am reluctant at this stage to make any amendments to provisions. The submitter may wish to provide additional reasoning in their evidence, including, in particular, an indication of the outcomes sought and the implications of including this type of direction in the pORPS. I do not recommend accepting this submission point.

9.5.7.4. Recommendation

251. I recommend amending LF-WAI-P3 to:

LF-WAI-P3 – Integrated management/ki uta ki tai

Manage the use of *freshwater* and *land*, in accordance with tikanga and kawa, using an integrated approach that:

- (1) recognises, ~~and~~ sustains and, where degraded or lost, restores¹⁴⁴ the natural¹⁴⁵ connections and interactions between *water bodies* (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),
- (2) sustains and, ~~wherever possible~~ where degraded or lost, restores the natural¹⁴⁶ connections and interactions between *land* and *water*, from the mountains to the sea,
- (3) sustains and, wherever possible, restores the habitats of ~~mahika kai~~ *mahika kai*¹⁴⁷ and indigenous species, including taoka species associated with the ~~water body~~ bodies,¹⁴⁸

¹⁴⁴ 00234.027 Te Rūnanga o Ngāi Tahu

¹⁴⁵ 00026.161 Moutere Station

¹⁴⁶ 00026.161 Moutere Station

¹⁴⁷ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

¹⁴⁸ 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

- (4) manages the *effects* of the use and development of *land* to maintain or enhance the health and well-being of *freshwater*, ~~and~~ *coastal water* and associated ecosystems,¹⁴⁹
- (5) encourages the coordination and sequencing of regional or urban growth to ensure it is sustainable,
- (6) has regard to foreseeable *climate change* risks and the potential effects of climate change on water bodies,¹⁵⁰ ~~and~~
- (7) has regard to cumulative *effects*,¹⁵¹ and
- (8)¹⁵¹ ~~the need to apply~~ applies¹⁵² a precautionary approach where there is limited available information or uncertainty about potential adverse *effects*.¹⁵³

9.5.8. LF-WAI-P4 – Giving effect to Te Mana o te Wai

9.5.8.1. Introduction

252. As notified, LF-WAI-P4 reads:

LF–WAI–P4 – Giving effect to *Te Mana o te Wai*

All persons exercising functions and powers under this RPS and all persons who use, develop or protect resources to which this RPS applies must recognise that LF-WAI-O1, LF-WAI-P1, LF-WAI-P2 and LF-WAI-P3 are fundamental to upholding *Te Mana o te Wai*, and must be given effect to when making decisions affecting *fresh water*, including when interpreting and applying the provisions of the LF chapter.

9.5.8.2. Submissions

253. Five submitters support LF-WAI-P4 and seek it be retained as notified.¹⁵⁴ DCC supports the policy but notes that consequential amendments may be required as a result of other submissions on the related objective and policies.¹⁵⁵

254. Ravensdown, Harbour Fish, OWRUG, and Federated Farmers seek that the policy be deleted.¹⁵⁶ This request is for the following reasons:

¹⁴⁹ 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

¹⁵⁰ 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

¹⁵¹ 00231.047 Fish and Game

¹⁵² 00231.047 Fish and Game

¹⁵³ 00239.072 Federated Farmers, 00022.016 Graymont, 00409.005 Ballance

¹⁵⁴ 00138.053 QLDC, 00226.162 Kāi Tahu ki Otago, 00230.076 Forest and Bird, 00407.033 Greenpeace and 1259 supporters, 00409.006 Ballance

¹⁵⁵ 00139.084 DCC

¹⁵⁶ 00121.050 Ravensdown, 00126.033 Harbour Fish, Southern Fantastic and Fantastic Holdings, 00235.081 OWRUG, 00239.073 Federated Farmers

- The policy is not needed as it does not provide any specific guidance of relevance to resource management processes,¹⁵⁷ and
- The policy overrides statutory tests, particularly section 104 of the RMA.¹⁵⁸

255. The remaining submitters sought the following amendments:

- Ngāi Tahu ki Murihiku seeks to include a space between “this” and “regional policy statement” in the second line of the policy,¹⁵⁹ and
- Fish and Game seeks to include LF-WAI-P5 (a new policy suggested by the submitter) in the list of policies referenced.¹⁶⁰

9.5.8.3. Analysis

256. I do not agree with the reasons stated by submitters seeking to delete this policy. In my view, this policy is instrumental to the architecture of the *LF – Land and freshwater* chapter because it clearly sets out that all subsequent provisions must be interpreted in a way that gives effect to the expression of Te Mana o te Wai in Otago. That is what I understand the NPSFM requires, particularly through clause 1.3, the objective, and Policy 1. Federated Farmers argues that section 104 of the RMA does not require giving effect to Te Mana o te Wai and instead requires only “having regard to” the concept. I do not agree that the test in section 104 allows decision-makers to disregard direction in higher order documents including, in this case, the direction in the NPSFM to manage freshwater in a way that gives effect to Te Mana o te Wai.¹⁶¹

257. I have addressed the amendments sought by Fish and Game regarding their proposed new provision in section 1.4.9 of *Report 1: Introduction and general themes* and, in summary, do not recommend its inclusion. I have also addressed the submission point by Waitaki Irrigators to remove reference to rakatirataka in section 9.5.2.1 of this report.

258. In my version of the pORPS, there is already a space between “this” and “RPS” so the amendment sought by Ngai Tahu ki Murihiku does not appear to be needed.

9.5.8.4. Recommendation

259. I recommend retaining LF-WAI-P4 as notified.

9.5.9. New policies

260. QLDC seeks to include a new policy to address a gap in the framework and provide further direction to guide the allocation and reallocation of water amongst the ‘third tier’ priorities under LF-WAI-P1.¹⁶² No specific wording is proposed. This submission is discussed in relation to LF-WAI-P1 in section 9.5.5.3 (Priorities – General) of this report

¹⁵⁷ 00121.050 Ravensdown

¹⁵⁸ 00235.081 OWRUG, 00239.073 Federated Farmers

¹⁵⁹ 00223.080 Ngāi Tahu ki Murihiku

¹⁶⁰ 00231.048 Fish and Game

¹⁶¹ Policy 1, NPSFM 2020.

¹⁶² 00138.048 QLDC

because there are other submitters seeking similar relief in relation to that policy. While I consider that there may be merit in providing additional guidance, I do not consider there is enough evidence in submissions to draft the type of guidance requested, and recommended retaining the provisions as notified.

9.5.10. LF-WAI-M1 – Mana whenua involvement

9.5.10.1. Introduction

261. As notified, LF-WAI-M1 reads:

LF–WAI–M1 – *Mana whenua* involvement

Otago Regional Council must partner with Kāi Tahu in *freshwater* management by:

- (1) implementing the actions in MW–M3 and MW–M4,
- (2) actively identifying and pursuing opportunities for *mana whenua* to be involved in *freshwater* governance, including through use of available mechanisms such as transfers of functions (under section 33 of the RMA 1991) and supporting the establishment of *freshwater* mātaaitai,
- (3) implementing actions to foster the development of *mana whenua* capacity to contribute to the Council’s decision-making processes, including resourcing,
- (4) supporting *mana whenua* initiatives that contribute to maintaining or improving the health and well-being of *water bodies*, and
- (5) providing relevant information to *mana whenua* for the purposes of (1), (2), (3) and (4).

9.5.10.2. Submissions

262. QLDC supports LF-WAI-M1 and seeks it be retained as notified.¹⁶³ Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu seek to include a reference to any successor legislation alongside the reference to the RMA.¹⁶⁴ Kai Tahu ki Otago also seeks two other changes to the method: amend the title to “Kāi Tahu rakatirataka” rather than *mana whenua* involvement and in clause (1), include MW-M2 in the list of actions to be implemented.¹⁶⁵

263. Ngāi Tahu ki Murihiku seeks that an additional clause be included to ensure there is explicit reference in the methods to support the use of mātauraka in monitoring and decision making:¹⁶⁶

- (6) developing a kaupapa Kāi Tahu monitoring programme and facilitating the use of mātauraka to inform freshwater management decision-making

¹⁶³ 00138.054 QLDC

¹⁶⁴ 00226.163 Kāi Tahu ki Otago, 00234.028 Te Rūnanga o Ngāi Tahu

¹⁶⁵ 00226.163 Kāi Tahu ki Otago

¹⁶⁶ 00223.081 Ngāi Tahu ki Murihiku

processes, methods and outcomes, in combination with environmental science.

264. Federated Farmers seeks that the method is revised to ensure consistency with the scope of Te Mana o te Wai.¹⁶⁷ No specific wording is requested.

9.5.10.3. Analysis

265. I agree with the amendments sought by Kāi Tahu ki Otago to the title of the method for the reasons set out in their submission, and because the method clearly expects a partnership relationship between the Council and mana whenua. I note that amendments are recommended to MW-M2, including some that move content from MW-M2 to MW-M1. I am unsure whether, with those recommended changes, Kāi Tahu ki Otago would still seek to include reference to MW-M2 in this method. The submitter may wish to address this in evidence. At this stage, I do not recommend accepting this part of the submission point.

266. I do not agree with the amendment sought by Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu to include reference to successor legislation. At this stage, there is no certainty about the form or content of any successor legislation to the RMA and it would not be appropriate to commit the Council to using tools that it is unaware of or that might be inappropriate or unlawful.

267. Ngāi Tahu ki Murihiku seeks an additional clause requiring development of a kaupapa Kāi Tahu monitoring programme to recognise the investment of Kāi Tahu in developing cultural indicators of health specifically to inform freshwater management decision-making. I agree that this will be important for future decision-making and consider it assists with implementing LF-WAI-P2(4) which requires incorporating mātauraka into decision-making, management, and monitoring processes.

268. Federated Farmers do not seek specific relief and I am unsure what consistency issues they refer to in their submission. The submitter may wish to provide more detail in their evidence.

9.5.10.4. Recommendation

269. I recommend amending LF-WAI-M1 to:

LF-WAI-M1 – ~~Mana whenua involvement~~ Kāi Tahu rakatirataka¹⁶⁸

Otago Regional Council must partner with Kāi Tahu in *freshwater* management by:

- (1) implementing the actions in MW-M3 and MW-M4,
- (2) actively identifying and pursuing opportunities for *mana whenua* to be involved in *freshwater* governance, including through use of available

¹⁶⁷ 00239.074 Federated Farmers

¹⁶⁸ 00226.163 Kāi Tahu ki Otago

mechanisms such as transfers of functions (under section 33 of the RMA ~~1991~~)¹⁶⁹ and supporting the establishment of *freshwater* mātaítai,

- (3) implementing actions to foster the development of *mana whenua* capacity to contribute to the Council's decision-making processes, including resourcing,
- (4) supporting *mana whenua* initiatives that contribute to maintaining or improving the health and well-being of *water bodies*, ~~and~~
- (5) providing relevant information to *mana whenua* for the purposes of (1), (2), (3) and (4), ~~and~~
- (6) developing a kaupapa Kāi Tahu monitoring programme and facilitating the use of mātauraka to inform freshwater management decision-making processes, methods and outcomes, in combination with environmental science.¹⁷⁰

9.5.11. LF-WAI-M2 – Other methods

9.5.11.1. Introduction

270. As notified, LF-WAI-M2 reads:

LF-WAI-M2 – Other methods

In addition to method LF-WAI-M1, the methods in the LF-VM, LF-FW, and LF-LS sections are also applicable.

9.5.11.2. Submissions

271. QLDC and Kāi Tahu ki Otago seek LF-WAI-M2 be retained as notified.¹⁷¹ Harbour Fish seeks an additional clause be added to the method, but no reason is provided:¹⁷²

- (x) identifying and pursuing opportunities for Fisheries New Zealand and the commercial fishing sector to be involved in contributing to Council's decision making processes.

9.5.11.3. Analysis

272. The purpose of this method is simply to alert the reader to other applicable methods in other parts of the LF chapter. On this basis, I do not agree that the relief sought by Harbour Fish is appropriate and recommend rejecting this submission point.

¹⁶⁹ Clause 16(2), Schedule 1, RMA

¹⁷⁰ 00223.081 Ngāi Tahu ki Murihiku

¹⁷¹ 00138.055 QLDC, 00226.164 Kāi ahu ki Otago

¹⁷² 00126.034 Harbour Fish, Southern Fantastic and Fantastic Holdings

9.5.11.4. Recommendation

273. I recommend retaining LF-WAI-M2 as notified.

9.5.12. New methods

274. Federated Farmers seeks to include a new method as follows:¹⁷³

LF-WAI-M2 Practical implementation of Te Mana o Te Wai

(1) The Otago Regional Council will give practical effect to LF-WAI-P2 by: Facilitating the practical use of matauraka Maori, such as through cultural flow preference studies, and other methods

(2) Undertaking and supporting detailed hydrological, ecological, habitat, and soil studies to support integrated management of water

(3) Undertaking and supporting social and economic studies to maintain or enhance social and economic wellbeing where transitions are required.

275. The submitter considers that this new method sets out the practical aspects of implementing Te Mana o te Wai that are missing from LF-WAI-M1.

9.5.12.1. Analysis

276. Federated Farmers considers that LF-WAI-M1 applies to the mana whenua component of implementing Te Mana o te Wai but not to all other aspects, including its practical implementation. They seek an additional method “to implement the balancing component of Te Mana o te Wai, and the desire ... to practically implement Te Mana o te Wai.”

277. I agree that facilitating the practical use of mātauraka is an important component of giving effect to Te Mana o te Wai. However, I consider that the amendment sought by Ngāi Tahu ki Murihiku to LF-WAI-M1, that I recommend adopting, addresses this point.

278. Clauses (2) and (3) as sought by the submitter are very broad and it is not clear for what purpose these studies would be undertaken. I agree that a range of information will be required to manage freshwater in an integrated way but consider it is appropriate for the commissioning of studies (or similar) to occur as and when there is clarity about the information sought and its purpose.

9.5.12.2. Recommendation

279. I do not recommend including any additional methods in the LF-WAI sub-section.

9.5.13. LF-WAI-E1 – Explanation

9.5.13.1. Introduction

280. As notified, LF-WAI-E1 reads:

¹⁷³ 00239.075 Federated Farmers

LF–WAI–E1 – Explanation

Water is a central element in Kāi Tahu creation traditions. It was present very early in the whakapapa of the world: in the beginning there was total darkness, followed by the emergence of light and a great void of nothingness. In time Maku mated with Mahoronuiatea which resulted in great expanses of water, then Papatūanuku and Takaroa met and had children after which Takaroa took a long absence. Papatūanuku met Rakinui and they had many children who conspired to force their parents' coupled bodies apart to let the light in. They were also responsible for creating many of the elements that constitute our world today - the mountains, rivers, forests and seas, and all fish, bird and animal life. The whakapapa and spiritual source of *water* and *land* are connected, and *water bodies* are the central unifying feature that connects our landscapes together. The spiritual essence of *water* derives from the atua and the life it exudes is a reflection of the atua.

The whakapapa of *mana whenua* and water are also integrally connected. There is a close kinship relationship, and *mana whenua* and the wai cannot be separated. The tūpuna relationship with *water*, and the different uses made of the *water*, provide a daily reminder of greater powers – of both the atua and tūpuna. This relationship continues into the present and future and is central to the identity of Kāi Tahu. The mana of wai is sourced from the time of creation and the work of kā Atua, invoking a reciprocal relationship with *mana whenua* based in kawa, tikaka and respect for *water's* life-giving powers and its sanctity.

The kinship connection engenders a range of rights and responsibilities for *mana whenua*, including rakatirataka rights and the responsibility of *kaitiakitaka*. *Kaitiakitaka* encompasses a high duty to uphold and maintain the mauri of the wai. If the mauri is degraded it has an impact not only on the mana of the wai but also on the kinship relationship and on *mana whenua*. The mauri expresses mana and connection, which can only be defined by *mana whenua*. Recognising rakatirataka enables *mana whenua* to enjoy their rights over *water bodies* and fulfil their responsibilities to care for the wai and the communities it sustains.

The condition of *water* is seen as a reflection of the condition of the people - when the wai is healthy, so are the people. Kawa and tikaka have been developed over the generations, based on customs and values associated with the Māori world view that span the generations, recognising and honouring *Te Mana o te Wai* and upholding the mauri of the wai is consistent with this value base.

Each *water body* is unique. This is a reflection of its unique whakapapa and characteristics, and it means that each *water body* has different needs. Management and use must recognise and reflect this.

9.5.13.2. Submissions

281. Kāi Tahu ki Otago and OWRUG seek additional paragraphs to highlight the importance of water to the well-being of people and communities, not solely Kāi Tahu. Kāi Tahu ki Otago seeks to include the following:¹⁷⁴

The concept of Te Mana o te Wai aligns closely with the Kāi Tahu approach to freshwater management, but it is not confined to Kāi Tahu. The life-giving qualities of freshwater support the health and wellbeing of the whole community and all people have a shared responsibility to respect and care for the health and wellbeing of freshwater bodies.

282. OWRUG seeks to include the following:¹⁷⁵

Water is valued by the community for a wide variety of reasons. Including productive and recreational values. The ability to utilise water for productive purposes supports a significant proportion of the Otago economy with associated downstream economic and social activity. Water also provides the food and fibre sector with an important resource to build resilience against adverse events including flooding and drought. Access to water, within appropriate environmental limits is an important contributor achieving social, cultural and economic wellbeing within Otago.

283. OWRUG also seeks amendments to paragraphs three and five to clarify the importance of water to all people, not only iwi.¹⁷⁶ Kāi Tahu ki Otago also seeks to include “to Kāi Tahu” in the first, second, and fifth paragraphs to identify particular matters of importance to Kāi Tahu.¹⁷⁷

284. Ngāi Tahu ki Murihiku also seeks to amend the explanation to recognise that Te Mana o te Wai is water centric rather than iwi centric, and that it recognises a collective responsibility, as described in the NPSFM.¹⁷⁸ They also noted that there is a missing macron on Papatūānuku.¹⁷⁹

9.5.13.3. Analysis

285. OWRUG seeks to amend the third paragraph to remove reference to mauri only being able to be defined by mana whenua. I do not agree with the amendments sought. I understand that mauri has a particular meaning for mana whenua and that protecting mauri is a kaitiakitaka obligation for Kāi Tahu. In that context, I consider it is correct that mauri can only be defined by mana whenua.

286. OWRUG also seeks amendments in paragraph 5 to delete reference to “recognising and honouring” Te Mana o Te Wai and replace it with “implementing” and to clarify that it is

¹⁷⁴ 00226.165 Kāi Tahu ki Otago

¹⁷⁵ 00235.082 OWRUG

¹⁷⁶ 00235.082 OWRUG

¹⁷⁷ 00226.165 Kāi Tahu ki Otago

¹⁷⁸ 00223.082 Ngāi Tahu ki Murihiku

¹⁷⁹ 00223.082 Ngāi Tahu ki Murihiku

protecting the health of freshwater that upholds the mauri of the wai. I agree with the submitter that “implementing” is a more accurate reflection of the requirements of the NPSFM. I also agree that the health of freshwater upholds the mauri of the wai, and that this comes from implementing Te Mana o te Wai, however I understand that there is more to Te Mana o te Wai than only freshwater health. I therefore recommend adopting the relief sought, except the phrase “to protect the health of freshwater”.

287. I agree with Kāi Tahu ki Otago and OWRUG that the explanation should reflect the importance of water to the well-being of all people and communities, not only Kāi Tahu. I am reluctant to single out primary production in the explanation as the LF-WAI subsection has deliberately stayed out of providing direction on the use of water and land. Additionally, there are many activities other than primary production that rely on the ability to utilise water, such as tourism, that are not referenced by OWRUG. I recommend including the additional paragraph sought by Kāi Tahu ki Otago as well as the first and last sentences proposed by OWRUG. I consider this also addresses the general relief sought by Ngāi Tahu ki Murihiku. I also agree that the minor amendments sought by Kāi Tahu are appropriate and further identify which concepts in the explanation are particular to mana whenua.

288. I recommend correcting the spelling of Papatūānuku as sought by Ngāi Tahu ki Murihiku.

9.5.13.4. Recommendation

289. I recommend amending LF-WAI-E1 as:

LF-WAI-E1 – Explanation

Water is a central element in Kāi Tahu creation traditions. It was present very early in the whakapapa of the world: in the beginning there was total darkness, followed by the emergence of light and a great void of nothingness. In time Maku mated with Mahoronuiatea which resulted in great expanses of water, then ~~Papatūānuku~~ Papatūānuku¹⁸⁰ and Takaroa met and had children after which Takaroa took a long absence. ~~Papatūānuku~~ Papatūānuku¹⁸¹ met Rakinui and they had many children who conspired to force their parents’ coupled bodies apart to let the light in. They were also responsible for creating many of the elements that constitute our world today - the mountains, rivers, forests and seas, and all fish, bird and animal life. To Kāi Tahu, the¹⁸² whakapapa and spiritual source of *water* and *land* are connected, and *water bodies* are the central unifying feature that connects our landscapes together. The spiritual essence of *water* derives from the atua and the life it exudes is a reflection of the atua.

To Kāi Tahu, the¹⁸³ whakapapa of *mana whenua* and water are also integrally connected. There is a close kinship relationship, and *mana whenua* and the wai

¹⁸⁰ 00226.024 Ngāi Tahu ki Murihiku

¹⁸¹ 00226.024 Ngāi Tahu ki Murihiku

¹⁸² 00226.165 Kāi Tahu ki Otago

¹⁸³ 00226.165 Kāi Tahu ki Otago

(water)¹⁸⁴ cannot be separated. The tūpuna relationship with water, and the different uses made of the *water*, provide a daily reminder of greater powers – of both the atua (gods)¹⁸⁵ and tūpuna (ancestors).¹⁸⁶ This relationship continues into the present and future and is central to the identity of Kāi Tahu. The mana of wai is sourced from the time of creation and the work of kā Atua, invoking a reciprocal relationship with *mana whenua* based in kawa, tikaka (customary practices or values)¹⁸⁷ and respect for *water's* life-giving powers and its sanctity.

The kinship connection engenders a range of rights and responsibilities for *mana whenua*, including rakatirataka rights and the responsibility of kaitiakitaka. Kaitiakitaka encompasses a high duty to uphold and maintain the mauri (life-force)¹⁸⁸ of the wai. If the mauri is degraded it has an impact not only on the mana of the wai but also on the kinship relationship and on *mana whenua*. The mauri expresses mana and connection, which can only be defined by *mana whenua*. Recognising rakatirataka enables *mana whenua* to enjoy their rights over *water bodies* and fulfil their responsibilities to care for the wai and the communities it sustains.

The condition of *water* is seen as a reflection of the condition of the people - when the wai is healthy, so are the people. Kawa and tikaka have been developed over the generations, based on customs and values associated with the Māori world view that span the generations, ~~recognising and honouring~~ Implementing te mana Te Mana o te wai Wai and upholding upholds the mauri of the wai and is consistent with this value base.¹⁸⁹

To Kāi Tahu, ~~Each~~ each¹⁹⁰ *water body* is unique. This is a reflection of its unique whakapapa and characteristics, and it means that each *water body* has different needs. Management and use must recognise and reflect this.

The concept of *Te Mana o te Wai* aligns closely with the Kāi Tahu approach to *freshwater* management, but it is not confined to Kāi Tahu.¹⁹¹ *Water* is valued by the community.¹⁹² The life-giving qualities of *freshwater* support the health and well-being of the whole community and all people have a shared responsibility to respect and care for the health and well-being of *freshwater bodies*.¹⁹³ Access to

¹⁸⁴ 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

¹⁸⁵ 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

¹⁸⁶ 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

¹⁸⁷ 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

¹⁸⁸ 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

¹⁸⁹ 00235.082 OWRUG

¹⁹⁰ 00226.165 Kāi Tahu ki Otago

¹⁹¹ 00226.165 Kāi Tahu ki Otago

¹⁹² 00235.082 OWRUG

¹⁹³ 00226.165 Kāi Tahu ki Otago

water, within appropriate environmental limits, is an important contributor achieving social, cultural and economic well-being within Otago.¹⁹⁴

9.5.14. LF-WAI-PR1 – Principal reasons

9.5.14.1. Introduction

290. As notified, LF-WAI-PR1 reads:

LF–WAI–PR1 – Principal reasons

In accordance with the NPSFM, councils are required to implement a framework for managing *freshwater* that gives effect to *Te Mana o te Wai*. This places the mauri (life-force) of the *water* at the forefront of decision making, recognising te hauora o te wai (the health of the *water*) is the first priority, and supports te hauora o te taiao (the health of the environment) and te hauora o te takata (the health of the people). It is only after the health of the *water* is sustained that water can be used for economic purposes. Giving effect to *Te Mana o te Wai* requires actively involving takata whenua in freshwater planning and management.

The NZCPS also recognises the interconnectedness of *land* and *water*. It notes inland activities can have a significant impact on *coastal water* quality which, in many areas around New Zealand, is in decline. This is a consequence of point and diffuse sources of contamination which can have environmental, social, cultural and economic implications. For example, poor *water* quality adversely effects aquatic life and opportunities for mahika kai gathering and recreational uses such as swimming and kayaking.

9.5.14.2. Submissions

291. Four submitters seek amendments to the principal reasons. OWRUG seeks a range of amendments to reflect that Te Mana o te Wai is to be considered as a whole, not as a strict prioritisation.¹⁹⁵ Toitū te Whenua seeks that a land management example be included in the final paragraph, and provides an example of unregulated or controlled erosion at the top of catchments.¹⁹⁶

292. Kāi Tahu ki Otago seeks two minor changes: including a missing “that” in paragraph one and amending “takata whenua” to “mana whenua”.¹⁹⁷

9.5.14.3. Analysis

293. I do not agree with OWRUG’s interpretation of Te Mana o te Wai and do not recommend adopting the amendments they seek. In my view, it is clear that the NPSFM does expect a hierarchy of obligations to be followed in decision-making.

¹⁹⁴ 00235.082 OWRUG

¹⁹⁵ 00235.083 OWRUG

¹⁹⁶ 00101.029 Toitū Te Whenua

¹⁹⁷ 00226.166 Kāi Tahu ki Otago

294. I consider there may be merit in making the amendment sought by Toitū te Whenua, however the submitter has not provided any specific changes so I am unsure which part of the paragraph they are referring to. In the absence of specific relief sought, I recommend retaining the notified wording. The submitter may wish to clarify the amendment sought in their evidence.

295. I believe the minor amendments sought by Kāi Tahu ki Otago would correct the reference to mana whenua and fix a typographical error.

9.5.14.4. Recommendation

296. I recommend amending LF-WAI-PR1 as:

LF-WAI-PR1 – Principal reasons

In accordance with the NPSFM, councils are required to implement a framework for managing *freshwater* that gives effect to *Te Mana o te Wai*. This places the mauri (life-force) of the *water* at the forefront of decision-making, recognising that¹⁹⁸ te hauora o te wai (the health of the *water*) is the first priority, and supports te hauora o te taiao (the health of the environment) and te hauora o te takata (the health of the people). It is only after the health of the *water* is sustained that water can be used for economic purposes. Giving effect to *Te Mana o te Wai* requires actively involving ~~takata~~ mana¹⁹⁹ whenua in *freshwater* planning and management.

The NZCPS also recognises the interconnectedness of *land* and *water*. It notes inland activities can have a significant impact on *coastal water* quality which, in many areas around New Zealand, is in decline. This is a consequence of point and diffuse sources of contamination which can have environmental, social, cultural and economic implications. For example, poor *water* quality adversely effects aquatic life and opportunities for ~~mahika kai~~ mahika kai²⁰⁰ gathering and recreational uses such as swimming and kayaking.

9.5.15. LF-WAI-AER1

9.5.15.1. Introduction

297. As notified, LF-WAI-AER1 reads:

LF-WAI-AER1 Kāi Tahu are actively involved in the management of *fresh water* and able to effectively exercise their raketirataka, manaakitaka and *kaitiakitaka*.

¹⁹⁸ 00226.166 Kāi Tahu ki Otago

¹⁹⁹ 00226.166 Kāi Tahu ki Otago

²⁰⁰ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

9.5.15.2. Submissions

298. Three submitters seek amendments to LF-WAI-AER1. OWRUG only seeks an amendment to this AER where it is consequential to give effect to relief sought elsewhere,²⁰¹ and Ngāi Tahu ki Murihiku seeks to retain the wording but change the order of AER1 and AER2 to reflect the prioritisation of the mauri of water bodies.²⁰²
299. Waitaki Irrigators seeks to remove all references to rakatirataka²⁰³, as it is not a principle of Te Mana o Te Wai which requires implementation under the NPSFM, and has not been defined in any higher level planning documents.

9.5.15.3. Analysis

300. OWRUG seeks consequential amendments to give effect to other relief sought but does not specify what these amendments are. I have addressed Waitaki Irrigators' submission regarding the term rakatirataka in section 9.5.2.1 of this report.
301. I agree with Ngāi Tahu ki Murihiku that reversing the order of LF-WAI-AER1 and LF-WAI-AER2 better reflects the focus of the LF sub-section. In order to avoid confusion by renumbering provisions, in the amendments to the provisions attached as Appendix 1 to this report I have moved AER2 above AER1 but retained their current numbering. The numbering can be corrected at the end of the hearing process.

9.5.15.4. Recommendation

302. I recommend that this AER becomes the first AER listed in the LF-WAI sub-section. I recommend retaining the wording as notified.

9.5.16. LF-WAI-AER2

9.5.16.1. Introduction

303. As notified, LF-WAI-AER2 reads:

LF-WAI-AER2 The mauri of Otago's *water bodies* and their health and well-being is protected.

9.5.16.2. Submissions

304. Four submitters seek amendments to LF-WAI-AER2. OWRUG seeks to remove the reference to mauri as a consequential amendment resulting from other changes sought to remove the term mauri from policies in the LF-WAI sub-section.²⁰⁴

²⁰¹ 00235.085 OWRUG

²⁰² 00223.083 Ngāi Tahu ki Murihiku

²⁰³ 00213.010 Waitaki Irrigators

²⁰⁴ 00235.084 OWRUG

305. As with LF-WAI-AER1, Ngāi Tahu ki Murihiku seeks to change the order of AER1 and AER2. They also seek to amend AER2 to include restoration of degraded water bodies.²⁰⁵ Similarly, Forest and Bird also seeks to include restoration.²⁰⁶ The reason for this is to reflect the requirements set out in the policies.

306. Harbour Fish seeks to include reference to communities' social, economic, and cultural well-being but has not proposed specific wording.²⁰⁷

9.5.16.3. Analysis

307. Without specific wording, I am unsure what amendments are sought by Harbour Fish and do not recommend any changes.

308. I understand OWRUG's previous points regarding mauri to have been focused on accurately describing the relationship between protecting the health and well-being of water and protecting mauri, rather than opposition to the concept as a whole. I agree that the wording of this AER does have a subtle difference to the way the concept of mauri is expressed earlier in this sub-section, particularly through the changes I have recommended (in response to OWRUG's submission) on LF-WAI-O1. Rather than deleting the term mauri from the AER, I consider similar amendments to those in LF-WAI-O1 would more accurately reflect the relationship between the health and well-being of water bodies and their mauri.

309. I agree with Ngāi Tahu ki Murihiku and Forest and Bird that it is appropriate to include reference to restoration given the direction set out in the policies in this sub-section. I prefer the wording proposed by Ngāi Tahu ki Murihiku which aligns more closely with the amendments I have recommended to the relevant policies to clarify when restoration is required. I note that the specific relief sought by Ngāi Tahu ki Murihiku includes reference to "benefitting people, kā takata katoa". The amendments I have recommended in response to OWRUG's submission include reference to the health and well-being of people, which I consider has a similar outcome to the wording proposed by Ngāi Tahu ki Murihiku.

9.5.16.4. Recommendation

310. I recommend move LF-WAI-AER2 so it sits above LF-WAI AER1. I also recommend the following amendments to LF-WAI-AER2:

LF-WAI-AER2 ~~The mauri of Otago's water bodies and their health and well-being is protected.~~ The mauri and the health and well-being of the environment and people is protected because the health and well-being of Otago's water bodies and their ecosystems are protected and, where degraded, restored.²⁰⁸

²⁰⁵ 00223.084 Ngāi Tahu ki Murihiku

²⁰⁶ 00230.077 Forest and Bird

²⁰⁷ 00126.035 Harbour Fish

²⁰⁸ 00223.084 Ngāi Tahu ki Murihiku, 00230.077 Forest and Bird, 00235.084 OWRUG

9.5.17. New AERs

9.5.17.1. Submissions

311. Three submitters seek to include additional AERs that, while worded differently, broadly seek to recognise the importance of fresh water to the wellbeing of people and communities more broadly. The wording proposed by these submitters is:

- OWRUG: There is balance achieved between water, the wider environment and the community that allows the community to be healthy and provide for its social, economic and cultural wellbeing.²⁰⁹
- Federated Farmers: The management of land and water restores the balance between water, the wider environment, and the community.²¹⁰
- AWA: Fresh water is allocated within limits in a way that gives effect to te Mana o te Wai, and supports the cultural, social and economic wellbeing of mana whenua and local communities.²¹¹

9.5.17.2. Analysis

312. I do not agree with OWRUG's understanding of the need for balance. In my view, the reference to "restoring and preserving the balance between the water, the wider environment, and the community" in clause 1.3(1) of the NPSFM expresses the outcome of Te Mana o te Wai: when water, the environment, and communities are working together in a balanced and integrated way. That is different to balancing competing interests in decision-making, as often happened under the RMA prior to the Supreme Court's findings in King Salmon. In addition, balance is not an anticipated environmental result of the policy framework set out in this chapter. I consider my recommended amendments to LF-WAI-AER2 include reference to the health and well-being of people, which addresses some part of OWRUG's concern. For similar reasons, I do not agree with the wording regarding balance proposed by Federated Farmers.

313. The new AER sought by AWA relates specifically to the use of resources, which is not the intention of this sub-section. I note that LF-FW – AER4 relates to allocating freshwater within limits and do not consider a second AER on this point is necessary.

9.5.17.3. Recommendation

314. I do not recommend including any additional AERs in the LF-WAI sub-section.

²⁰⁹ 00235.086 OWRUG

²¹⁰ 00239.076 Federated Farmers

²¹¹ 00502.004 AWA

9.6. LF-VM – Visions and management

9.6.1. Introduction

315. This section of the *LF – Land and freshwater* chapter identifies Otago’s freshwater management units (FMUs) and sub-units (known as rohe) and sets out their long-term freshwater visions as required by the NPSFM. The freshwater visions were developed following region-wide consultation with communities and mana whenua and set out the long-term aspirations for the catchment, including the water bodies and freshwater ecosystems. They are strategic objectives that look beyond the lifetime of current planning documents and guide the development of plan provisions. Objectives LF-FW-O2 to LF-VM-O6 set freshwater visions at the FMU level. Objective LF-VM-O7 is focused on integrated management and highlights that, while the FMUs and rohe have been identified as the appropriate unit for freshwater management and accounting purposes in accordance with the NPSFM, there are many interconnections and interactions between these spatial areas and giving effect to Te Mana o te Wai requires recognising and managing these in an integrated way.

316. Policy LF-VM-P5 sets out the FMU and rohe to be used for freshwater management in Otago and defines their boundaries. The policy refers to MAP1 which shows the spatial extent of these areas. Policy LF-VM-P6 defines the relationship between FMU and rohe to clarify how their provisions will relate to one another in practice. Broadly, rohe provisions will need to be no less stringent than FMU provisions insofar as they relate to the same matters. LF-VM-M3 sets out how communities will be involved in implementing the processes required by the NPSFM.

317. As well as the provisions in this section, the objectives will be implemented by all of the provisions of the *LF – Land and freshwater* chapter. The relevant provisions for this section are:

- LF-VM-O2 – Clutha Mata-au FMU vision
- LF-VM-O3 – North Otago FMU vision
- LF-VM-O4 – Taieri FMU vision
- LF-VM-O5 – Dunedin & Coast FMU vision
- LF-VM-O6 – Catlins FMU vision
- LF-VM-O7 – Integrated management
- LF-VM-P5 – Freshwater management units and rohe
- LF-VM-P6 – Relationship between FMUs and rohe
- LF-VM-M3 – Community involvement
- LF-VM-M4 – Other methods
- LF-VM-E2 – Explanation
- LF-VM-PR2 – Principal reasons
- LF-VM-AER3
- MAP1 – Freshwater management units

9.6.2. General themes

318. This section of the report begins by addressing a number of general themes that are raised in submissions:

- Structure and consistency of freshwater visions
- Modification of the shape and behaviour of water bodies
- Discharges of wastewater
- Food production

319. The remainder of this section evaluates the submissions on the provisions of the *LF-VM – Visions and management* section in the order they appear in the pORPS.

9.6.2.1. Structure and consistency of freshwater visions

320. The *LF-VM – Visions and management* section contains five long-term freshwater visions. The visions are set at the FMU level, with the Clutha Mata-au vision containing a combination of clauses that apply across the whole FMU and clauses that apply in one or more specific rohe. This reflects the decision of Council to retain the Clutha Mata-au as one FMU to ensure an integrated approach to managing the catchment, while providing for delineation of various sub-catchments (rohe), recognising the considerably different environments and pressures in these areas.

321. A number of submitters have commented on and sought amendments to the way the visions are structured and the consistency (or lack thereof) between them.

Submissions

322. A number of submitters have commented on the approach taken in the LF-VM section to setting a freshwater vision per FMU. Some submitters have raised this in relation to each objective and others have raised it through general comments in their submissions. DOC seeks that all freshwater visions are amended to provide a consistent and clear structure, and to appropriately recognise the relevant values and issues in every FMU or rohe, provide appropriate timeframe and staged targets.²¹²

323. Forest and Bird, Fish and Game, and Matthew Sole seek the addition of a new all of Otago catchment vision as follows:²¹³

LF-VM-O1 – All of Otago catchment vision

By no later than 2040, in all Otago catchments:

- (1) water bodies are protected at, or restored to a state of good health, well-being and resilience,
- (2) activities relating to water support the health, well-being and resilience of affected water bodies,

²¹² 00137.064 DOC, 00137.065 DOC, 00137.067 DOC

²¹³ 00230.078 Forest and Bird, 00231.05 Fish and Game, 00508.008 Matthew Sole

- (3) the natural form and function of water bodies, including with respect to water quality, sedimentation and flows, mimics that of their natural behaviour,
- (4) ecosystem connections between freshwater, wetlands and the coastal environment are protected and restored,
- (5) wetland, estuary and lagoon extent has been restored as much as practical where it has been lost, and their quality is protected and restored,
- (6) the habitat of indigenous species is protected and restored, and indigenous species are able to migrate easily within and between catchments,
- (7) food is available to be harvested from water bodies in abundance and is safe to consume,
- (8) people have abundant, quality opportunities to connect with and recreate within or close to a wide range of water bodies,
- (9) there are no direct discharges of wastewater to water bodies, and
- (10) fresh water is managed in accordance with the LF-WAI objectives and policies.

324. Those submitters also seek consequential amendments to the FMU-specific objectives (LF-VM-O2 to O6) to ensure that the overarching vision applies to all of them while retaining the FMU-specific provisions and timeframes where stronger than their proposed new objective. No specific amendments are sought.

325. Kāi Tahu ki Otago submits that:

“In general, Kā Rūnaka support the focus of the freshwater visions set out in the LF-VM objectives. However, we retain a desire for a consistent and holistic vision for freshwater to apply across all Freshwater Management Units (FMUs). Although Kā Rūnaka accept the approach of setting a vision for each FMU, each of the visions should address all of the components that contribute to supporting Te Mana o te Wai and the relationship of Kāi Tahu with wai maori. Distinctions between the visions for particular FMUs or rohe should only be made where a matter is clearly specific to that FMU or rohe. Kā Rūnaka request that the visions be reviewed to make them more consistent.”

326. In terms of specific relief, Kāi Tahu ki Otago seeks the following:

- Timeframes for action to require practices to change with 10 years, and visions to be achieved within 20 years,²¹⁴
- Amendments to provisions to ensure that mahika kai species do not contain contaminants that would make them unsafe for eating, and that whanau can enter water bodies,²¹⁵

²¹⁴ 00226.010 Kāi Tahu ki Otago

²¹⁵ 00226.011 Kāi Tahu ki Otago

- Amendments to the objectives to remove unnecessary inconsistencies and ensure that each vision addresses the following outcomes:²¹⁶
 - Kāi Tahu relationship with wāhi tūpuna,
 - Kāi Tahu ability to access and use water bodies to maintain their connection with the wai,
 - The health and abundance of mahika kai,
 - The health of ecosystems and indigenous species,
 - The health of wetlands, estuaries and lagoons, and downstream coastal waters,
 - The ability for indigenous species to migrate easily,
 - Sustaining the natural form and function of the water bodies,
 - Sustainable land and water management practices, and
 - Ceasing direct discharges of wastewater to water bodies.

327. For the avoidance of doubt, Wise Response seeks the following additional wording after the objectives:²¹⁷

These FMU and Rohe visions are in addition to meeting all other provisions in this statement and cannot be weaker than a national standard or provision.

Analysis

328. DOC seeks a general amendment to all visions to improve their consistency and structure, as well as specific amendments to each vision. I am unsure whether the amendments they have sought in relation to each vision collectively address their concern regarding the overall structure and consistency of the visions, or whether that relief is additional. At this stage, I recommend accepting this submission in part on the basis that I have recommended accepting some of the specific relief sought by DOC in relation to the visions.

329. Public consultation on the development of Otago’s freshwater visions occurred through October and November 2020. There is further information on the detail of this consultation in section 2.4 and Appendices 5, 6 and 7 of the Section 32 Report. Through that consultation, several key themes were identified that were consistently raised by participants across all FMU and rohe in Otago.²¹⁸ As a result, an early draft of the visions for the pORPS included a region-wide vision, a vision for each FMU, and a vision for each rohe. As set out in the Section 32 Report:²¹⁹

“Feedback on the LF chapter received during clause 3 consultation raised concerns with the freshwater visions, namely that having three ‘levels’ added considerable

²¹⁶ 00226.167 Kāi Tahu ki Otago

²¹⁷ 00509.071 Wise Response

²¹⁸ Noting that the Manuherekia rohe was not included in the freshwater visions consultation due to having had its own, similar consultation process already undertaken.

²¹⁹ Section 32 Report for the pORPS 2021 at [373].

complexity to the planning framework. In terms of the content of the visions, some respondents queried whether some of the visions conflicted with others (for example, the rohe and relevant FMU vision both providing direction on a similar matter but differently). Others were concerned about the flow-on effects for the new LWRP, particularly about the ability of that plan to clearly articulate how all of the visions would be met....”

330. That feedback was taken on board and resulted in redrafting the freshwater visions into their notified form. Forest and Bird, Fish and Game, and Matthew Sole now seek to introduce a new region-wide vision and consequential amendments to the FMU visions to ensure the overarching vision applies to all of them while retaining FMU-specific provisions and timeframes, so long as these are more stringent than the region-wide vision. No specific relief is sought in relation to the FMU visions, so I am unsure what consequential amendments the submitters envisage being made.
331. I note that the vision proposed by the submitters does not adopt the common clauses of the notified visions and instead introduces new language and terminology. In my opinion, this reintroduces the issue described above in the Section 32 Report regarding the complexity that is introduced when there is multiple ‘levels’ of visions, particularly when the terminology between them differs.
332. In addition, I am concerned that the proposed region-wide vision contains no reference to Kāi Tahu values or relationships with water, which are a prominent component of the FMU visions as notified. I note that Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku, and Te Rūnanga o Ngāi Tahu support the inclusion of the region-wide vision proposed, however I remain uncertain how Kāi Tahu values and relationships are recognised, in particular Kāi Tahu relationships with wāhi tūpuna and the ability of Kāi Tahu to access and use water bodies to maintain their connection with the wai, as sought by Kāi Tahu ki Otago.
333. Finally, while I agree with submitters that there are a number of common elements across the freshwater visions, I do not consider that the NPSFM provides the ability for freshwater visions to be set at the region-wide scale. Clause 3.3(2)(a) of the NPSFM states that long-term visions “may be set at FMU, part of FMU, or catchment level”. In my opinion, the NPSFM has explicitly set the maximum spatial scale for each vision at the FMU level, with the ability to develop them on a smaller scale (but not larger).
334. For the reasons I have set out, I do not recommend accepting the submissions seeking a region-wide vision.

Recommendation

335. I recommend retaining the structure of the objectives in LF-VM, subject to specific amendments recommended elsewhere in this report.
- 9.6.2.2. Modification of the shape and behaviour of water bodies
336. Two of the visions in this chapter require that there is no further modification of the shape and behaviour of the water bodies and opportunities to restore the natural form and function of water bodies are promoted wherever possible. These are:

- LF-VM-O2(7)(c) – Clutha Mata-au FMU (Lower Clutha rohe), and
- LF-VM-O5(4) – Dunedin & Coast FMU

Submissions

337. Kāi Tahu ki Otago seeks to extend this requirement to the Upper Lakes rohe in the Clutha Mata-au FMU, the North Otago FMU (LF-VM-O3), the Taieri FMU (LF-VM-O4), and the Catlins FMU (LF-VM-O6).²²⁰
338. In relation to LF-VM-O2, the vision for the Clutha Mata-au FMU, Waka Kotahi seeks that the objective cross-reference other chapters of the RPS that provide for modification of water bodies as a result of infrastructure works or a new provision that recognises this requirement.²²¹
339. In relation to LF-VM-O5, the vision for the Taieri FMU, DCC seeks to delete the requirement to prevent further modification in clause (4) as this could unintentionally restrict restoration activities and does not recognise that modification can have benefits for communities (for example, stormwater drainage).²²²

Analysis

340. It is not clear to me why Kāi Tahu ki Otago seeks to adopt this requirement in the Upper Lakes rohe, North Otago FMU, Taieri FMU, or Catlins FMU, other than for consistency across the visions. I do not consider that, on its own, is sufficient reason to introduce what is a very stringent requirement. Without further evidence, I do not recommend accepting this part of the submission point.
341. I have considered the feedback provided by Kāi Tahu ki Otago during consultation on the freshwater visions and note the following:²²³
- In all catchments, Kāi Tahu ki Otago sought the following outcome: “The water ways are restored to the way they were when tūpuna knew them:
 - Water flow is continuous through the whole system,
 - There is no further modification of river shape or braided stretches,
 - Existing wetlands are restored and the area of wetlands is increased.” (p.2)
 - An additional focus in the Dunedin & Coast FMU is: “Hidden waterways are recognised – in the long term, waterways are naturalised as much as possible, and potentially some piped areas are opened up.” (p.3)
 - The following specific management changes were considered necessary to achieve the vision: (p.4)
 - No modification of headwaters.

²²⁰ 00226.168, 00226.169, 00226.170, 00226.171 Kāi Tahu ki Otago

²²¹ 00305.020 Waka Kotahi

²²² 00139.088 DCC

²²³ Appendix 6 (pp.1-4) of the Section 32 Evaluation Report for the pORPS 2021.

- Retain existing braided stretches.
 - No further modification of the shape of rivers.
 - No new instream dams.
 - Rehabilitations of gravel extractions to provide for natural habitat and mahika kai.
 - Removal or modification of flood gates in lower reaches to allow easy fish passage.
342. This provides more detail on what is meant by “modification”, which appears to have a particular focus on river shape, braided rivers, damming, gravel extractions, and flood gates. I consider the scope of the clauses in LF-VM-O2 and LF-VM-O5 is considerably broader than this, applying to all activities that modify the shape or behaviour of a water body in these FMUs.
343. Policies 6 and 7 of the NPSFM require the following (respectively):
- There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.
 - The loss of river extent and values is avoided to the extent practicable.
344. Both policies are supported by more detailed direction in clauses 3.22 and 3.24, including policies that regional councils must include in their regional plans. Those policies anticipate some modification to both natural inland wetlands and rivers, including extent. I consider that the modification clauses in LF-VM-O2 and LF-VM-O5 are more stringent than these, however I note that clause 3.1(2)(a) states that nothing in Part 3 of the NPSFM prevents a local authority adopting more stringent measures than required by the NPSFM.
345. In relation to the submission point by Waka Kotahi, Policy EIT-INF-P13 provides direction on locating and managing the effects of infrastructure. Clause (1) of that policy requires avoiding, as a first priority, locating infrastructure in a list of particular places that includes significant natural areas, outstanding natural features and landscapes, natural wetlands, and outstanding water bodies. If it is not possible to avoid those areas, clause (2) sets out how the effects must be managed for nationally or regionally significant infrastructure and for other infrastructure. I agree with Waka Kotahi that this provision provides for modification of water bodies, as far as the modification is functionally or operationally needed, however the restriction on modification in LF-VM-O2 and LF-VM-O5 is limited to shape and behaviour which would not prevent some activities anticipated by EIT-INF-P13 occurring. It may, however, prevent others types of activities.
346. I agree with DCC that modification of the shape and behaviour of a water body may have positive effects on the health and well-being of water bodies, including where it is undertaken for restoration or enhancement purposes. The clauses as notified have assumed that modification is negative which may not always be the case. While I acknowledge that the modification clauses do not recognise the benefits for communities, I am conscious of the need to give effect to Te Mana o te Wai, including by

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

347. I consider that the modification clauses in LF-VM-O2 and LF-VM-O5 are not clearly enough worded to convey their intent. I am concerned that the clauses may unintentionally prevent positive action occurring. During consultation on freshwater visions in a number of FMUs and rohe, communities identified the importance of water storage as a tool for managing the effects of climate change as well as a desire, in some places, to increase the use of hydro-electricity generation. As currently worded, the clauses may prevent the development of these types of infrastructure. While I do not consider they should be provided for in every situation, both are likely to play a role in mitigating and/or adapting to climate change.
348. In response to the concerns of submitters, I recommend replacing “there is no further modification” with “minimise modification...”. I consider that recognises that there will be some modification of shape and behaviour, but qualifies the amount able to occur. This amendment changes the grammar of the clause and therefore I recommend a consequential amendment to the second part of the clause regarding restoration. I recommend accepting the submission points by DCC and Waka Kotahi in part.
349. Kāi Tahu ki Otago seeks to include this provision in the wider Clutha Mata-au FMU (LF-VM-O2), the North Otago FMU (LF-VM-O3), the Taiari FMU (LF-VM-O4), and the Catlins FMU (LF-VM-O6). The submitter has not provided evidence to demonstrate why that inclusion is sought. Without further information, I do not recommend accepting these submission points.

Recommendations

350. I recommend the following amendments to LF-VM-O2(7)(c)(i):
- (i) ~~there is no further~~ minimise²²⁴ modification of the shape and behaviour of the *water bodies* and promote opportunities to restore the natural form and function of *water bodies* ~~are promoted~~²²⁵ wherever possible, and
351. I also recommend the following amendment to LF-VM-O5(4):
- (4) ~~there is no further~~ minimise²²⁶ modification of the shape and behaviour of the *water bodies* and promote opportunities to restore the natural form and function of *water bodies* ~~are promoted~~²²⁷ wherever possible, and

²²⁴ 00139.088 DCC, 00305.020 Waka Kotahi

²²⁵ Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00139.088 DCC, 00305.020 Waka Kotahi

²²⁶ 00139.088 DCC, 00305.020 Waka Kotahi

²²⁷ Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00139.088 DCC, 00305.020 Waka Kotahi

9.6.2.3. Discharges of wastewater

352. Two of the visions in this chapter require that, by the dates specified, there are no direct discharges of wastewater to water bodies. These are:

- LF-VM-O2(7)(c)(iv) – Clutha Mata-au FMU (Lower Clutha rohe), and
- LF-VM-O4(7) – Taieri FMU.

353. Some submitters have sought amendments to these provisions that I consider are best addressed together.

Submissions

354. Kāi Tahu ki Otago seeks that all visions are amended to include the requirement for direct discharges of wastewater to water bodies to be phased out.²²⁸ Similarly, Ngāi Tahu ki Murihiku seeks to include this requirement in LF-VM-O6.²²⁹

355. In relation to LF-VM-O2, Fonterra supports the intention of the clause but submits that, given the scope of the definition of wastewater, there may be instances whereby alternative discharge regimes are not available within the timeframe specified, despite best efforts. The submitter notes that wetland treatment prior to discharge may not always be an option. Fonterra states that it agrees that there is no scenario where the discharge of sewage direct to water bodies would be acceptable post 2045, however there may be scenarios where discharge of treated industrial wastewater to water offers the best overall outcome for freshwater and considers that that option should not be ruled out entirely. Fonterra seeks the following amendments:²³⁰

(iv) there are no direct discharges of ~~wastewater~~ sewage to water bodies,

(v) there are no direct discharges of industrial and trade waste or grey water to water bodies unless no feasible alternative discharge option exists to better manage ecological and cultural effects on water quality.

356. In relation to LF-VM-O4, DCC submits that in some situations (such as extreme weather events or when a system fault has occurred), discharges of treated and/or untreated wastewater to water bodies can occur.²³¹ DCC states that in some cases, the provision of a wastewater overflow may be the best practicable option with minimal environmental effect as total elimination of overflows is unlikely to be possible in most wastewater systems. The submitter does not seek specific amendments, rather it seeks general amendments to address the concerns raised.

357. The submission points by Fonterra and DCC have not been opposed by any further submitters.

²²⁸ 00226.167 Kāi Tahu ki Otago

²²⁹ 00223.086 Ngāi Tahu ki Murihiku

²³⁰ 00213.035 Fonterra

²³¹ 00139.087 DCC

Analysis

358. Wastewater is a term that is defined in the National Planning Standards and therefore the definition is mandatory where the term is used. The definition is:

...any combination of two or more the [sic] following wastes: sewage, greywater or industrial and trade waste.

359. It is not clear to me from the submission by Kāi Tahu ki Otago what the reason is for their request to require phasing out direct discharges of wastewater to water across the region, or for Ngāi Tahu ki Murihiku other than that this requirement is important to Ngāi Tahu ki Murihiku, however I understand that discharges of human wastes are culturally offensive to Kāi Tahu. I have considered the relevant iwi management plans to better understand the position of Kāi Tahu rūnaka on this matter.

360. The Kāi Tahu ki Otago IMP contains a number of relevant provisions:

- Section 5.3.3, objective (iii): “There is no discharge of human waste directly to water.”
- Section 5.3.4, policy 8: “To require land disposal for human effluent and contaminants.”

361. Section 3.5.2 of the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 contains specific direction on the management of wastewater. This section applies to Te rā a Takitimu/Southland Plains area, which includes parts of the Clutha Mata-au FMU, but is cross-referenced in the Takitimu me ona Uri/High Country and Foothills section (3.4) which is relevant to the Catlins FMU. Particularly relevant are the following:

- “Wastewater disposal is a resource management issue arising from community sewage schemes, new subdivision and residential development proposals, and industrial operations such as freezing works and fish processing plants.” (Section 3.5.2)
- “Our bottom line is to avoid discharge of wastewater (e.g. sewage and stormwater) to water, as such activities have adverse effects on cultural values such as mauri, wairua, mahinga kai and wāhi tapu. Our preference is for wastewater to be treated to remove contaminants, and then discharged to land via wetlands and riparian areas, to allow Papatūānuku to provide a natural filter for waste. Where this is not practical or feasible, and discharge to water is proposed, then adverse effects must be mitigated through treatment to a very high standard and robust monitoring programs. Ngāi Tahu ki Murihiku will always look for the most culturally, environmentally, socially and economically appropriate option for a particular site.” (Section 3.5.2)

362. Although not relevant to LF-VM-O4 (Taieri FMU) or LF-VM-O6 (Dunedin and Coast FMU), the Waitaki Iwi Management Plan 2019 is relevant to the request by Kāi Tahu ki Otago to incorporate the requirement to cease direct discharges of wastewater into LF-VM-O5 (North Otago FMU). That Plan states the following in section 5.2.5 (Discharges):

- “*E.coli* contamination in waterways is entirely unacceptable to Manawhenua.” (Issue 2)
- “The direct discharge to waterways and moana of contaminants, nutrients and wastewater is avoided.” (Objective 1)
- “Require the phasing out of existing direct discharges to water.” (Policy 1)
- “Prohibit the discharge of contaminants that would result in rivers, springs, lakes and wetlands exceeding drinking water quality standards, including the discharge of: (a) wastewater ...” (Policy 2)
- “Encourage the discharge to land of treated wastewater and storm water that meets Manawhenua aspirations.” (Policy 3)

363. I have also considered the Ngāi Tahu Freshwater Policy Statement 1999 which I understand is intended to be read alongside iwi management plans, such as those I have referenced above. Section 4.3.2 of the Statement states:

- “Protecting the mauri of a waterbody requires Prohibiting the direct discharge of contaminants to water, in particular the discharge of human effluent ...”
- “Throughout the rohe there are still examples of point source water pollution caused by the discharge of effluent from sewage plants directly to water and industries. Resource management agencies need to recognise that the direct discharge of treated effluent to water, while causing few biological adverse effects, still causes significant adverse cultural effects. Too often this distinction is not made.”

364. Additionally, Strategy 31 of priority 6.2 (mauri) states that “Councils should prohibit the direct discharge of contaminants, particularly human effluent, to waterways ... Discharges to land should be encouraged.”

365. From my reading of these documents, I understand that Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku have a strong desire to avoid the discharge of human effluent, or sewage, directly to water. The term “wastewater” is often used to describe discharges from community sewerage schemes and on-site domestic wastewater treatment systems that contain sewage. I understand that it is the sewage component of wastewater that is the most culturally offensive, however I acknowledge that the definition of “wastewater” from the Planning Standards (and used in this chapter) could also apply to discharges that do not contain sewage and that the iwi management plans referenced above also, in some cases, contain direction that is broader than only sewage.

366. I agree with Fonterra that direct discharge of sewage to water bodies is very unlikely to be acceptable beyond 2045, but that there may be other types of discharges that meet the definition of wastewater despite not containing sewage. I am not convinced, from my reading of the iwi management plans, that these discharges are as culturally offensive as those containing sewage, but Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku may wish to clarify in their evidence.

367. Fonterra seeks to replace “wastewater” with “sewage”. That term is also defined in the National Planning Standards, as follows:

means human excrement and urine

368. While I understand the intent behind adopting this term, I am concerned that it would suggest that only direct discharges of sewage alone are within scope. It is my understanding that most sewage discharges are part of wastewater discharges (i.e. discharges that contain sewage as well as greywater and blackwater) as all household wastes are collected and treated via the same system (either a community wastewater treatment system or on-site domestic wastewater treatment system). To prevent any unintended narrowing of the intent of the clause, I consider it would be more appropriate to amend the reference to “wastewater containing sewage”.
369. The additional clause requested by Fonterra goes into a level of detail that I consider does not accord with a long-term vision. I note that policy LF-FW-P15(1) requires preferring discharges of wastewater to land over discharges to water unless the adverse effects associated with a discharge to land are greater than a discharge to water. I consider this appropriately addresses wastewater discharges that do not contain sewage. I recommend the submission point by Fonterra is accepted in part.
370. I acknowledge that the amendment I have recommended does not address the concerns raised by DCC. I understand that there are generally two types of overflows from wastewater systems: dry weather and wet weather. Dry weather overflows usually occur when there is a blockage in the wastewater system that causes wastewater to back-up behind the blockage. Wet weather overflows occur when the wastewater system is inundated with stormwater and/or groundwater during wet weather events, which can cause the capacity of the system to be exceeded. In many places in Otago, constructed overflows divert these flows to water bodies during these periods. It is my understanding that it is primarily wet weather overflows that result in wastewater being discharged to water bodies.
371. While I appreciate the difficulties that may be faced by DCC (and other wastewater system operators) if they are unable to rely on constructed overflows, in my view any discharges containing sewage will be culturally offensive to Kāi Tahu and should, in the long-term, cease to occur. At this stage, I do not recommend accepting the submission point by DCC and do not recommend any amendments to the provisions. I anticipate this matter will be a point of discussion during the hearing and DCC, Kāi Tahu ki Otago, and Ngāi Tahu ki Murihiku may wish to specifically address this in their evidence. In particular, it would be beneficial for Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku to confirm their position on discharges of wastewater containing sewage rising from constructed overflows (and other methods) to water bodies. Similarly, DCC may wish to provide more explanation about the scale of this issue in their system and what the implications would be should the wording remain as I recommend.
372. At this stage, subject to further evidence from submitters, I recommend accepting in part the submission point by Fonterra and rejecting the submissions by DCC and Kāi Tahu ki Otago.

Recommendation

373. I recommend replacing “wastewater” with “wastewater containing sewage” in LF-VM-O2(7)(c)(iv) and LF-VM-O4(7).

9.6.2.4. Food production

374. Four of the visions in this chapter refer to food production in various ways. These are:

- LF-VM-O2(7)(b)(ii) – Clutha Mata-au FMU (Dunstan, Manuherekia, and Roxburgh rohe)
- LF-VM-O3(6) – North Otago FMU
- LF-VM-O4(8) – Taieri FMU
- LF-VM-O6(6) – Catlins FMU

375. A number of submissions, both general and in relation to particular provisions, have sought to amend this term. The replacement wording sought varies depending on submitter but generally seeks to include other primary production activities such as forestry.

Submissions

376. City Forests Limited seeks that the references to “food production” throughout the provisions are replaced with primary production. The submitter considers that the equal importance of fibre production, including plantation forestry, alongside food production should be acknowledged.

377. Other submitters have sought to replace “food production” with various terms in the specific provisions. In LF-VM-O2 submitters have sought:

- OWRUG and Moutere Station: “food and fibre sector” or “food and fibre production”,²³²
- Federated Farmers: “primary production”,²³³ and
- McArthur Ridge and Strath Clyde Water and others: “food and wine production”,²³⁴

378. Elsewhere, OWRUG seeks a new provision (presumably a definition although the submission is unclear) specific to the food and fibre sector, and proposes the following wording:

includes the primary sector production industries (excluding mining), the related processing industries and services industries along the value chain from producer to final consumer including transporters, storage, distribution marketing and sales.²³⁵

²³² 00235.087 OWRUG, 00026.005 Moutere Station

²³³ 00239.077 Federated Farmers

²³⁴ 00403.005 McArthur Ridge Vineyard, 00404.005 Strath Clyde Water

²³⁵ 00235.008 OWRUG

379. For the purposes of considering the OWRUG submission on the LF-VM section, I have also considered this general submission point.

380. In LF-VM-O3, LF-VM-O4, LF-VM-O5, Federated Farmers seeks to replace “food production” with “primary production.”²³⁶ Generally, the submitter seeks to broaden the reference to include other types of primary production activities that are not food production.

Analysis

381. The term “primary production” is defined in Standard 14 (Definitions) of the National Planning Standards and therefore using that term would require adopting that definition, which is:

means:

(a) *any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and*

(b) *includes initial processing, as an ancillary activity, of commodities that result from the listed activities in (a);*

(c) *includes any land and buildings used for the production of the commodities from (a) and used for the initial processing of the commodities in (b); but*

(d) *excludes further processing of those commodities into a different product.*

382. In my opinion, there is a significant difference between “food production” and “primary production” and the former was used deliberately to reflect the feedback received from the community. I do not consider it would be appropriate to replace “food production” with “primary production” in each vision without considering the consultation feedback provided by communities and the impacts of amending the term within each clause it is used.

383. The definition of “Food and fibre sector” proposed by OWRUG largely adopts the definition of primary production, except that it excludes mining. As with the definition above, I do not consider that all of these activities were necessarily intended to be captured by the term “food production”, particularly aquaculture, forestry, and quarrying. In some FMUs, communities held strong views on some of those activities that differed from the views they held on food production generally. For example, in the Taieri FMU, community consultation feedback highlighted that agriculture was the primary economic driver in the FMU and that irrigation ensured the stability and resilience of agricultural practices but also that there was strong opposition to forestry because it is seen as a threat to agriculture.

384. In my opinion, these submission points (including the general point by City Forests Limited) need to be addressed individually in each provision, rather than collectively. I have therefore considered these points in relation to each use of the term in each vision and made my recommendations accordingly.

²³⁶ 00239.079 Federated Farmers

Recommendation

385. I do not recommend any amendments.

9.6.3. Definitions

386. There are a range of submissions relating to defined terms used in this section, some of which are addressed in other parts of this report. In summary:

- Defined terms used throughout the pORPS, including in this section, are addressed in *Report 3: Interpretation (Definitions and abbreviations)*.
- Defined terms used only in the LF chapter, but across two or more of the sections within the LF chapter, are addressed in section 9.4 of this report.
- Defined terms used only in the LF-VM section are addressed in this section of the report.

387. There are no submissions on definitions used only in the LF-VM section, so no further discussion is required.

9.6.4. LF-VM-O2 – Clutha Mata-au FMU vision

9.6.4.1. Introduction

388. This objective is a long-term vision for freshwater as required by clause 3.3 of the NPSFM. The Clutha Mata-au FMU has five sub-units called rohe: Upper Lakes, Dunstan, Manuherekia, Roxburgh, and Lower Clutha. The vision is structured as follows:

- Clauses (1) to (6) apply to the whole FMU,
- Clause (7) contains additional requirements for each of the rohe within the FMU, and
- Clause (8) outlines the timeframes for achieving the vision in each rohe.

389. As notified, LF-VM-O2 reads:

LF-VM-O2 – Clutha Mata-au FMU vision

In the Clutha Mata-au FMU:

- (1) management of the FMU recognises that:
 - (a) the Clutha Mata-au is a single connected system ki uta ki tai, and
 - (b) the source of the wai is pure, coming directly from Tawhirimatea to the top of the mauka and into the awa,
- (2) *fresh water* is managed in accordance with the LF-WAI objectives and policies,
- (3) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained,
- (4) *water bodies* support thriving mahika kai and Kāi Tahu whānui have access to mahika kai,

- (5) indigenous species migrate easily and as naturally as possible along and within the *river* system,
- (6) the national significance of the Clutha hydro-electricity generation scheme is recognised,
- (7) in addition to (1) to (6) above:
 - (a) in the Upper Lakes rohe, the high quality *waters* of the *lakes* and their tributaries are protected, recognising the significance of the purity of these *waters* to Kāi Tahu and to the wider community,
 - (b) in the Dunstan, Manuherehia and Roxburgh rohe:
 - (i) flows in *water bodies* sustain and, wherever possible, restore the natural form and function of main stems and tributaries to support Kāi Tahu values and practices, and
 - (ii) innovative and sustainable *land* and *water* management practices support food production in the area and reduce discharges of nutrients and other *contaminants* to *water bodies* so that they are safe for human contact, and
 - (iii) sustainable abstraction occurs from main stems or *groundwater* in preference to tributaries,
 - (c) in the Lower Clutha rohe:
 - (i) there is no further modification of the shape and behaviour of the *water bodies* and opportunities to restore the natural form and function of *water bodies* are promoted wherever possible,
 - (ii) the ecosystem connections between *freshwater*, *wetlands* and the coastal environment are preserved and, wherever possible, restored,
 - (iii) *land* management practices reduce discharges of nutrients and other *contaminants* to *water bodies* so that they are safe for human contact, and
 - (iv) there are no direct *discharges* of *wastewater* to *water bodies*, and
- (8) the outcomes sought in (7) are to be achieved within the following timeframes:
 - (a) by 2030 in the Upper Lakes rohe,
 - (b) by 2045 in the Dunstan, Roxburgh and Lower Clutha rohe, and
 - (c) by 2050 in the Manuherehia rohe.

9.6.4.2. Submissions

390. There are approximately 50 submissions on this provision, the most of any provision in the *LF – Land and freshwater* chapter. Three submitters support LF-VM-O2 and seek it be retained as notified.²³⁷ The remaining submissions range from more general or high-level amendments to the provision through to specific amendments to clauses.

General

391. Ngāi Tahu ki Murihiku and Kāi Tahu ki Otago have raised concerns about the objective setting visions for both the FMU and the rohe. In particular, Ngāi Tahu ki Murihiku considers that the division of the FMU into five rohe may undermine the provisions in the LF-WAI section and the achievement of *ki uta ki tai*.²³⁸ The submitter has proposed:²³⁹

- Amendments to the objective so that it provides an overarching vision for Clutha Mata-au,
- Amendments to avoid unnecessary duplication between the overarching vision for the FMU as a whole and the visions for the five rohe within it to make it clear where distinct rohe outcomes are sought, and
- Amending the objective so that it is consistent with ‘region-wide’ visions proposed elsewhere by submitters.

392. Kāi Tahu ki Otago seeks substantial changes to the objective, primarily by bringing many of the rohe-specific requirements up to the ‘whole of FMU’ level: clauses (7)(b)(i), (7)(c)(ii) and (iv) as notified and (7)(b)(ii) and (iii) and (7)(c)(iii) with additional amendments.²⁴⁰ This leaves only two rohe-specific requirements in the objective: (7)(a) and (7)(c)(i) with amendments to include the Upper Lakes rohe.

393. The Minister for the Environment seeks amendments to include a clear vision of a future state where over-allocation is addressed through the phasing out of existing over-allocation and the avoidance of future over-allocation.²⁴¹ Waka Kotahi seeks that the objective cross-reference other chapters of the RPS that provide for modification of water bodies as a result of infrastructure works or a new provision that recognises this requirement.²⁴²

394. Horticulture NZ supports the vision and objective but seeks that food production and related elements of food supply and food security are included as a Significant Resource Management Issue for the region.

²³⁷ 00318.056 Contact, 00240.018 NZ Pork, 00321.031 Te Waihanga

²³⁸ 00223.085a Ngāi Tahu ki Murihiku

²³⁹ 00223.085a Ngāi Tahu ki Murihiku

²⁴⁰ 00226.168 Kāi Tahu ki Otago

²⁴¹ 00136.004 Minister for the Environment

²⁴² 00305.020 Waka Kotahi

395. DCC submits that the vision does not recognise sediment processes currently being obstructed by large dams, and seeks that the vision be amended to include material about mitigation of those processes.²⁴³

Clauses (1) to (6): All of Clutha Mata-au

396. Ngāi Tahu ki Murihiku highlights that the reference to Tāwhiremātea in clause (1)(b) is missing the correct macrons.²⁴⁴ No submissions were made on clause (2). Toitū te Whenua seeks to amend clause (3) to include reference to finding new connections being supported. The submitter considers this is necessary to recognise the loss of connection between Kāi Tahu and wāhi tūpuna due to Kāi Tahu being unable to access large parts of the region.

397. In relation to clause (4), concerns were raised by Toitū te Whenua that ORC is unrealistically committing to providing Kāi Tahu access to all mahika kai in the FMU and that the clause should be amended to reflect that ORC will support Kāi Tahu whanui in accessing mahika kai.²⁴⁵ The submitter requests that consideration be given by ORC to supporting Kāi Tahu in building relationships with private landowners whose properties contain significant sites.²⁴⁶

398. In relation to clause (5), Moutere Station seeks amendments to only require the management of indigenous species migration pathways where this is required to complete their lifecycle, on the basis that not all indigenous species need to migrate and the movement of other non-indigenous species could have a detrimental effect on the indigenous species sought to be protected, such as the Central Otago roundhead galaxias.²⁴⁷

399. Similarly, Contact seeks amendments to (5) so that the effective migration of indigenous species is maintained or, where practicable, improved.²⁴⁸ The submitter considers that the clause as notified fails to reflect the reality that the dams on the Clutha Mata-au have significantly altered the natural form and function of parts of the awa, including interfering with the natural migration of native fish species. Contact considers mitigation measures such as trap and transfer to assist with fish passage is not “natural”.

400. Conversely, John Highton seeks amendments to clause (5) to provide for the migration of valued introduced species, such as salmon, as well as native species.²⁴⁹

²⁴³ 00139.085 DCC

²⁴⁴ 00223.085a Ngāi Tahu ki Murihiku

²⁴⁵ 00101.031 Toitū Te Whenua

²⁴⁶ 00101.031 Toitū Te Whenua

²⁴⁷ 00026.004 Moutere Station

²⁴⁸ 00318.011 Contact

²⁴⁹ 00014.044 John Highton

401. In relation to clause (6), John Highton seeks amendments to recognise that hydro-electricity generation causes significant environmental degradation and the inclusion of a provision with tighter regulations to manage those effects.²⁵⁰

402. DOC seeks two new clauses be included in this part of the objective:²⁵¹

(x) healthy wetlands are restored in the upper and lower catchment wetland complexes, including Lake Tuakitoto

(y) land and water management practices improve resilience to the effects of flooding and climate change

403. The first is sought for consistency with the approach taken to wetlands in other FMUs and identifies the significant values of Lake Tuakitoto which warrant specific recognition in the same way as the Waipori/Waiholā wetland in LF-VM-O4. The second is sought on the basis that the objective as notified fails to recognise the significant issues with flooding and climate change in the catchment.²⁵²

New clauses: All of Clutha Mata-au

404. A number of submitters seek to include additional clauses into the part of the objective applying to the whole Clutha Mata-au FMU.

405. OWRUG seeks the addition of a new clause to reflect the importance of the food and fibre sector with the FMU:²⁵³

(x) water is allocated to the food and fibre sector support sustainable production and the sectors contribution to social and economic wellbeing of the community.

406. For similar reasons to OWRUG, Federated Farmers also seeks an additional clause:

(x) food production and activities associated with the primary sector are recognised as having an important role in the FMU,

407. Trojan and Wayfare seek the addition of a new clause to provide for human well-being through thriving outdoor recreation opportunities, including access to waterbodies and use of water for outdoor recreation activities.²⁵⁴

408. Kāi Tahu ki Otago seeks to move a number of the rohe-specific requirements from clause (7) up to the earlier clauses applying to the whole FMU:²⁵⁵

(5a) the ecosystem connections between freshwater, wetlands and the coastal environment are preserved and, wherever possible, restored,

²⁵⁰ 00014.045 John Highton

²⁵¹ 00137.064 DOC

²⁵² 00137.064 DOC

²⁵³ 00235.087 OWRUG

²⁵⁴ 00206.028 Trojan, 00411.040 Wayfare

²⁵⁵ 00226.168 Kāi Tahu ki Otago

(5b) flows in water bodies sustain and, wherever possible, restore the natural form and function of main stems and tributaries to support Kāi Tahu values and practices, and

(5c) food production in the area is supported by innovative and sustainable land and water management practices that reduce discharges of nutrients and other contaminants to water bodies so that they are safe for human contact and mahika kai species are safe for consumption, and

(5d) sustainable abstraction occurs from lakes, river main stems or groundwater in preference to tributaries,

(5e) land management practices reduce discharges of nutrients and other contaminants to water bodies so that they are safe for human contact and mahika kai species are safe for consumption, and

(5f) there are no direct discharges of wastewater to water bodies, and

409. The reason for moving these clauses is to reflect the intent of managing the Mata-au as a single system by ensuring that visions that are appropriate for the whole FMU are applied at that level and only necessary distinctions are made between rohe.

Clause (7) in general and (7)(a): Upper Lakes

410. John Highton seeks that clause 7 be amended to emphasise the need for reducing contaminants and discharges from land management practices, as specified in clause 7(c)(iii).²⁵⁶ It is not clear which part of clause (7) the submitter is referring to.

411. Waterfall Park seeks that clause 7(a) be amended to require, in addition to protection, that water quality is improved if degraded.²⁵⁷ They provide the example of Lake Hayes as a degraded lake and consider that improvement of degraded water bodies should be promoted through the objective. For similar reasons, Wise Response also seeks to require restoration in addition to protection in clause (7)(a).²⁵⁸

Clause (7)(b): Dunstan, Manuherehia and Roxburgh rohe

412. There were many submissions on this part of the objective. In relation to (7)(b) as a whole, Toitū te Whenua raises concerns about the ability to meet expectations for Lake Dunstan, due to the challenges experienced in this area but does not seek specific relief.²⁵⁹

413. In relation to clause (7)(b)(i), Manuherehia Catchment Group considers that the provision lacks the detail required to be able to determine if it is suitable for the FMU.²⁶⁰ The submitter also considers that Kāi Tahu values and practices that are to be supported need

²⁵⁶ 00014.046 John Highton

²⁵⁷ 00023.004 Waterfall Park

²⁵⁸ 00509.072 Wise Response

²⁵⁹ 00101.032 Toitū Te Whenua

²⁶⁰ 00116.001 Manuherehia Catchment Group

to be stated in this vision statement.²⁶¹ Lauder Creek Farming seeks clarification on what “natural form and function” is.²⁶²

414. Wise Response seeks a number of amendments to clause (7)(b)(i) to improve clarity and remove what are considered to be loopholes:²⁶³

- Replacing “flows” with “environmental flow regimes”,
- Deleting “wherever possible”, and
- Including “in accordance with Te Mana o te Wai” at the end of the clause.

415. There were several submissions received on clause 7(b)(ii) with submitters seeking a range of amendments:

- Beef + Lamb and DINZ seek amendments to only require the reduction of discharges of nutrients and other contaminants to water bodies “where necessary to ensure” that they are safe for human contact,²⁶⁴
- Moutere Station, OWRUG, Federated Farmers, McArthur Ridge Vineyard, and Strath Clyde Water seek to replace “food production” with either “food and fibre production” (Moutere Station and OWRUG), “food and fibre sector” (OWRUG), “primary production” (Federated Farmers) or “food and wine production” (McArthur Ridge and Strath Clyde Water and others),²⁶⁵
- Manuherehia Catchment Group seeks to delete the term “innovative” and replace “food production” with “innovative land use”,²⁶⁶
- COES and Lynne Stewart seek to delete (7)(b)(ii) and insert a new clause as follows:²⁶⁷

the ecological function of all water bodies is protected and restored where degraded supported by innovation and sustainable land and water management practices which reduce discharges of nutrients and other contaminants to water bodies so they are safe for human contact

416. Several submissions were received on clause 7(b)(iii):

- Lauder Creek Farming seeks its deletion,²⁶⁸
- OWRUG and Federated Farmers seek that it be amended to refer to sustainable abstraction consistent with NOF values,²⁶⁹

²⁶¹ 00116.001 Manuherehia Catchment Group

²⁶² 00406.007 Lauder Creek Farming

²⁶³ 00509.072 Wise Response

²⁶⁴ 00237.026 Beef + Lamb and DINZ

²⁶⁵ 00026.005 Moutere Station, 00235.087 OWRUG, 00239.077 Federated Farmers, 00403.005 McArthur Ridge Vineyard and 00404.005 Strath Clyde Water *et al.*, respectively.

²⁶⁶ 00116.002 Manuherehia Catchment Group

²⁶⁷ 00202.016 COES, 00030.012 Lynne Stewart

²⁶⁸ 00406.007 Lauder Creek Farming

²⁶⁹ 00235.087 OWRUG, 00239.077 Federated Farmers

- Moutere Station seeks that it be amended to note that abstraction from the specified water body types in preference to tributaries only occurs where practicable, to ensure that sustainable abstraction from tributaries can continue,²⁷⁰
- COES considers it is not clear what is to be sustained and seeks that the clause as notified be deleted and replaced with “abstraction within the ecological capacity of the water bodies occurs from the main stems or groundwater in preference to tributaries”,²⁷¹
- Manuherekia Catchment Group seeks that it be deleted.²⁷² The submitter considers that the vision should not dictate a preference of abstraction, given that as long as the waterbody at the site of abstraction is looked after, then the fact that it is a tributary is irrelevant. They also note that many abstraction locations have multiple reasons for their selection, including being near the site of water use, only source available to the property, and the use of gravity for delivery.

417. COES and Lynne Stewart seek two additional matters be added to clause 7(b):²⁷³

(iv) creative ecological approaches to reducing didymo

(v) no direct discharges of waste water to water bodies

418. The submitters consider that didymo is a threat to the ecological health of the Dunstan Creek and Manuherekia and needs to be actively managed, including by allowing periodic flushing. They also consider there is no reason why direct discharges of wastewater should be acceptable in this rohe.

419. OWRUG seeks one more matter be added to clause 7(b):²⁷⁴

(iv) the role of water storage is recognised as being fundamental to the food and fibre sector, and an essential part of meeting the vision as set out in (1) to (7) above.

420. The submitter considers this reflects the importance of irrigation and water storage which enable food production while also supporting sustainable land and water management practices.

Clause (7)(c): Lower Clutha rohe

421. Many submitters seek amendments to the clauses in (c).

422. Some submitters seek that clause 7(c)(ii) be amended to replace “preserved” with “protected” and replace “wherever possible” to “where possible.”²⁷⁵ Wise Response seeks to delete “wherever possible” from (i) and (ii) to remove loopholes.²⁷⁶

²⁷⁰ 00026.006 Moutere Station

²⁷¹ 00202.016 COES

²⁷² 00116.003 Manuherekia Catchment Group

²⁷³ 00202.018 COES, 00030.013 Lynne Stewart

²⁷⁴ 00235.087 OWRUG

²⁷⁵ 00235.087 OWRUG, 00239.077 Federated Farmers

²⁷⁶ 00509.072 Wise Response

423. Several submitters seek changes to clause 7(c)(iii):

- Beef + Lamb and DINZ seek that it be amended to only require the reduction of nutrient and contaminant discharges “where necessary to ensure” they are safe for human contact,²⁷⁷
- Ravensdown seeks that the reference to land management practices is deleted, and replaced with “innovative and sustainable land and water management practices support food production in the area”,²⁷⁸
- Silver Fern Farms seeks that the clause is amended to focus on ensuring “downstream primary contact sites” are safe for human contact, rather than all water bodies. The submitter notes that clause 3.8(3)(b) of the NPSFM requires that primary contact sites, if any, must be identified within each FMU and that Appendix 3 of the NPSFM seeks that at least 80% of specified rivers and lakes are suitable for primary contact by 2030, and 90% by 2040,²⁷⁹ and
- Wise Response seeks amendments to require a reduction in inputs from land uses as well as discharges.²⁸⁰

424. Fonterra seeks to amend clause (7)(c)(iv) to refer to sewage rather than wastewater, and to include a new clause recognising that there may be some instances where there is no practicable alternative discharge regime outside direct discharge to water prior to 2045.²⁸¹ I have addressed this submission point in section 9.6.2.3 so will not repeat that discussion in this part of the report.

Clause (8): Timeframes

425. Several submitters seek changes to the timeframes in clause 8, including requests to both shorten and extend timeframes as follows:

- John Highton seeks to amend all rohe timeframes to 2030 on the basis that their achievement should not be put so far in the future that it is easy to postpone meaningful action,²⁸²
- The Minister for the Environment seeks to amend the timeframes, particularly for the Manuherekia, to provide interim steps to recognise that addressing over-allocation cannot be left until close to the ultimate deadline,²⁸³

²⁷⁷ 00237.026 Beef + Lamb and DINZ

²⁷⁸ 00121.051 Ravensdown

²⁷⁹ 00221.007 Silver Fern Farms

²⁸⁰ 00509.072 Wise Response

²⁸¹ 00233.035 Fonterra

²⁸² 00014.047 John Highton

²⁸³ 00136.005 Minister for the Environment

- Kāi Tahu ki Otago, COES, Lynne Stewart and Evelyn M Skinner seek to shorten the timeframe for the Manuherekia rohe from 2050 to 2045²⁸⁴, 2033²⁸⁵ or 2030²⁸⁶ (respectively),
- Federated Farmers seeks to extend the timeframe for the Dunstan, Roxburgh and Lower Clutha rohe from 2045 to 2050,²⁸⁷ and
- Wise Response seeks to shorten the timeframe for the Dunstan, Roxburgh and Lower Clutha rohe from 2045 to 2035.²⁸⁸

426. Beef + Lamb and DINZ seek clarification of the timeframe for achieving the matters set out in clauses (1) to (6) and proposes that the timeframe, in absence of any other, is 2050.²⁸⁹

427. Wise Response seeks reporting on all timeframes at 5 yearly intervals.²⁹⁰

9.6.4.3. Analysis

General

428. Ngāi Tahu ki Murihiku and Kāi Tahu ki Otago seek amendments to ensure that the overarching vision for the Clutha Mata-au FMU is clear and that there are only rohe-specific clauses where distinct outcomes are sought. Ngāi Tahu ki Murihiku highlights the need to take a ki uta ki kai approach to this FMU. I understand the points made by these submitters, and I note that there was only one further submission in opposition to the relief sought by these submitters.

429. Clause 3.3(3)(a) requires long-term visions to be developed through engagement with communities and tangata whenua about their long-term wishes for the water bodies and freshwater ecosystems in the region. The Council consulted with the public on freshwater visions in October and November 2020. There was no specific consultation on the Clutha Mata-au FMU as a whole – the approach to consultation was targeted at each rohe due to the differences in geography and communities of interest in each rohe. As a result, most of the feedback from that engagement was rohe-specific rather than over-arching.

430. It is clear from the consultation feedback and submissions from Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku that mana whenua view the Clutha Mata-au FMU as one continuous and interrelated system, ki uta ki tai. LF-VM-O2 synthesises the common themes raised across the Clutha Mata-au FMU (and particularly those raised by mana whenua) while recognising the differing aspirations expressed through the consultation process.

²⁸⁴ 00226.168 Kāi Tahu ki Otago

²⁸⁵ 00202.019 COES, 00030.014 Lynne Stewart

²⁸⁶ 00317.001 Evelyn Skinner

²⁸⁷ 00239.077 Federated Farmers

²⁸⁸ 00509.072 Wise Response

²⁸⁹ 00237.026 Beef + Lamb and DINZ

²⁹⁰ 00509.072 Wise Response

431. I agree with Ngāi Tahu ki Murihiku that the vision for the Clutha Mata-au should avoid unnecessary duplication and clarify where distinct outcomes are sought in the rohe. I also agree that it is important to take a ki uta ki tai approach, particularly because there is the potential for disconnection by having rohe within the FMU. I note that clause 3.2(2)(e) of the NPSFM states that in giving effect to Te Mana o te Wai, regional councils must adopt an integrated approach, ki uta ki tai, to the management of freshwater. Clause 3.5 then sets out in more detail that adopting an integrated approach, ki uta ki tai, requires local authorities to:

- Recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea, and
- Recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments,
- Manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.

432. For these reasons, I recommend accepting in part the submission by Kāi Tahu ki Otago. In addition to the reasons provided by the submitter, I consider that focusing the vision predominantly on the FMU will assist with developing the planning framework to follow. It is my understanding that rohe were established within the wider FMU to ensure that the Clutha Mata-au FMU was managed in an integrated way while providing each rohe the ability to determine what will be needed to achieve the outcomes sought for the FMU in a way that is more applicable to the rohe. In my opinion, an overarching vision for the FMU supports this approach by ensuring that all rohe are aiming at the same long-term outcome.

433. The ‘new’ clauses sought by Kāi Tahu ki Otago are in fact existing clauses²⁹¹ in the objectives that the submitter seeks to move from the rohe-specific parts of the objective to the ‘whole of FMU’ part. There are many other submissions on those clauses and I have recommended a range of amendments in response to those submissions. I also note that clauses (8) and (10) as proposed by Kāi Tahu ki Otago largely duplicate one another. I do not recommend accepting (8) for that reason.

[Clauses \(1\) to \(6\): All of Clutha Mata-au](#)

434. I recommend accepting the submission by Ngāi Tahu ki Murihiku to correct the spelling of Tāwhiremātea.

435. While not expressed in the same terms, I agree with Toitū te Whenua that there are historic issues with appropriate recognition of wāhi tūpuna and Kāi Tahu relationships

²⁹¹ Clauses (7)(b)(i), (ii) and (iii); (7)(c)(ii), (iii) and (iv).

with wāhi tūpuna.²⁹² I recommend accepting this submission point in part. For consistency with other provisions that seek to restore what has been lost, I consider the wording of clause 3 should instead be “sustained, and where degraded or lost, restored”.

436. Toitū te Whenua is concerned that clause (4) unrealistically commits to providing Kāi Tahu access to all mahika kai in the FMU and seeks to change the wording so that ORC supports Kāi Tahu whanui instead. I consider this is a misinterpretation of the role of an RPS objective. It is not ORC’s sole responsibility to achieve each objective, they are expected to be collectively achieved by the people of Otago, and primarily through resource management processes. Mahika kai is explained in the Kāi Tahu ki Otago Natural Resource Management Plan 2005 as follows:

“Our very distinctive and unique culture and lifestyle in the southern half of the South Island included permanent coastal settlements and seasonal migrations inland over often-vast distances to harvest and collect food and resources. The seasonal inland migrations were determined by whakapapa as to who could exercise those rights. This practice is referred to as “mahika kai” and became a corner-stone of our culture. Mahika kai is the basis of culture, and the unrelenting cultural imperative is to keep the mahika kai intact, to preserve its productivity and the diversity of species.

The term “mahika kai” literally means “food works”. It encompasses the ability to access the resource, the site where gathering occurs, the act of gathering and using resources, and ensuring the good health of the resource for future generations. This is enshrined in the Kāi Tahu proverbial saying and tribal motto - “Mo tatou, a mo ka uri I muri ake nei - for us and for the generation that come after us.” (Section 5.5.1, p.65)

437. Under section 6(e) of the RMA, the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is a matter of national importance that must be recognised and provided for. Additionally, mahinga kai is a compulsory value under the NPSFM and critical to the ability of Kāi Tahu to exercise kaitiakitaka as expressed in clause 1.3(4)(b) of the NPSFM. I acknowledge that there are difficulties with providing access to sites, including mahika kai sites, where they are located on private land. However, given the importance of mahika kai to Kāi Tahu and their relationship with their culture and traditions, I consider it is appropriate for the long-term vision to set an ambitious goal.

438. Moutere Station seeks amendments so that clause (5) only applies to indigenous species where required to complete their lifecycle. I am unsure what the submitter means by ‘completing their lifestyle’ and am concerned that this may constrain the clause in a way that was not intended. Moutere Station also raises concerns with the potential migration of exotic species and the effects that may have on indigenous species. I agree that is an

²⁹² See section 5.6.2 (Cultural landscapes general issues), Kāi Tahu ki Otago Natural Resources Management Plan 2005 and sections 3.4.14, 3.5.21, and 3.6.2 of the Te Tangi a Tauira – The cry of the people: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008

- issue in some parts of Otago, but note that the submitter does not seek any amendments to address this. I do not recommend accepting this submission.
439. Also in relation to clause (5), Contact seeks to replace “migrate easily and as naturally as possible” with “effective migration” and that this is “maintained or where practicable improved” on the basis that the clause does not reflect the physical realities of the Clutha Mata-au system, and particularly the dams. I agree that “trap and transfer” methods of fish passage are not “natural”, but note that the clause requires migration be “as natural as possible” which recognises that there will be situations where natural solutions are not possible. On this basis, I do not recommend accepting this submission.
440. I have addressed a suite of submission points by Fish and Game regarding the habitats of trout and salmon in section 1.4.9 of *Report 1: Introduction and general themes*. In summary, in response to those submissions, I have recommended including provision for these habitats in LF-FW-P7 (which applies region-wide) and therefore do not consider the amendment by John Highton here is necessary.
441. John Highton seeks to amend clause (6) to include a provision with tighter regulations to manage the effects on the environment caused by hydro-electricity schemes. No specific wording is provided. This objective sets out a long-term vision for the Clutha Mata-au FMU and does not attempt to determine how those visions will be achieved (i.e. the particular management regimes). I consider clause (6) is an appropriate recognition of the national significance of the Clutha Mata-au hydro-electricity generation and assists with giving effect to the NPSREG. Regional plans will be the primary way that management regimes, including the management of the effects of particular activities, are established. I do not recommend accepting this submission.
442. DOC seeks to include two new clauses. The first relates to restoring healthy wetlands in the upper and lower catchment wetland complexes, including Lake Tuakitoto. I note that this is supported by the further submissions of Ngāi Tahu ki Murihiku and Beef + Lamb and DINZ, although the latter submitter notes that healthy wetlands do not need to be restored.²⁹³ In their feedback on freshwater visions during the consultation period, Kāi Tahu ki Otago outlined the management changes needed to achieve their visions for freshwater, including reversing the loss of wetlands by restoration and increases in area.²⁹⁴ The wording DOC has proposed aligns with a comparable clause in the vision for the Taieri FMU (LF-VM-O4(3)), including, in particular, the reference to upper and low catchment wetland complexes. I understand the upper (Upper Taieri) and lower (Waipori/Waihola) wetland complexes are relatively distinct areas and their spatial extent generally understood. I do not consider this is the same in the Clutha Mata-au catchment, where there are individual wetlands in the upper and lower catchments but not complexes in the same way as the Taieri and certainly not in terms of extent.
443. In relation to flooding in the Clutha Mata-au FMU, Otago’s *Climate change risk assessment* (Tonkin + Taylor, 2021, p. 23) states that:

²⁹³ FS00223 Ngāi Tahu ki Murihiku, FS00237 Beef + Lamb and DINZ

²⁹⁴ Appendix 6 (p.4) of the Section 32 Evaluation Report for PORPS 2021.

“Communities located along western and central lakesides and river flood plains, such as Lakes Wakatipu and Wanaka and the Clutha River, could face an increase in risk from flood waters.

Historically, rainfall events have resulted in widespread flooding throughout the region such as events in Lower Clutha in 2020, Lower Taieri in 2017, Roxburgh in 2017 and South Dunedin in 2015 and led to evacuations, road closures, damage to infrastructure and associated power outages (Otago Daily Times, 2018; NZ Herald, 2020a; Stuff, 2017; NZ Herald, 2020b; Hughes et al., 2019). Similarly, Henley, located on the Taieri Flood Plain, is regularly isolated due to significant flood events (Otago Regional Council, 2015; Otago Daily Times, 2018).”

444. While I agree with DOC that the vision does not recognise flooding or climate change, and that flooding in particular (including as a result of climate change) is an issue in the area, it does not appear that this was raised by the community, Kāi Tahu ki Otago, or Ngāi Tahu ki Murihiku during consultation. For that reason, while I agree with the submitter’s points, I do not recommend accepting this submission point.

New clauses: All of Clutha Mata-au

445. OWRUG seeks to include a new clause that would see water allocated to the food and fibre sector to support sustainable production and the sector’s contribution to social and economic well-being of the community. I do not consider that this is consistent with Te Mana o te Wai, particularly because it does not recognise the hierarchy of obligations set out in the objective of the NPSFM. Additionally, I do not consider that a long-term vision for water should ‘lock in’ allocation for specific purposes for long durations. As such, I do not recommend accepting this submission point.

446. Federated Farmers seeks the inclusion of a similar clause to recognise the important role of food production and associated activities within the FMU. I do not consider recognising a particular industry to be a long-term vision “for freshwater” as per clause 3.3 and do not recommend accepting this submission point.

447. Trojan and Wayfare seek to include a new clause providing for human well-being through outdoor recreation opportunities. I have reviewed the feedback gathered through public consultation on the freshwater visions for the Clutha Mata-au rohe and note that recreational pursuits and opportunities were a common theme in each. There is also a Water Conservation Order on the Kawarau River, which begins at Whakatipu Waimāori / Lake Wakatipu and ends in Lake Dunstan, which protects scheduled waters, in part, for their natural and physical qualities and characteristics that contribute to (among other things) cultural and recreational attributes.²⁹⁵ The amendment is consistent with LF-WAI-P1(2), whereby primary contact is afforded second priority in decision-making.

448. I recommend accepting this submission in part. The dictionary definition of “thriving” is “characterised by success or prosperity”.²⁹⁶ Although I understand the general intent of

²⁹⁵ Clause 3 of the Water Conservation (Kawarau) Order 1997

²⁹⁶ Merriam-Webster Dictionary, retrieved 12 December 2021 from <https://www.merriam-webster.com/dictionary/thriving>

what the submitters are seeking, I am not convinced this is the correct usage of the term thriving. I recommend minor amendments to the wording proposed so that the clause reads:

water bodies support a range of outdoor recreation opportunities that provide people and communities with diverse and memorable experiences

449. I have addressed the amendments sought by Kāi Tahu ki Otago previously in 9.6.2.1.

[Clause \(7\) in general and \(7\)\(a\): Upper Lakes](#)

450. I am unsure which part of clause (7) John Highton is referring to and as no specific amendments are sought, I do not recommend accepting this submission point.

451. Waterfall Park seeks to include reference to improving water quality where it is degraded. I consider that is consistent with Policy 5 of the NPSFM which requires that the health and well-being of degraded water bodies and freshwater ecosystems is improved. I recommend this submission is accepted. In my opinion, this amendment satisfies, in part, the relief sought by Wise Response and I therefore recommend that submission is accepted in part.

[Clause \(7\)\(b\): Dunstan, Manuherekia and Roxburgh rohe](#)

452. I do not recommend accepting the submission point by Toitū te Whenua as the submitter has not specified the relief sought and it is unclear what amendments would resolve their concern.

453. Manuherekia Catchment Group considers this clause lacks the detail required to be able to determine if it is suitable for the FMU and seeks that the Kāi Tahu values and practices referred to be stated in the vision. The *MW – Mana whenua* chapter of the PORPS 2021 provides considerable contextual information about Kāi Tahu values and practices that will inform the application of this provision. In addition, there are three iwi management plans relevant to the Otago region that also outline Kāi Tahu values and practices.²⁹⁷ On this basis, I do not consider the specific values and practices need to be listed in the objective and do not recommend accepting this submission.

454. Lauder Creek seeks clarification on what “natural form and function” means in this clause but has not sought specific amendments. I consider that this term is generally well-understood and as the submitter has not sought specific amendments, I do not recommend accepting this submission point.

455. Wise Response seeks to replace the reference to “flows” with “environmental flow regimes”. The submission suggests this is to improve clarity. I agree it is helpful to clarify what is meant by this term and recommend accepting this submission point in part. I consider it would be beneficial to align the wording with that used in the NPSFM, which is “environmental flows and levels”.

²⁹⁷ Kāi Tahu ki Otago Natural Resources Management Plan 2005, Te Tangi a Tauira – The cry of the people: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008, Waitaki Iwi Management Plan 2019.

456. Wise Response seeks to delete “where possible” in the direction to restore the natural form and function of main stems. The Dunstan, Manuherekia and Roxburgh rohe are all affected by dams and other structures that affect the form and function of water bodies and it is not practical to remove these in order to restore natural form and function. I consider the notified wording is therefore appropriate and do not recommend this submission point is accepted.
457. Wise Response also seeks to include “in accordance with Te Mana o te Wai” at the end of this clause. I do not consider this is necessary as clause (2) of the objective, which applies to all rohe in the FMU, requires freshwater to be managed in accordance with the LF-WAI objectives and policies, including LF-WAI-O1 (Te Mana o te Wai). I do not recommend accepting this submission point.
458. In clause (7)(b)(ii), Beef + Lamb and DINZ seek amendments to only require reductions in discharges of contaminants where necessary to ensure that they are safe for human contact. They consider that the provision as notified is not based on an understanding of what, if any, contaminant reduction is needed. I agree with the submitter that reductions may not be necessary in every case and recommend accepting this submission point in part. I consider “where required” would be clearer than “where necessary”.
459. Manuherekia Catchment Group seeks to remove “innovative” from clause (7)(b)(ii) and replace “food production” with “innovative land uses”. They consider that some traditional, “non-innovative” practices are sustainable and that “food production” is too limiting a description for the types of activities to be provided for by this clause.
460. Relevant consultation feedback from communities in these rohe recorded the following:²⁹⁸

- In the Dunstan rohe:
 - Local context: “Good water quality underpins agriculture (in particular horticulture and viticulture) and tourism, which are key economic drivers.” (p.15)
 - Long-term aspirations: “The area is recognised as the world’s best producer of fresh produce and wine, underpinned by excellent water quality, the right activities in the right places, and well managed infrastructure, sustainably supporting economies and communities.” (p.16)
- In the Manuherekia rohe:
 - “Water in the catchment supports several highly valued and often competing values. Feedback received across the board covered both a desire to see a strengthening of the environmental bottom line and tightening of timeframes to achieve such and a greater focus on enabling the use of water and the economic value it plays in supporting the community.” (p.17)
- In the Roxburgh rohe:

²⁹⁸ Appendix 5 of the Section 32 Evaluation Report for the pORPS 2021.

- Local context: “Food production is a vital part of the Roxburgh Rohe’s local economy.” (p.19)
- Long-term aspiration: “Food Production: Food producers in the Roxburgh Rohe are recognised as world leaders in environmentally ethical, profitable, and efficiently sustainable food production.” (p.20).

461. In my view, food production is a clear theme from the consultation feedback. As the visions are to be developed through engagement with communities, I do not consider that it is appropriate to broaden this reference as sought by the submitter. I do not recommend accepting this submission point.
462. COES and Lynne Stewart seek to amend clause (7)(b)(ii) to refocus the clause on protecting and restoring (where degraded) the ecological function of water bodies. The submitters consider that the current wording is focused on food production rather than the ecological health of water bodies. It is not clear what degree of ecological functioning is envisaged by the submitter. I note that ecological health is a compulsory value in the NPSFM and therefore communities will have the opportunity to provide input into the development of the LWRP which will establish environmental outcomes for every value (compulsory or separated identified). I do not recommend accepting this submission.
463. Lauder Creek Farming and Manuherekia Catchment Group seek to delete clause (7)(b)(iii) on the basis that abstraction should not be restricted from tributaries if values continue to be met. Manuherekia Catchment Group also considers that a vision should not dictate a preference for abstraction and should instead focus on the outcomes sought. OWRUG and Federated Farmers seek to amend the provision for similar reasons. Similarly, Moutere Station considers that sustainable abstraction from tributaries should be able to continue.
464. It is my understanding that most abstractors prefer to abstract from main stems wherever possible due to the higher reliability provided. Where abstractions are sought from tributaries, this is generally due to the distance between the point of take and the use of the water. For example, a farm may be abstracting water for irrigation but the land is located many kilometres from the main stem. It is not practical, in these cases, to abstract from the main stem and, presuming that any relevant limits are met, it would be preferable to abstract from a tributary. I consider that there are already incentives in place to abstract from main stems where this is possible, and that abstractions from tributaries occur primarily for practicality reasons.
465. Groundwater abstractions can be hydrologically linked to surface water sources and sometimes those interactions are not well-understood. It may not always be preferable to abstract from groundwater – those decisions need to be made within the circumstances of each situation, without pre-empting which source will be most appropriate. I agree with the submitters that abstraction from tributaries may be appropriate if any relevant limits on resource use can be met, and environmental outcomes continue to be achieved.
466. For these reasons, I recommend accepting the submission by Lauder Creek Farming in full and accepting the submissions by OWRUG, Federated Farmers and Moutere Station in

part. COES seeks alternative amendments to the clause for clarity. I do not recommend accepting this submission in light of my recommendation to accept the request by Lauder Creek Farming to delete the clause.

467. COES and Lynne Stewart seek to include two additional sub-clauses into (7)(b) relating to didymo and wastewater discharges. Regarding the former, the submitters consider didymo is a threat to the ecological health of the Dunstan Creek and Manuherekia River but have not provided evidence to support this. Without further evidence, I do not recommend accepting this submission point. Regarding the latter new clause, I have recommended the inclusion of this clause at the FMU level in response to the submission by Kāi Tahu ki Otago which is consistent with the relief sought by COES and Lynne Stewart. I therefore recommend accepting this submission in part.
468. OWRUG also seeks the addition of a new clause regarding the role of water storage. In their further submission, Kāi Tahu ki Otago opposes this relief on the basis that water storage is a tool for freshwater management not an outcome and that consideration of tools, including water storage, is a matter for the regional plan to consider.²⁹⁹ I agree with Kāi Tahu ki Otago and do not recommend accepting the submission point by OWRUG.

Clause (7)(c): Lower Clutha rohe

469. Federated Farmers and OWRUG seek to replace “preserve” with “protect” and “wherever possible” with “where possible” in clause (7)(c)(ii) but have not provided any reasoning for these changes in their submissions. Without further evidence, I do not recommend accepting those submission points.
470. Wise Response seeks to delete “wherever possible” from (7)(c)(ii) to remove what they consider to be a loophole. I do not consider it will always be necessary to restore connections and therefore do not recommend accepting this submission point.
471. The amendment sought by Beef + Lamb and DINZ to clause (7)(c)(iii) is also sought in relation to clause (7)(b)(ii). As I did in relation to clause (7)(b)(ii), I agree with the submitter that reductions may not be necessary in every case and recommend accepting this submission point. The amendment sought by Ravensdown is also sought by Kāi Tahu ki Otago and I have recommended accepting that part of the Kāi Tahu ki Otago and Ravensdown submission points.
472. Silver Fern Farms seeks to restrict the application of this clause to downstream primary contact sites. I agree with the requirements of the NPSFM as stated by the submitter but note that LF-FW-P7 provides more detail about requirements for primary contact, mahika kai, and drinking water which are all human contact in different forms. I consider that is the more appropriate place to contain the level of detail sought by the submitter and therefore do not recommend accepting the submission point.
473. Wise Response seeks to include reference to reducing land use inputs as well as discharges. I do not consider that is necessary as discharges may be reduced in a number

²⁹⁹ FS00226 Kāi Tahu ki Otago

of ways, including by reducing inputs. I do not recommend accepting the submission point.

Clause (8): Timeframes

474. John Highton seeks to amend all rohe timeframes to 2030 on the basis that their achievement should not be put so far in the future that it is easy to postpone meaningful action. The submitter has not provided any evidence to demonstrate that it would be possible to achieve the outcomes stated by 2030. Without further evidence, I do not recommend accepting this submission.
475. The Minister for the Environment seeks that the vision include interim steps towards full achievement, as was included in an earlier version of the pORPS. The submitter has not sought specific amendments or indicated what interim steps are considered appropriate. I consider that the LWRP provides an opportunity for interim steps to be identified, once the values and environmental outcomes for the FMU are developed. I note that clause 3.12 of the NPSFM sets out how target attribute states (which will be informed by the freshwater visions in the pORPS 2021) are to be achieved, including through the use of action plans for achieving targets within specified timeframes. I do not recommend accepting this submission point.
476. Submitters seek a range of amendments to the time frames for individual rohe, both longer and shorter than notified. For the most part, submitters have not provided evidence to support those amendments or an indication of the likely costs and benefits of amending the timeframes. Without further evidence, I do not recommend accepting the submission points by COES, Lynne Stewart, Evelyn M Skinner, or Wise Response.
477. Kāi Tahu ki Otago seeks to shorten the timeframe for the Manuherekia rohe from 2050 to 2045 on the basis that visions should be achieved within 20 years to ensure that degraded environments are improved by the current generation rather than being left to the next one. This would align the Manuherekia rohe with the Dunstan, Roxburgh and Lower Clutha rohe. Federated Farmers seeks to extend the Dunstan, Roxburgh, and Lower Clutha rohe timeframes from 2045 to 2050 on the basis that it does not make sense for the Lower Clutha to have a shorter timeframe than the Manuherekia (which drains into the Lower Clutha). The submitter considers the timeframes should be consistent for this reason.
478. I understand from the submission by Kāi Tahu ki Otago that an important component of the relationship of mana whenua with wai māori is the ability to pass on mātauraka to the next generation. When water bodies are degraded, this ability is hampered, therefore Kāi Tahu ki Otago have a strong desire for degradation to be reversed within a generation to enable the relationship of mana whenua with wai māori, and the transfer of mātauraka, to be sustained over generations. The relationship of Māori and their culture and traditions with their ancestral water is a matter of national importance that must be recognised and provided for in the pORPS 2021.³⁰⁰ On this basis, I recommend accepting the submission point by Kāi Tahu ki Otago. I consider this amendment also addresses the

³⁰⁰ Section 6(e), RMA.

inconsistency raised by Federated Farmers as it would align the timeframes for the Manuherehia and the Lower Clutha and therefore recommend accepting this submission point in part.

479. Beef + Lamb and DINZ seek clarification of the timeframe for achieving the FMU-wide matters in clauses (1) to (6). I consider it is clear from clause (8) that those outcomes are to be achieved in each rohe by the timeframes set out in clause (8). I do not recommend accepting this submission point.

480. Wise Response seeks reporting on all timeframes at 5 yearly intervals. Clause 3.30(2) of the NPSFM requires regional councils to publish an assessment of the extent to which the long-term visions are being met at five yearly intervals. I do not consider it is necessary to repeat this requirement in the pORPS and therefore do not recommend accepting this submission point.

9.6.4.4. Recommendation

481. I recommend amending LF-VM-O2 to:

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

In the Clutha Mata-au *FMU*:

(1) management of the *FMU* recognises that:

- (a) the Clutha Mata-au is a single connected system ki uta ki tai, and
- (b) the source of the wai is pure, coming directly from Tawhirimatea Tāwhirimātea³⁰¹ to the top of the mauka and into the awa,

(2) *fresh water* is managed in accordance with the LF – WAI objectives and policies,

(3) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained and, where degraded or lost, restored,³⁰²

(4) *water bodies* support thriving ~~maḥika-kai mahika kai~~³⁰³ that are safe for consumption³⁰⁴ and Kāi Tahu whānui have access to ~~maḥika-kai~~ maḥika kai³⁰⁵

(5) indigenous species migrate easily and as naturally as possible along and within the *river* system,

(5A) the ecosystem connections between freshwater, wetlands, and the coastal environment are preserved and, wherever possible, restored,³⁰⁶

³⁰¹ 00223.085a Ngāi Tahu ki Murihiku

³⁰² 00101.031 Toitū te Whenua

³⁰³ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

³⁰⁴ 00226.011 Kāi Tahu ki Otago

³⁰⁵ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

³⁰⁶ 00226.168 Kāi Tahu ki Otago

(5B) environmental flows and levels in water bodies sustain and, wherever possible, restore the natural form and function of main stems and tributaries to support Kāi Tahu values and practices,³⁰⁷

(5C) food production in the area is supported by innovative and sustainable *land* and *water* management practices that reduce *discharges* of nutrients and other *contaminants* to *water bodies* where required to ensure that they are safe for human contact,³⁰⁸

(5D) there are no direct *discharges* of *wastewater* containing *sewage* to *water bodies*,³⁰⁹

(6) the national significance of the Clutha hydro-electricity generation scheme is recognised,

(7) in addition to (1) to (6) above:

(a) in the Upper Lakes rohe, the high quality *waters* of the *lakes* and their tributaries are protected, and if degraded are improved,³¹⁰ recognising the significance of the purity of these *waters* to Kāi Tahu and to the wider community,

(b) in the Dunstan, Manuherekia and Roxburgh rohe:

~~(i) — flows in *water bodies* sustain and, wherever possible, restore the natural form and function of main stems and tributaries to support Kāi Tahu values and practices, and~~³¹¹

~~(ii) — innovative and sustainable *land* and *water* management practices support food production in the area and reduce *discharges* of nutrients and other *contaminants* to *water bodies* so that they are safe for human contact, and~~³¹²

~~(iii) — sustainable abstraction occurs from main stems or *groundwater* in preference to tributaries,~~³¹³

(c) in the Upper Lakes and³¹⁴ Lower Clutha rohe:

~~(i) — there is no further minimise~~³¹⁵ modification of the shape and behaviour of the *water bodies* and promote opportunities to

³⁰⁷ 00226.168 Kāi Tahu ki Otago, 00509.072 Wise Response

³⁰⁸ 00226.168 Kāi Tahu ki Otago, 00237.026 Beef + Lamb and DINZ

³⁰⁹ 00226.168 Kāi Tahu ki Otago, 00213.035 Fonterra

³¹⁰ 00023.004 Waterfall Park

³¹¹ 00226.168 Kāi Tahu ki Otago

³¹² 00226.168 Kāi Tahu ki Otago

³¹³ 00406.008 Lauder Creek Farming

³¹⁴ 00226.168 Kāi Tahu ki Otago

³¹⁵ 00139.088 DCC, 00305.020 Waka Kotahi

restore the natural form and function of *water bodies* ~~are promoted~~³¹⁶ wherever possible, and

~~(ii) the ecosystem connections between *freshwater, wetlands* and the coastal environment are preserved and, wherever possible, restored,~~

~~(iii) *land* management practices reduce discharges of nutrients and other *contaminants* to *water bodies* so that they are safe for human contact, and~~

~~(iv) there are no direct *discharges* of *wastewater* to *water bodies*, and~~³¹⁷

(8) the outcomes sought in (7) are to be achieved within the following timeframes:

- (a) by 2030 in the Upper Lakes rohe, and
- (b) by 2045 in the Dunstan, Manuherekiā, Roxburgh and Lower Clutha rohe, and
- ~~(c) by 2050 in the Manuherekiā rohe.~~³¹⁸

9.6.5. LF-VM-03 – North Otago FMU vision

9.6.5.1. Introduction

482. As notified, LF-VM-03 reads:

LF-VM-03 – North Otago FMU vision

By 2050 in the North Otago FMU:

- (1) *fresh water* is managed in accordance with the LF-WAI objectives and policies, while recognising that the Waitaki River is influenced in part by catchment areas within the Canterbury region,
- (2) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained and Kāi Tahu maintain their connection with and use of the *water bodies*,
- (3) healthy riparian margins, *wetlands*, estuaries and lagoons support thriving mahika kai, indigenous habitats and downstream coastal ecosystems,
- (4) indigenous species can migrate easily and as naturally as possible to and from the coastal environment,
- (5) *land* management practices reduce *discharges* of nutrients and other *contaminants* to *water bodies* so that they are safe for human contact, and

³¹⁶ Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00139.088 DCC, 00305.020 Waka Kotahi

³¹⁷ 00226.168 Kāi Tahu ki Otago

³¹⁸ 00226.168 Kāi Tahu ki Otago

- (6) innovative and sustainable *land* and *water* management practices support food production in the area and improve resilience to the *effects* of *climate change*.

9.6.5.2. Submissions

483. Five submitters seek to retain LF-VM-O3 as notified.³¹⁹ Forest and Bird seeks amendments for consistency with its proposed overarching vision for Otago but does not specify the amendments sought.³²⁰ Kāi Tahu ki Otago seeks to amend the timeframes for achieving the vision from 2050 to 2045.³²¹ The submitter considers that all visions should be required to be achieved within 20 years to ensure degraded environments are improved by the current generation rather than being left to the next one.

484. No submissions sought amendments to clauses (1) to (4).

485. Graymont considers that clause (5) as notified may prevent some industries from continuing to operating due to the requirement to reduce discharges and seeks to amend clause (5) so that land management practices reduce discharges “to the extent practicable.”³²² Kāi Tahu ki Otago seeks to retain the notified working but include “and mahika kai species are safe for consumption” at the end to recognise mana whenua aspirations.³²³

486. Beef + Lamb and DINZ submit that ORC has not undertaken the work to establish what contaminant reductions are required, by whom, or where, in order to draft policy which relies on that information. The submitters consider it is unusual for a long-term vision to focus on a specific management practice and that the vision should set a goal for freshwater, not land management practices. The submitters seek a number of amendments to clause (5):³²⁴

- Focus on a freshwater goal rather than land management practices (for example, “more water bodies are safe for human contact more often”),
- Focus on the main contaminant of concern rather than nutrients (for example, “faecal contamination of water bodies is reduced so that more water bodies are suitable for human contact more often”), and
- Focus on overall reduction in sources of contamination rather than all land management practices.

487. Graymont considers that in addition to food production, activities that produce products that assist in resolving environmental challenges in the FMU and beyond should also be provided for and seeks to include “other activities that make products that may assist in

³¹⁹ 00013.011 ECan, 00121.052 Ravensdown, 00139.086 DCC, 00213.017 Waitaki Irrigators, 00240.019 NZ Pork.

³²⁰ 00230.080 Forest and Bird

³²¹ 00226.169 Kāi Tahu ki Otago

³²² 00022.017 Graymont

³²³ 00226.169 Kāi Tahu ki Otago

³²⁴ 00237.027 Beef + Lamb and DINZ

addressing environmental challenges” as well as a minor amendment to change “improve” to “while improving”.³²⁵

488. A number of submitters seek amendments to clause (6). Kāi Tahu ki Otago seeks to move “food production in the area” from the middle of the clause to the front and make necessary consequential amendments in order to improve the general clarity of meaning and consistency of wording across the visions.³²⁶ Horticulture NZ seeks to include reference to reducing emissions as well as improving resilience to the effects of climate change.³²⁷ Federated Farmers seeks to replace the reference to “food production” with “primary production”.³²⁸

489. Three submitters seek to include additional clauses in the objective.

490. DOC submits that as notified the objective fails to recognise the dryland nature of much of North Otago and the significant populations of indigenous fish in the FMU, including threatened non-diadromous galaxiids and Canterbury mudfish. The submitter seeks to include two new clauses.³²⁹

(x) water and land management recognise the drylands nature of much of this FMU and the resulting low water availability

(y) populations of threatened indigenous fish are stable or increasing

491. For the same reasons, Waitaki DC also seeks to include the second clause proposed by DOC.³³⁰

492. Kāi Tahu ki Otago considers that each FMU vision should incorporate important components of other visions and to improve the general clarity of meaning and consistency of wording across the visions.³³¹ The submitter seeks to include two new clauses regarding modification of water bodies and discharges of wastewater that I have addressed in sections 9.6.2.2 and 9.6.2.3.

(x) there is no further modification of the shape and behaviour of the water bodies and opportunities to restore the natural form and function of water bodies are promoted wherever possible

(y) there are no direct discharges of wastewater to water bodies

493. Kāi Tahu ki Otago also seeks to amend the boundary of the North Otago FMU so that the Waikouaiti catchment is managed within the Dunedin and Coast FMU instead. The latter point is discussed further in relation to LF-VM-P5 and MAP1 which list and map those boundaries.

³²⁵ 00022.017 Graymont

³²⁶ 00226.169 Kāi Tahu ki Otago

³²⁷ 00236.059 Horticulture NZ

³²⁸ 00239.078 Federated Farmers

³²⁹ 00137.065 DOC

³³⁰ 00140.017 Waitaki DC

³³¹ 00226.169 Kāi Tahu ki Otago

9.6.5.3. Analysis

494. Without clarification about the consequential amendments sought by Forest and Bird, I do not recommend accepting this submission.

495. I understand the reasons for the request by Kāi Tahu ki Otago to shorten the timeframe for achieving this vision. However, I note that clause 3.3(2)(c) requires long-term freshwater visions to identify timeframes for achieving stated goals that are “both ambitious and reasonable.” The North Otago FMU is considered to be one of the catchments in Otago with “very complex hydrology and diverse pressures on competing values.”³³² It is also considered to be ‘water short’, meaning that the water yield can be insufficient to meet the demand for either instream values or out of stream uses.³³³ The submitter has not provided evidence to indicate whether an earlier timeframe would still be “reasonable”, as required by the NPSFM. Without further evidence, I do not recommend accepting this submission point.

496. I agree with Graymont that it will not be practicable for all discharges to be reduced, however I do not consider the wording proposed by the submitter is appropriate. Where environmental outcomes require reductions in order to be met, there is no ‘practicability’ test. I prefer to amend clause (5) in line with my recommendation for a similar provision in LF-VM-O2: by clarifying that reductions are required where necessary to ensure water bodies are safe for human contact. I recommend accepting this submission in part.

497. I consider the amendment sought by Kāi Tahu ki Otago to (5) accurately reflects the second priority in decision-making set out in LF-WAI-P1 (2), which includes interactions with water such as ingestion (including consumption of harvested resources) and immersive activities (such as harvesting resources). I also consider the amendment assists with implementing LF-WAI-P2(4) which requires recognising and giving practical effect to Kāi Tahu rakatirataka by providing for a range of customary uses, including mahika kai.

498. Clause 3.3 of the NPSFM sets out the requirements for developing long-term visions for fresh water. In particular, I note that clause 3.3(3)(b) and (c) require that every long-term vision must:

- Be informed by an understanding of the history of, and environmental pressures on, the FMU, part of the FMU, or catchment, and
- Express what communities and tangata whenua want the FMU, part of the FMU, or catchment to be like in the future.

499. In my view, managing freshwater in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, as required by Policy 3 of the NPSFM, requires managing interconnected resources holistically. There is ample evidence about the adverse effects of land use practices on freshwater and I consider it is appropriate for a vision to state an outcome that includes improving practices known

³³² Statement of evidence of Dr Julie Marie Everett-Hincks on behalf of the Otago Regional Council (7 December 2020), Plan Change 7 to the Regional Plan: Water for Otago.

³³³ Statement of evidence of Tom de Pelsemaeker on behalf of the Otago Regional Council (7 December 2020), Plan Change 7 to the Regional Plan: Water for Otago.

to be contributing to degraded freshwater health. Further, from my reading of the consultation report on the community engagement undertaken on the visions, communities expressed a desire to see changes in land use practices in this FMU.

500. In relation to the specific amendments sought by Beef + Lamb and DINZ, I do not consider that “more water bodies are safe for human contact more often” meets the aspirations of Kāi Tahu or communities. For example, in their feedback on the freshwater visions, Kāi Tahu ki Otago sought to achieve a range of outcomes across the region, including that “we can drink the water and eat the kai”.³³⁴ During community engagement in the North Otago FMU, people commonly expressed a “desire to enable their children to [swim, fish, and collect mahika kai in rural rivers]”.³³⁵ The amendments sought by Beef + Lamb and DINZ could arguably be met with very little improvement, which I do not consider reflects the aspirations of the community or mana whenua.

501. Beef + Lamb and DINZ also seek to refer to the main contaminant of concern (faecal contamination) rather than nutrients. I agree that levels of *E.coli* contamination are a key concern for human contact with water bodies. However, I have recommended including reference to mahika kai species being safe for consumption. The assessment is broader than *E.coli* and will require consideration of other types of contaminants.

502. I agree with Beef + Lamb and DINZ that discharges of contaminants may come from a range of sources, not only land management practices. I recommend amending the clause to remove reference to land management practices, instead focusing on the discharges generally.

503. In response to the request by Graymont, I note that the drafting of this vision was underpinned by consultation with the community and iwi. The consultation report prepared by ORC included the followed:

- Local context: “Feedback showed that agriculture plays a key role in North Otago FMU’s economy, making certainty of access to water vital, especially as climate change is expected to make the FMU drier.”³³⁶
- Long-term aspiration: “Long term sustainable farming systems and practices support a thriving economy.”³³⁷

504. I do not consider that the amendments sought by Graymont accurately reflect the feedback provided by communities during public engagement and therefore do not recommend accepting this submission point.

505. As set out in section 9.6.2.4, Federated Farmers seek to replace “food production” with “primary production” in clause (6).³³⁸ The definition of that term includes, among other

³³⁴ Appendix 6 (p.2) of the Section 32 Evaluation Report for the pORPS 2021.

³³⁵ Appendix 5 (p.23) of the Section 32 Evaluation Report for the pORPS 2021.

³³⁶ Appendix 5 (p.23) of the Section 32 Evaluation Report for the pORPS 2021.

³³⁷ Appendix 5 (p.24) of the Section 32 Evaluation Report for the pORPS 2021.

³³⁸ 00239.078 Federated Farmers

things, forestry. Consultation feedback recorded the following relevant points from this FMU:³³⁹

- Local context: “Identified drivers of poor water quality included urban storm water, forestry, and lack of fencing of waterway.” (p.23)
- Local context: “Feedback showed that agriculture plays a key role in North Otago FMU’s economy, making certainty of access to water vital, especially as climate change is expected to make the FMU drier.” (p.23)
- Long-term aspiration: “Long term sustainable farming systems and practices support a thriving economy.” (p.24)

506. As discussed elsewhere in this report, some submitters have raised concerns with carbon forestry, including Waitaki DC. The jurisdiction of Waitaki DC includes areas within both the Canterbury and Otago regions (specifically the North Otago FMU). This submitter stated in their submission:

“Recent public meetings in North Otago have highlighted the current issue that carbon forestry poses. This issue is anticipated to accelerate across the region throughout the life of the RPS with the high degree of central government incentive.” (p.10)

507. I am aware that there have been concerns raised about carbon forestry in the North Otago FMU in particular.³⁴⁰ I am concerned that the amendment sought by Federated Farmers would not reflect the community feedback from this FMU, particularly as it would encompass forestry (both plantation and carbon) in a way that is not consistent with the views expressed by the community. I do not recommend accepting this submission point.

508. Similarly, having reviewed the community and iwi feedback provided through consultation on the freshwater visions, I do not consider that a desire to reduce emissions was expressed and therefore do not recommend accepting the submission point by Horticulture NZ.

509. I agree with Kāi Tahu ki Otago that minor rewording of clause (6) would assist its readability and recommend accepting this part of the submission point.

510. I agree with DOC that most of the North Otago FMU is dry in nature.³⁴¹ The feedback from community consultation highlighted this indirectly, for example:³⁴²

- “Irrigation was raised as a key to future success.” (p.23)

³³⁹ Appendix 5 of the Section 32 Evaluation Report for the pORPS 2021.

³⁴⁰ See, for example, <https://www.oamarumail.co.nz/community/plea-for-action-on-carbon-farming/>

³⁴¹ For example, Figures 1 and 2 in the Statement of Evidence of Roderick Donald Henderson on behalf of the Otago Regional Council (7 December 2020) for Plan Change 7 demonstrate that most of the North Otago FMU has low mean runoff (less than 150mm) and low flow yields. Mr Henderson also notes that “...coastal North Otago [has] very low yields during summer” (p.9).

³⁴² Appendix 5 of the Section 32 Evaluation Report for the pORPS 2021.

- “Some community members noted that climate change could provide opportunity for diversification. This included land use practices suitable for a dryer climate and high value recreation development.” (p.23)
- “General suggestions included improved use efficiency, water storage, and practices to improve water retention and soil quality. Other points raised included maintaining and further developing irrigation infrastructure, identifying and protecting high value agricultural land from urban development, investing in technology for agriculture, and managing land use to ensure the right activities occur in the right places (e.g. forestry, dairying).” (p.23)
- “The natural character of North Otago is maintained.” (p.24)
- “Long term sustainable farming systems and practices support a thriving economy.” (p.24)
- “Irrigation is developed, managed, and maintained to support a sustainable economy.” (p.24)
- “Development is sustainable and considers future generations.” (p.24)

511. This is also referenced in the management changes considered by Kāi Tahu ki Otago to be needed in order to achieve the vision proposed:³⁴³

- “Levels and flows support flourishing mahika kai, not minimum requirements.” (p.3)
- “Augmentation by off-stream storage in appropriate locations and circumstances.” (p.3)
- “Look at moving to dryland farming systems.” (p.4)

512. The further submission by Ngāi Tahu ki Murihiku supports the relief sought by DOC on the basis that it is consistent with Ngāi Tahu ki Murihiku Kaupapa and mātauraka.

513. I consider there is sufficient evidence to demonstrate that the relief sought is consistent with the feedback from the community and iwi about their long-term wishes for the water bodies and freshwater ecosystems in the North Otago FMU, and that it has been informed by an understanding of the history of, and environmental pressures on, the FMU as required by clause 3.3(3) of the NPSFM 2020.

514. Rather than incorporate the relief sought by DOC as a new clause, in my opinion reference to recognising the drylands nature of the FMU could be incorporated into clause (6). I do not consider it is necessary to refer to low water availability as this will be variable across the FMU.

515. I understand that North Otago FMU is home to the lowland longjaw galaxias which is restricted to rivers in North Otago and considered “nationally critical”, as well as other indigenous fish species such as the Canterbury mudfish, Canterbury galaxias, and Taieri flathead galaxias. With the exception of the Canterbury galaxias, these species are all threatened.³⁴⁴ I note that “threatened species” is a compulsory value under the NPSFM

³⁴³ Appendix 6 of the Section 32 Evaluation Report for the pORPS 2021.

³⁴⁴ New Zealand Threat Classification System, available online at <https://nztns.org.nz/home>

and that Policy 9 of the NPSFM requires that the habitats of indigenous freshwater species are protected. Indigenous biodiversity also featured in the feedback from community consultation:³⁴⁵

- “Some respondents were satisfied with current biodiversity health, through many were not. All wanted to see thriving biodiversity and healthy aquatic habitats maintained or improved.” (p.23)
- “Biodiversity in North Otago is flourishing – habitats have been maintained and enhanced; rivers and waterways are healthy and can support sustainable recreational fishing; biodiversity needs are considered in each catchment and in farm planning.” (p.24)
- “North Otago ecosystems are resilient, and their condition has been improving through careful stewardship and sustainable approaches to management.” (p.24)

516. In their feedback, Kāi Tahu ki Otago sought the following outcome (among others):³⁴⁶

- Mahika kai is flourishing, native fish can migrate easily and as naturally as possible, and taoka species and their habitats are protected from negative water quality and quantity impacts.” (p.2)

517. On this basis, I consider that the second additional clause sought by DOC and Waitaki DC is consistent with the aspirations of the community and Kāi Tahu and reflects the direction regarding threatened species and the habitats of indigenous species in the NPSFM. In my view, the relief sought could be incorporated into clause (4) rather than included as a new and separate clause. I recommend these submission points are accepted in part.

9.6.5.4. Recommendation

518. I recommend amending LF-VM-O3 to:

LF-VM-O3 – North Otago FMU vision

By 2050 in the North Otago FMU:

- (1) *fresh water* is managed in accordance with the LF – WAI objectives and policies, while recognising that the Waitaki River is influenced in part by catchment areas within the Canterbury region,
- (2) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained and Kāi Tahu maintain their connection with and use of the *water bodies*,
- (3) healthy riparian margins, *wetlands*, estuaries and lagoons support thriving ~~mahika kai~~ *mahika kai*³⁴⁷, indigenous habitats and downstream coastal ecosystems,

³⁴⁵ See Appendix 5 of the Section 32 Evaluation Report for the pORPS 2021.

³⁴⁶ See Appendix 6 of the Section 32 Evaluation Report for the pORPS 2021.

³⁴⁷ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

- (4) indigenous species can migrate easily and as naturally as possible to and from the coastal environment and populations of threatened indigenous fish are stable or increasing,³⁴⁸
- (5) ~~land management practices reduce~~³⁴⁹ discharges of nutrients and other contaminants to water bodies are reduced³⁵⁰ ~~so~~ where required to ensure³⁵¹ that ~~they~~ water bodies³⁵² are safe for human contact and mahika kai species are safe for consumption,³⁵³ and
- (6) food production in the area is supported by³⁵⁴ innovative and sustainable land and water management practices ~~support food production in the area and that~~³⁵⁵ improve resilience to the effects of climate change and recognise the dryland nature of much of this FMU.³⁵⁶

9.6.6. LF-VM-O4 – Taieri FMU vision

9.6.6.1. Introduction

519. As notified, LF-VVM-O4 reads:

LF-VM-O4 – Taieri FMU vision

By 2050 in the Taieri FMU:

- (1) fresh water is managed in accordance with the LF-WAI objectives and policies,
- (2) the ongoing relationship of Kāi Tahu with wāhi tūpuna is sustained,
- (3) healthy wetlands are restored in the upper and lower catchment wetland complexes, including the Waipori/Waihola Wetlands, Tunaheketaka/Lake Taieri, scroll plain, and tussock areas,
- (4) the gravel bed of the lower Taieri is restored and sedimentation of the Waipori/Waihola complex is reduced,
- (5) creative ecological approaches contribute to reduced occurrence of didymo,
- (6) water bodies support healthy populations of galaxiid species,
- (7) there are no direct discharges of wastewater to water bodies, and

³⁴⁸ 00137.065 DOC

³⁴⁹ 00237.027 Beef + Lamb and DINZ

³⁵⁰ 00237.027 Beef + Lamb and DINZ

³⁵¹ 00022.017 Graymont

³⁵² 00237.027 Beef + Lamb and DINZ

³⁵³ 00226.169 Kāi Tahu ki Otago

³⁵⁴ 00226.169 Kāi Tahu ki Otago

³⁵⁵ 00226.169 Kāi Tahu ki Otago

³⁵⁶ 00137.065 DOC

- (8) innovative and sustainable *land* and *water* management practices support food production in the area and improve resilience to the *effects* of *climate change*.

9.6.6.2. Submissions

520. Two submitters seek to retain the objective as notified.³⁵⁷ Forest and Bird seeks amendments for consistency with their proposed overarching vision for Otago but does not specify the amendments sought.³⁵⁸

521. Kāi Tahu ki Otago seeks that all references to “Taieri” in the RPS, including in this vision, be replaced with the correct traditional spelling “Taiari”.³⁵⁹ The submitter considers that this would recognise that the whole of the catchment is wāhi tūpuna and appropriately acknowledge the connection of mana whenua with the river. For similar reasons, the submitter also seeks to replace “Waipori” with “Waipōuri”.

522. DCC seeks unspecified amendments to the objective to address the following concerns:³⁶⁰

- Modification of some waterbodies might be necessary for drainage purposes and the well-being of communities,
- Wetlands that have been engineered and significantly enhanced can be employed to treat stormwater and wastewater, and
- Work can be required in these wetlands for public flood control or drainage and it is essential that maintenance works are provided for to ensure the appropriate functioning of these areas for stormwater and flood management. Minor modifications such as erosion protection work, or the installation of culverts might also be necessary.
- In relation to (7), in specific situations such as extreme wet weather events or when a system fault has occurred, discharges of treated and/or untreated wastewater from the network and/or wastewater treatment plants to water bodies can occur and in some cases a wastewater overflow may be the best practicable option with minimal environmental effects

523. Regarding the last point above, I have addressed this in section 9.6.2.3.

524. Susan and Donald Broad seek the following general amendments:

- Extend the Outram Groundwater Protection zone to include all septic tanks in town and settlement non-reticulated residential areas,³⁶¹
- Develop a more robust consent process and more fair boundaries for the use of septic tanks,³⁶² and

³⁵⁷ 00121.053 Ravensdown, 00240.020 NZ Pork

³⁵⁸ 00230.081 Forest and Bird

³⁵⁹ 00226.170 Kāi Tahu ki Otago

³⁶⁰ 00139.087 DCC

³⁶¹ 00218.001 Susan and Donald Broad

³⁶² 00218.002 Susan and Donald Broad

- Discourage the addition of septic-dependent development in rural townships.³⁶³

525. Gavan James Herlihy seeks to include reference to a range of additional matters:³⁶⁴

- The role of the Loganburn Reservoir,
- The role that irrigation has and must continue to play in delivering the purpose of the RPS and in communities' resilience to climate change must be considered,
- The role of water storage and of additional storage of "surplus" water in the Upper Taieri Catchment,
- The role of pest management, including the role of wildlife in degrading water quality in the Upper Taieri Catchment,
- The issue of willow control and removal from the scroll plain,
- Any outcomes developed by the FMU process must be developed in concert with the community driven Maniototo Tiaki project, and
- Greater environmental gains would be achieved through "creation of and enhancement of" existing wetlands.

526. Kāi Tahu ki Otago seeks to shorten the timeframe for achieving the vision from 2050 to 2045 in order to ensure improvements are made within a generation.³⁶⁵

527. DOC seeks to amend clause (1) to require management to be consistent with the status of the catchment as a Ngā Awa river.³⁶⁶

528. John Highton seeks to amend clause (3) to include specific mention of the Upper Taieri Scroll Plain and its significance.³⁶⁷ Kāi Tahu ki Otago seeks to refer to the "wetland complex" instead of just "wetland" as this is considered to be more accurate.³⁶⁸ Beef + Lamb and DINZ seek clarification about the level of restoration required for wetlands and request, if the drafting was intended to capture healthy wetlands, an explanation from ORC as to why healthy wetlands need restoration rather than sustainment.³⁶⁹

529. In relation to clause (5), John Highton also considers that didymo is not specifically an issue on the Taieri and seeks that this part of the objective is included in the Clutha Mata-au FMU vision instead.³⁷⁰

530. Horticulture NZ seeks to retain clause (6) as notified.³⁷¹ DOC seeks amendments to require water bodies to also support healthy populations of kanakana, lamprey and tuna, and longfin eel, in addition to galaxiid species, to recognise the significance of all

³⁶³ 00218.003 Susan and Donald Broad

³⁶⁴ 00104.005 Gavan Herlihy

³⁶⁵ 00226.170 Kāi Tahu ki Otago

³⁶⁶ 00137.066 DOC

³⁶⁷ 00014.048 John Highton

³⁶⁸ 00226.170 Kāi Tahu ki Otago

³⁶⁹ 00237.028 Beef + Lamb and
DINZ

³⁷⁰ 00014.050 John Highton

³⁷¹ 00236.060 Horticulture NZ

indigenous fish.³⁷² Kāi Tahu ki Otago seeks a similar amendment but proposes the wording “other indigenous species, including tuna”.³⁷³

531. In relation to clause (7), DCC raises a general concern that in specific situations such as extreme wet weather events or when a system fault (breakdown, breakage or blockage) has occurred, discharges of treated and/or untreated wastewater from the network and/or wastewater treatment plants to waterbodies can occur. In some cases, the provision of a wastewater overflow may be the best practicable option with minimal environmental effect as total elimination of overflows is unlikely to be possible in most wastewater systems.³⁷⁴

532. COES and Lynne Stewart seek to replace clause (8) with “the ecological function of all water bodies is protected and restored where degraded supported by innovative and sustainable land and water management practices which reduce discharges of nutrients and other contaminants to water bodies so they are safe for human contact.”³⁷⁵

533. Kāi Tahu ki Otago, Horticulture NZ and Federated Farmers seek minor amendments to clause (8) as follows (respectively):

- Move “food production in the area” from the middle of the clause to the front and make necessary consequential amendments,³⁷⁶
- Include reference to reducing emissions,³⁷⁷ and
- Replace “food production” with “primary production”.³⁷⁸

534. DOC considers the vision fails to recognise the significant issues with flooding and climate change in the catchment and seeks to include one new clause:³⁷⁹

(x) land and water management practices improve resilience to the effects of flooding and climate change

535. Kāi Tahu ki Otago seeks to include three new clauses, to better recognise the importance of mahika kai and for consistency with the outcomes sought in other visions:³⁸⁰

(x) water bodies support thriving mahika kai and Kāi Tahu whānui have access to mahika kai,

(y) there is no further modification of the shape and behaviour of the water bodies and opportunities to restore the natural form and function of water bodies are promoted wherever possible,

³⁷² 00137.066 DOC

³⁷³ 00226.170 Kāi Tahu ki Otago

³⁷⁴ 00139.087 DCC

³⁷⁵ 00030.015 Lynne Stewart, 00202.02 COES

³⁷⁶ 00226.169 Kāi Tahu ki Otago

³⁷⁷ 00236.060 Horticulture NZ

³⁷⁸ 00239.079 Federated Farmers

³⁷⁹ 00137.066 DOC

³⁸⁰ 00226.170 Kāi Tahu ki Otago

(z) land management practices reduce discharges of nutrients and other contaminants to water bodies so that they are safe for human contact and mahika kai species are safe for consumption,

536. OWRUG seeks to include two new clauses to emphasise the importance of the food and fibre sector to this FMU and the important role of water storage:³⁸¹

(8) water is allocated to the food and fibre sector support sustainable production and the sectors contribution to social and economic wellbeing of the community.

(9) the role of water storage is recognised as being fundamental to the food and fibre sector, and an essential part of meeting the vision as set out in (1) to (8) above.

537. Trustpower seeks to include a new clause recognising their hydro-electricity schemes in the FMU:³⁸²

(9) the national and regional significance of the Waipori, Deep Stream and Paerau / Patearoa hydro-electric power schemes are recognised

9.6.6.3. Analysis

538. I agree with Kāi Tahu ki Otago that using the correct spelling, “Taiari”, recognises the connection of mana whenua with the river. I note that the Kāi Tahu ki Otago Natural Resources Management Plan 2005 states that:

“The name “Taiari” was originally spelt “Tai-ari” and had three different meanings; “to smash or pulp”, “shining river” and “tide on the eleventh night of the moon.” (Section 3.10)

539. It is my understanding that using Māori place names is an important way of telling stories of past ancestors and important events, helping to record history and legends. Kā Huru Manu, the Ngāi Tahu Cultural Mapping project, has collated and mapped traditional place names and associated stories within the Ngāi Tahu rohe. The Ngāi Tahu Atlas, as this mapping project is known, describes the river as follows:

“Taiari is the correct spelling for the Taiari River located in Otago. From its source, the Taiari River flows almost entirely around Pātearoa (the Rock & Pillar Range) before discharging into Te Tai-o-Āraiteuru (the Otago coastline). The wider Taiari area is a major mahika kai resource with the coastal area, inland waterways and surrounding hills providing an abundance and variety of kai. In the evidence gathered for the 1879 Royal Commission of Inquiry into the Ngāi Tahu land claims, Ngāi Tahu kaumātua recorded Taiari specifically as a kāinga mahinga tuna and kāinga nohoanga (settlement). The lower Taiari area and the river mouth was also an important area of occupation, especially the Maitapapa kāinga located at

³⁸¹ 00235.088 OWRUG

³⁸² 00311.014 Trustpower

nearby Henley. In 1844 a 2,300-acre native reserve was situated on the north bank of the Taieri River as part of the Otago Deed of Purchase.”³⁸³

540. The Atlas describes the Waipōuri River (which flows into the Waipori/Waihola wetland complex) as follows:³⁸⁴

“Waipōuri is the correct spelling for the Waipori River which rises in Te Papanui (the Lammerlaw Range), and flows southeast before joining the Taieri River near Henley.”

541. Schedule 96 of the Ngāi Tahu Claims Settlement Act 1998 sets out formally amended place names but does not include the Taieri River or Waihola/Waipori wetlands. I note that the relevant statutory acknowledgement in Schedule 70 uses the name “Waihola/Waipori wetland”.

542. Section 32(1) of the New Zealand Geographic Board (Ngā Pou Taunaha o Aotearoa) Act 2008 requires that if there is an official geographic name for a geographic feature or Crown protected area, that name must be used in all official documents. According to the New Zealand Gazetteer, the name “Taieri River” is not official and the river does not have an official name. However, there are many other names in the area that use Taieri and are official names:

- Taieri Gorge/Outram Glen Scenic Reserve
- Taieri Island/Moturata
- Taieri Lake Recreation Reserve
- Taieri Mouth Recreation Reserve
- Taieri Rapids Scenic Reserve
- Taieri River Scenic Reserve

543. Similarly, while the Waipori/Waihola Wetlands do not have an official name in the New Zealand Gazetteer, there are nearby official names that use the spelling “Waipori”:

- Waipori Falls Scenic Reserve
- Waipori/Waihola Wildlife Management Reserve
- Lake Waipori Wildlife Management Reserve

544. I understand that in early 2019, ORC began using the correct spelling “Manuherekia” instead of “Manuherikia” on the basis that the correct spelling was preferred by Kāi Tahu.³⁸⁵ Similarly to Taieri and Waipori, the Manuherekia River does not have an official name in the New Zealand Gazetteer but there are nearby place names adopting the misspelled Manuherikia.

545. I consider that there is no legal requirement to use either Taieri / Waipori or Taieri / Waipōuri. Given the significance of Māori place names to mana whenua, the requirement in MW-M2(1) for local authorities to consult Kāi Tahu to determine appropriate naming

³⁸³ Ngāi Tahu Atlas, retrieved from <https://www.kahurumanu.co.nz/atlas>

³⁸⁴ Ngāi Tahu Atlas, retrieved from <https://www.kahurumanu.co.nz/atlas>

³⁸⁵ <https://www.thenews.co.nz/news/preference-for-rivers-maori-spelling/>

- for places of significance in Otago, and the Council’s previous decision to adopt the correct spelling of Manuherikia, in my opinion this submission point should be accepted. However, I acknowledge that this would create inconsistencies given that all current maps and documents use “Taieri” and it would ordinarily be a decision of Council to make decisions such as this. There are also likely to be strong community connections with the name “Taieri”.
546. As an alternative to accepting the submission point, the Council could work with Kāi Tahu to identify incorrect place names across the region and make decisions on naming conventions outside of this process. While that would be preferable from a consistency perspective, once the wording of the pORPS is confirmed it will likely be many years before there is another opportunity to revisit place names used in this document. Implementing this change in the regional plans would require a plan change process, which may there may not capacity for in addition to the council’s future plan making workload. Alternatively, the change could be implemented in the pORPS, and implemented alongside existing plan making projects to be undertaken in the coming years.
547. DCC raises a number of concerns and seeks unspecified amendments to address them. The submitter supports restoring wetlands but considers that modification of some water bodies might be necessary for drainage purposes and the well-being of communities. In my opinion, there are no clauses in LF-VM-O4 that would prevent the modification of water bodies, including works in wetlands, so I do not consider any amendments are necessary.
548. In response to the submission points by Susan and Donald Broad, I note that the Outram Groundwater Protection Zone is mapped and referenced in the Water Plan, not the pORPS 2021, so any amendments to the extent of that zone is outside the scope of this process. Similarly, resource consent processes for septic tanks are set out in the Water Plan and also out of scope of this process. I do not recommend accepting these submission points.
549. Susan and Donald Broad have also sought to discourage the addition of septic-dependent development in rural townships. I note that LF-FW-P15 requires minimising the adverse effects of wastewater discharges, including by requiring on-site wastewater systems to be designed and operated in accordance with best practice standards and by ensuring that discharges meet any applicable water quality standards set for FMUs or rohe. The policy also seeks to promote the reticulation of wastewater in rural areas. In addition, UFD-P8(5)(b) requires having particular regard to the individual and cumulative impacts of wastewater disposal on the receiving environment. In my view, there is sufficient direction to decision-makers regarding the expansion of urban areas that are reliant on on-site wastewater systems. I consider that issues in specific locations, such as Outram, are more appropriately addressed through a regional plan. I do not recommend accepting this submission point.
550. Gavan James Herlihy seeks to include reference to a range of matters relevant to the Maniototo area. I understand the submitter is seeking greater recognition of the role of irrigation in delivering on the purpose of the pORPS and resilience to climate change, and

particularly the importance of the Loganburn Reservoir. In my view, clause (8) broadly recognises a range of practices that assist with supporting food production and improving resilience to climate change and I do not consider specific reference to irrigation, water storage, or the Loganburn Reservoir is necessary.

551. The submitter notes the role of wildlife in degrading water quality in the Maniototo catchment and seeks to include reference to pest management in LF-VM-O4. The submitter has not provided any supporting evidence about the issues posed by wildlife in the area. I note that the *ECO – Ecosystems and indigenous biodiversity* chapter contains provisions managing biodiversity, including providing for pest control activities (ECO-M4(1)(a)) and engaging with individuals, community groups, government agencies and other organisations with a role or an interest in biodiversity management. Pest management is an activity managed under the Biosecurity Act 1993 and so there are limitations on the direction that can be provided through RMA planning documents. I consider there will be opportunities to address pest management in particular catchments more specifically through the development of the LWRP.
552. The submitter also states that water in the Upper Taiari is being “sucked up” by introduced willows and this must be acted on. I understand that crack willows have historically been used in river control works to stabilise banks, including in Otago. I am aware that ORC’s current approach to the use of crack willow is generally to prefer their removal, however this is a site-specific assessment and in some cases willows are retained or relocated. Overall, however, ORC does not introduce crack willow to a site where it is not already present. The submitter has not provided any supporting evidence about the degree to which willows are affecting water yield in the Upper Taiari, however I consider that type of discussion is more relevant to the development of environmental outcomes and environmental flows and levels which will occur through the LWRP. Specific management of the scroll plain will also be a matter for the LWRP to address, guided by the direction in LF-VM-O4 to restore healthy wetlands in that area.
553. The submitter notes that the Tiaki Maniototo project seeks to improve environmental outcomes in the Upper Taiari area over the next five years and considers that any outcomes developed for the Taiari FMU process should be developed in concert with the Tiaki Maniototo project. I agree that would be beneficial but consider this type of synergy can be provided outside the formal pORPS process, for example through engagement and other non-regulatory methods.
554. Finally, the submitter considers that greater environmental gains would be achieved through creation and enhancement of existing wetlands, as well as restoration. I do not consider it is practical to require creation of existing wetlands, however I agree that in some cases enhancement will be more appropriate than restoration. I recommend accepting this submission point in part, noting that there is more specific direction on the management of wetlands in LF-FW-O9, LF-FW-P9, and LF-FW-P10.
555. Kāi Tahu ki Otago seeks to amend the timeframe for achieving this vision from 2050 to 2045. In his evidence for the hearing on Proposed Plan Changer 7 to the Water Plan, Tom de Pelsemaeker stated that, as at 7 December 2020, the Schedule 2A Primary Allocation Limit for the Taiari Catchment was 4,860 litres per second while the Consented Primary

Allocation was 24,748.78 litres per second.³⁸⁶ Mr de Pelsemaeker concluded, and I agree, that in parts of Otago (including the Taieri) there is a risk that current levels of allocation do not first prioritise the health and well-being of water bodies and freshwater ecosystems as required by the NPSFM. Using the data available through ORC's online GIS,³⁸⁷ I understand there are at least 1086 current water take permits in the Taieri catchment.³⁸⁸ Of those, 218 are due to expire between 2045 and 2050. This equates to 20% of the current water take permits in the catchment. An additional 19% of current water take permits expire between 2040 and 2045.

556. On this basis, although I understand the reasons for the request by Kāi Tahu ki Otago, I do not consider that bringing forward the date for achieving the vision from 2050 to 2045 is practical. Clause 3.3(2)(c) of the NPSFM requires timeframes to be both ambitious and reasonable. In the Taieri FMU, I do not consider a 2045 timeframe is reasonable because at that point in time 20% of the water take permits will not have been re-examined under the new LWRP framework (which will give effect to the NPSFM). For these reasons, I do not recommend accepting this submission point.

557. I understand that Ngā Awa is a river restoration programme established by the Department of Conservation to: (Department of Conservation, n.d.)

- improve the condition, biodiversity and the ecological processes of the rivers,
- protect the threatened species (like native fish) that are present, and
- increase the ability of each river to cope with climate change.

558. While the Ngā Awa programme will support the achievement of the vision, I do not consider that the vision needs to specifically refer to this programme which is one of a number of programmes focused on improving the health of various rivers in Otago.³⁸⁹ Further, this is a programme of work that sits outside the RMA and the sphere of local authorities. I do not recommend accepting this submission point.

559. John Highton seeks specific mention of the Upper Taieri Scroll Plain. I note that clause (3) requires restoring (or enhancing, as I have recommended elsewhere) healthy wetlands, including the scroll plain. I recommend rejecting this submission point.

560. Regarding the submission point by Kāi Tahu ki Otago, I note that Schedule 9 (Regionally significant wetlands) in the Water Plan uses the term "wetland complex" to describe this area. Although that Plan uses "Waipori/Waihola", I understand the official name of the relevant wildlife management reserve is "Waihola/Waipori" and therefore I consider the name "Waihola/Waipōri wetland complex" as sought by Kāi Tahu ki Otago is appropriate. I recommend accepting this part of the submission point.

³⁸⁶ Statement of evidence of Tom de Pelsemaeker on behalf of the Otago Regional Council (7 December 2020), p.23

³⁸⁷ <https://maps.orc.govt.nz/OtagoViewer/?map=2b72476ec76446cf8270dad325952215>

³⁸⁸ I note that there are 891 other water take permits across Otago that do not have a catchment identified in the data and some of them will also be in the Taieri catchment.

³⁸⁹ Including catchment groups and Tiaki Maniopoto, for example.

561. By my reading, the intent of clause (3) is to restore (or enhance, as recommended elsewhere) wetlands so that they are healthy. However, I acknowledge that the wording is somewhat unclear and could be interpreted, as highlighted by Beef + Lamb and DINZ, as requiring healthy wetlands to be restored. In response to the submitter's request to clarify what level of restoration is required, I consider that is a matter for the regional plan to determine when environmental outcomes are developed for the FMU. However, for consistency with an amendment I have recommended to LF-VM-O2 for similar reasons, I consider that changes could be made to clarify that restoration or enhancement is required where wetlands have been degraded, lost or reduced in size. I recommend accepting this submission in part and amending the clause to clarify its meaning.
562. In considering these submissions, I have noted that clause (3) does not require protecting these wetland complexes. In my opinion, given their significance, that is an oversight. However, there are no submissions seeking additional protection to clause (3) and therefore I do not consider that there is sufficient scope in submissions to address this. I note that clause (49)(2) of Schedule 1 of the RMA enables the hearings panel take make decisions outside the scope of submissions and the panel may wish to consider this.
563. In response to the submission point by John Highton regarding didymo, I understand that didymo is present in the Taieri FMU but not currently at nuisance levels, however the feedback from communities during consultation on this vision specifically identified didymo as a "significant problem for both biodiversity and water quality." I have not been able to access sampling results to verify the extent of didymo in this FMU and, in the absence of that information, consider it is appropriate to reflect the feedback from the community. At this stage, without further evidence, I do not recommend accepting the submission point by John Highton.
564. I agree with DOC and Kāi Tahu ki Otago that there are other indigenous freshwater species in the Taieri FMU in addition to *galaxiid* species. Section 9.4.1 of the Kāi Tahu ki Otago Natural Resources Management Plan 2005 states that:
- "Waihola/Waipori was an important mahika kai resource for Kāi Tahu ki Otago. An abundance of tuna, īnaka, pātiki and other indigenous fish were available."
 - "A number of other settlements further afield were dependent on the mahika kai resources of Waihola/Waipori for sustenance, including Tu Paritaniwha Pā near Momona, Omoua Pā above Henley, Maitapapa (Henley area), the Kaik south of Henley and Takaaihitau near the old Taieri Ferry bridge, in addition to other settlements adjacent to the Taieri River up and downstream of the wetlands. Ōtākou and Puketeraki hapū also made seasonal visits to gather resources and strengthen and maintain the kupenga of whakapapa on which their rights to use those resources were based."
565. I recommend accepting these submissions in part and amending the clause to refer to indigenous freshwater species, including *galaxiid* species.
566. The amendments sought by Lynne Stewart and COES to clause (8) would combine and alter the intent of clauses in a way that is not consistent with the feedback provided

during community consultation. It is not clear what degree of ecological functioning is envisaged by the submitter. I note that ecological health is a compulsory value in the NPSFM and therefore communities will have the opportunity to provide input into the development of the LWRP which will establish environmental outcomes for every value (compulsory or separated identified). I do not recommend accepting this submission.

567. I agree with Kāi Tahu ki Otago that minor rewording of clause (8) would assist its readability and recommend accepting this part of the submission point.

568. Having reviewed the community and iwi feedback provided through consultation on the freshwater visions, I do not consider that a desire to reduce emissions was expressed and therefore do not recommend accepting the submission point by Horticulture NZ.

569. Federated Farmers seeks to replace “food production” with “primary production”. As discussed in section 9.6.2.4, that term is considerably broader than food production and includes other activities such as forestry. The summary of feedback from community consultation on the Taieri FMU vision included the following:³⁹⁰

- “There was strong opposition to forestry in the Taieri FMU, as a threat to natural character and agriculture.” (p.25)
- “Agriculture is the primary economic driver in the Taieri, and the communities want to see it remain this way across generations.” (p.25)
- Long-term aspiration: “Agriculture remains the primary economic driver for the Taieri across generations who utilise sustainable, prosperous, and adaptable agricultural practices.” (p.25)

570. The dictionary definition of agriculture is:³⁹¹

the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products

571. In my opinion, this definition more closely reflects the feedback provided by the community during consultation. I do not consider that the amendments sought by Federated Farmers are an accurate reflection of the community’s aspirations and therefore do not recommend accepting this submission point.

572. I understand from Otago’s *Climate change risk assessment* (Tonkin + Taylor, 2021, p. 6) that in general, Otago is expected to experience an increase in annual rainfall, increased intensity of extreme and rare rainfall events, and an increase in Mean Annual Flood. In relation to flooding, the region is generally projected to see an increase of greater than 20% with some areas seeing more than 100% increase in Mean Annual Flood. The Taieri Plains are already vulnerable to flooding and will become more so as the effects of climate change are felt. This is reflected, to some degree, in the community consultation feedback which highlighted the importance of flood protection in the FMU. On this basis, I agree with DOC that including reference to improving resilience to flooding is appropriate. I do not agree that an entirely new clause is necessary and instead

³⁹⁰ See Appendix 5 of the Section 32 Evaluation Report for the pORPS 2021.

³⁹¹ <https://www.merriam-webster.com/dictionary/agriculture>

recommend including reference to flooding in existing clause (8). I recommend accepting this submission point in part.

573. I acknowledge the importance of mahika kai to Kāi Tahu and consider that the additional clause sought by Kāi Tahu ki Otago should be included.

574. With regard to including an additional clause preventing any further modification to the shape or behaviour of the water bodies, I note that in the freshwater visions feedback provided by Kāi Tahu ki Otago one of the region-wide aspirations was that there is no further modification of river shape or braided stretches, existing wetlands are restored, and the area of wetlands is increased.³⁹² The community consultation also recorded the following:³⁹³

- “Communities valued the FMU’s unique and distinct natural character, including the scroll plains, wetlands, rocky outcrops, and Sutton Salt Lake. These are unique features and will need unique management approaches to maintain them for future generations to enjoy.” (p.25)
- Long-term aspiration: “The unique natural character and features of the Taiari are beautiful and valued, continuing to contribute to the community sense of place.” (p.25)

575. In its consultation feedback, the outcome sought was restricted to river shape and braided stretches, whereas in its submission on the pORPS Kāi Tahu ki Otago seeks that there is no further modification of any water bodies. In my view, this does not accord with the consultation feedback which highlights particular features (i.e. the scroll plains and Sutton Salt Lake) and their ‘uniqueness’, which to me indicates a narrower subset of water bodies. In relation to rivers, LF-FW-P13(1) requires avoiding the loss or values of a river unless particular exclusions apply, which will set a high bar for modification. Similar restrictions apply to natural wetlands under LF-FW-P9. The vision already seeks to restore, in clause (3), the upper and lower catchment wetland complexes that were identified as valued by communities.

576. I am aware that there are flood protection schemes in place in the Taiari FMU, some of which protect regionally significant infrastructure such as Dunedin Airport. Climate change projections indicate a significant increase in flooding in Otago, including the Taiari. It may be necessary for the health and safety of people and communities to modify water bodies, for example to improve flood protection, in the future and I am reluctant to introduce a blanket restriction of this nature. On this basis, I do not recommend accepting this submission point.

577. The submission by Kāi Tahu ki Otago states that “it is ... important to mana whenua that mahika kai species do not contain contaminants that would make them unsafe to eat” and “[t]o enable harvest of food, the water body must also be safe for whānau to enter ...” I appreciate that this is critical to mahika kai and recommend accepting this submission point in part. I consider this request is linked to an earlier submission point

³⁹² Appendix 6 (p.2) of the Section 32 Evaluation Report for the pORPS 2021.

³⁹³ Appendix 5 of the Section 32 Evaluation Report for the pORPS 2021.

by Kāi Tahu ki Otago seeking greater recognition of mahika kai in the Taieri FMU vision and that the requirement for mahika kai species to be safe for consumption could instead be incorporated into that clause, rather than included as a separate clause.

578. OWRUG states that the vision does not accurately reflect the outcome of community consultation because it does not express the community's desire for water to be allocated to support food and fibre production. I agree that irrigation and food production were a clear theme during consultation, and that water storage was suggested a number of times as a potential management tool. I have not incorporated those desires into the vision to the extent sought by the submitter, or indicated by the community, because in my opinion freshwater visions still need to comply with higher order documents, and in this case particularly the NPSFM and Te Mana o te Wai.

579. As discussed earlier in this section, Mr de Pelsemaeker stated in his evidence prepared for PC7 that, as at 7 December 2020, the Schedule 2A Primary Allocation Limit for the Taieri Catchment was 4,860 litres per second while the Consented Primary Allocation was 24,748.78 litres per second.³⁹⁴ In my opinion, this indicates that there is a significant risk of over-allocation in this FMU and that ORC will need to carefully consider the limits on resource use developed as part of the LWRP. In that context, I do not consider that it is appropriate to attempt to 'shore up' allocation in advance of the LWRP process. In my opinion, irrigation is a third priority under the hierarchy of obligations in the objective of the NPSFM, and under LF-WAI-P1, and I am not convinced that there is evidence to demonstrate that the type of allocation sought by OWRUG would, first, prioritise the health and well-being of the water bodies and freshwater ecosystems.

580. Similarly, while water storage may be one of the methods considered for managing freshwater in this FMU, I do not consider that it will always be the most appropriate method. Whether water storage can be provided will be site-specific and is, in my opinion, a matter better addressed in the LWRP once there is clarity about the environmental outcomes sought, limits on resource use, and, if applicable, any requirements to phase out over-allocation. I do not recommend accepting this submission point.

581. Trustpower seeks an additional clause recognising the national and regional significance of the Waipori, Deep Stream, and Paerau/Patearoa hydro-electric power schemes. In its submission, Trustpower gives the following reason for this request:

Trustpower's primary assets in the Otago region are the Waipori and Paerau/Patearoa hydroelectric power schemes – both of which are located within the Taieri FMU. It is considered appropriate that the significance of these assets is specifically referred in the vision for the Taieri FMU.

582. It is not clear to me which of these power schemes Trustpower considers to be nationally significant and which regionally significant. These terms are defined in the pORPS but I am unable to determine from Trustpower's submission whether these schemes meet those definitions. I note that in their reasons, Trustpower does not mention Deep Stream

³⁹⁴ Statement of evidence of Tom de Pelsemaeker on behalf of the Otago Regional Council (7 December 2020), p.23

but seeks to include reference to that scheme in the relief sought to LF-VM-O4. Without further evidence, I do not recommend accepting this submission point.

583. In section 9.6.2.3 of this report, I have addressed submissions on clause (7) of this objective and recommended an amendment which I have included below. That section should be referred to for the relevant submissions and evaluation.

9.6.6.4. Recommendation

584. I recommend amending LF-VM-O4 to:

LF-VM-O4 – ~~Taiari~~ Taiari³⁹⁵ FMU vision

By 2050 in the ~~Taiari~~ Taiari³⁹⁶ FMU:

- (1) *fresh water* is managed in accordance with the LF-WAI objectives and policies,
- (2) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained,
- (3A) water bodies support thriving *mahika kai* that are safe for consumption and Kāi Tahu whānui have access to *mahika kai*,³⁹⁷
- (3) ~~healthy wetlands are restored in~~³⁹⁸ the upper and lower catchment *wetland* complexes, including the ~~Waipori~~ Waipoūri/Waihola Wetlands, Tunaheketaka/Lake ~~Taiari~~ Taiari,³⁹⁹ scroll plain, and tussock areas, are restored⁴⁰⁰ or enhanced where they have been degraded, lost or reduced in size,⁴⁰¹
- (4) the gravel *bed* of the lower ~~Taiari~~ Taiari⁴⁰² is restored and sedimentation of the ~~Waipori~~ Waipoūri/Waihola complex is reduced,
- (5) creative ecological approaches contribute to reduced occurrence of didymo,
- (6) *water bodies* support healthy populations of indigenous freshwater species, including⁴⁰³ *galaxiid* species,
- (7) there are no direct *discharges of wastewater containing sewage*⁴⁰⁴ to *water bodies*, and

³⁹⁵ 00226.170 Kāi Tahu ki Otago

³⁹⁶ 00226.170 Kāi Tahu ki Otago

³⁹⁷ 00226.170 Kāi Tahu ki Otago

³⁹⁸ 00237.028 Beef + Lamb and DINZ

³⁹⁹ 00226.170 Kāi Tahu ki Otago

⁴⁰⁰ 00237.028 Beef + Lamb and DINZ

⁴⁰¹ 00104.005 Gavan Herlihy

⁴⁰² 00226.170 Kāi Tahu ki Otago

⁴⁰³ 00137.066 DOC, 00226.170 Kāi Tahu ki Otago

⁴⁰⁴ 00213.035 Fonterra

(8) food production in the area is supported by⁴⁰⁵ innovative and sustainable *land and water* management practices ~~support food production in the area and that~~⁴⁰⁶ improve resilience to the *effects of climate change, including flooding*.⁴⁰⁷

9.6.7. LF-VM-O5 – Dunedin & Coast FMU vision

9.6.7.1. Introduction

585. As notified, LF-VM-O5 reads:

LF-VM-O5 – Dunedin & Coast FMU vision

By 2040 in the Dunedin & Coast FMU:

- (1) *fresh water* is managed in accordance with the LF-WAI objectives and policies,
- (2) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained,
- (3) healthy estuaries, lagoons and *coastal waters* support thriving mahika kai and downstream coastal ecosystems, and indigenous species can migrate easily and as naturally as possible to and from these areas,
- (4) there is no further modification of the shape and behaviour of the *water bodies* and opportunities to restore the natural form and function of *water bodies* are promoted wherever possible, and
- (5) *discharges of contaminants* from urban environments are reduced so that *water bodies* are safe for human contact.

9.6.7.2. Submissions

586. Few submissions were received on this objective. Forest and Bird seeks amendments for consistency with their proposed overarching vision for Otago but does not specify the amendments sought.⁴⁰⁸ Harbour Fish seeks that water bodies are expanded to specifically include the coastal marine environment.⁴⁰⁹

587. Waka Kotahi seeks that the objective cross-reference other chapters of the RPS that provide for modification of water bodies as a result of infrastructure works or a new provision that recognises this requirement.⁴¹⁰ I have addressed this submission point in section 9.6.2.2.

⁴⁰⁵ 00226.169 Kāi Tahu ki Otago

⁴⁰⁶ 00226.169 Kāi Tahu ki Otago

⁴⁰⁷ 00137.066 DOC

⁴⁰⁸ 00230.082 Forest and Bird

⁴⁰⁹ 00126.036 Harbour Fish

⁴¹⁰ 00305.021 Waka Kotahi

588. John Highton seeks the following general amendments:⁴¹¹
- include the restoration of the Water of Leith, its amenity values and habitat for migratory fish, and
 - identify Tomahawk Lagoon, Silverstream, Kaikorai Stream and estuary as water bodies to be restored and maintained.
589. DCC seeks a range of amendments to the vision:⁴¹²
- Amend the vision, along with the means and timeframes for attaining the vision given some specific catchment challenges, to include a clear vision for Dunedin’s urban waterways (in particular the Kaikorai, Leith, Tomahawk Lagoon and Silverstream) in terms of water quality, access, and the value placed on them by the community,
 - Amend the objective and the objectives in the CE – Coastal environment chapter to address the link between the two chapters, particularly in relation to clause (3) of the objective which they consider may be more applicable to coastal environments,
 - Delete the requirement to prevent further modification in clause (4) as this could unintentionally restrict restoration activities and does not recognise that modification can have benefits for communities (for example, stormwater drainage),
590. In relation to the final point above, I agree with DCC that modification of the shape and behaviour of a water body may have positive effects on the health and well-being of water bodies, and that the clauses as notified have assumed that modification is negative which may not always be the case. While I acknowledge that the modification clauses do not recognise the benefits for communities, I am conscious of the need to give effect to Te Mana o te Wai, including by prioritising, first, the health and well-being of the water bodies and freshwater ecosystems. I note that I have discussed modification of water bodies in section 9.6.2.2 and recommended replacing “there is no further modification” with “minimise modification”. I recommend accepting this submission point in part.
591. Kāi Tahu ki Otago seeks that, in clause (1), Kāi Tahu maintain their connection with and use of water bodies in order to incorporate important components of other visions that should be outcomes for all FMUs and improve general clarity of meaning and consistency of wording across visions.
592. Clause (5) relates to reducing discharges of contaminants from urban environments. DCC seeks to delete the reference to urban environments as problematic contaminants may come from either urban or rural environments, whereas Kāi Tahu ki Otago seeks to include reference to rural environments for similar reasons. Kāi Tahu ki Otago also seeks to amend clause (5) so that reductions in contaminant discharges also ensure that mahika kai species are safe for consumption. Kāi Tahu ki Otago also seeks to include a new clause regarding discharges of wastewater which I have addressed in section 9.6.2.3.

⁴¹¹ 00014.051 John Highton

⁴¹² 00139.088 DCC

593. Ravensdown and Federated Farmers seek the addition of a new clause to recognise the importance of primary production to this FMU:⁴¹³

(6) innovative and sustainable land and water management practices support food production in the area and improve resilience to the effects of climate change.

594. Kāi Tahu ki Otago seeks to amend the boundary of the Dunedin and Coast FMU so that it includes the Waikouaiti catchment. This is discussed further in relation to LF-VM-P5 and MAP1 which list and map those boundaries.

9.6.7.3. Analysis

595. I have addressed the submission point by Forest and Bird in section 9.6.2.1 of this report as it relates to their relief sought elsewhere for a region-wide freshwater vision.

596. Harbour Fish considers that water bodies need to be expanded to specifically include the coastal marine environment. I am unsure what exactly the submitter is seeking, but note that the boundaries of the FMUs incorporate some areas that are likely to fall within the coastal marine area. For example, the maps below in Figure 1 show the boundary of the coastal marine area as delineated in the Coast Plan (first image) compared to the FMU boundary set in the pORPS (second image). The FMU boundary clearly incorporates part of the Kaikorai Lagoon that is also within the coastal marine area.

⁴¹³ 00121.054 Ravensdown, 00239.080 Federated Farmers



Figure 1: Coast Plan CMA boundary vs Dunedin & Coast FMU boundary

597. Without clarification from the submitter about what is being sought, I do not recommend accepting this submission point.
598. John Highton seeks general amendments to require restoration of the Leith, Tomahawk Lagoon, Kaikorai stream and estuary, and the Silverstream. I do not consider that the outcomes sought by this submitter are an accurate reflection of the community consultation feedback, which did not identify restoration of these water bodies as a long-term aspiration. On this basis, I do not recommend accepting the submission point.
599. DCC considers that there needs to be a clear vision for Dunedin’s urban waterways (in particular the Kaikorai, Leith, Tomahawk Lagoon, and Silverstream) in terms of water

quality, access, and their value to the community. The submitter seeks that the vision is amended, along with the means and timeframes for attaining the vision, to address the issues raised but does not provide any specific wording. In the absence of more detail about the vision the submitter envisages for urban waterways, I do not recommend accepting this submission point at this stage. The submitter may wish to provide additional detail in their evidence.

600. I agree with Kāi Tahu ki Otago that including reference to the connection of Kai Tahu with, and use of, water bodies is an appropriate amendment to clause (1) and reflects the relationship described in LF-WAI-O1(2). I recommend accepting this part of the submission point.

601. Clause (3) of the vision relates to estuaries, lagoons, and coastal waters as well as the migration of indigenous species. DCC questions whether the *LF – Land and freshwater* chapter is the most appropriate place for this type of direction and seeks that the objective, as well as the objectives in the *CE – Coastal environment* chapter, are amended to address the link between the two chapters. DCC also seeks to amend CE-P1 to include reference to the *LF – Land and freshwater* chapter, which is addressed in relation to that policy.

602. As I have explained above, the FMU boundaries (including in the Dunedin & Coast FMU) include some estuaries and lagoons. Coastal water is defined in section 2 of the RMA as:

...seawater within the outer limits of the territorial sea and includes –

(a) seawater with a substantial fresh water component; and

(b) seawater in estuaries, fiords, inlets, harbours, or embayments.

603. Some water bodies within FMUs will therefore contain coastal water. This FMU contains the majority of Otago’s coastline and there are many estuaries, lagoons, and other water bodies with coastal water or a mixture of fresh and coastal water, some of which are located partly or wholly within the CMA. Clause 3.2(2)(e) of the NPSFM requires regional councils to give effect to Te Mana o te Wai and, in doing so, adopt an integrated approach, *ki uta ki tai*, to the management of freshwater. Clause 3.5(1) sets out more detail about this requirement and, in particular, requires local authorities to:

(a) recognise the interconnectedness of the whole environment, from the mountain and lakes down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and

(b) recognise interactions between freshwater, land, waterbodies, ecosystems, and receiving environments;

604. Finally, I note that clause 1.5 of the NPSFM states that the NPS 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).”

605. On this basis, I consider it is appropriate for the vision for the Dunedin & Coast FMU to recognise the close links between fresh and coastal water in this part of the region. In my

opinion, the NPSFM clearly anticipates this approach and separating the receiving environment from the freshwater bodies would not recognise ki uta ki tai or integrated management. I note that an explicit cross-reference to the LF chapter in CE-P1 is recommended and therefore recommend accepting this submission point in part.

606. In relation to clause (5), I agree with both DCC and Kāi Tahu ki Otago that contaminants may come from either rural or urban environments. In response to submissions on LF-VM-O3(5), which is very similar to LF-VM-O5(5), I have recommended changes to focus on the action (reductions in contaminant discharges) and the outcome sought (water bodies being safe for human contact and mahika kai species safe for consumption) rather than the activities leading to the discharges. I consider that adopting this approach in LF-VM-O5(5) addresses the issue raised by DCC and Kāi Tahu ki Otago and provides consistency with LF-VM-O3 which applies to the North Otago FMU, adjacent to the Dunedin & Coast FMU. I recommend accepting the submission point by DCC and accepting in part the submission point by Kāi Tahu ki Otago.

607. The summary of community consultation feedback on this vision recorded as a long-term aspiration that:⁴¹⁴

“Farming contributes to the local economy. Highly productive land is protected, and lifestyle blocks are restricted to marginal land. Costs of externalities are factored into prices and regulation is workable for all landowners. Opportunities for high value production are explored and supported.”

608. In my view, this is more closely related to the management of urban and rural-residential expansion than to food production. I do not recommend accepting the submission points by Ravensdown and OWRUG.

609. Elsewhere in this chapter, Kāi Tahu ki Otago seeks to amend the boundary between the Dunedin & Coast and North Otago FMUs. In relation to this provision, Kāi Tahu ki Otago seeks that if that boundary change is recommended to be accepted, then this provision should include recognition of management outcomes for the Waikouaiti freshwater mātaimai and the East Otago Taiāpure. As outlined in section 9.6.10 of this report, I have recommended accepting the request to adjust the boundary and consider that there may need to be consequential amendments to LF-VM-O5 as a result. While I do not oppose the additional relief sought by Kāi Tahu ki Otago, I am unsure what types of outcomes are envisaged by the submitter. Without further clarification, I do not recommend accepting this part of the submission point at this stage. The submitter may wish to clarify the relief sought in their evidence.

9.6.7.4. Recommendation

610. I recommend amending LF-VM-O5 to:

LF-VM-O5 – Dunedin & Coast FMU vision

By 2040 in the Dunedin & Coast FMU:

⁴¹⁴ Appendix 5 (p.28) of the Section 32 Evaluation Report for the pORPS 2021.

- (1) *fresh water* is managed in accordance with the LF-WAI objectives and policies,
- (2) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained and Kāi Tahu maintain their connection with and use of the water bodies,⁴¹⁵
- (3) healthy estuaries, lagoons and *coastal waters* support thriving ~~mahika kai~~ *mahika kai*⁴¹⁶ and downstream coastal ecosystems, and indigenous species can migrate easily and as naturally as possible to and from these areas,
- (4) ~~there is no further~~ minimise⁴¹⁷ modification of the shape and behaviour of the *water bodies* and promote opportunities to restore the natural form and function of *water bodies* ~~are promoted~~⁴¹⁸ wherever possible, and
- (5) ~~discharges of contaminants from urban environments~~⁴¹⁹ are reduced so that *water bodies* are safe for human contact and mahika kai species are safe for consumption.⁴²⁰

9.6.8. LF-VM-O6 – Catlins FMU vision

9.6.8.1. Introduction

611. As notified, LF-VM-O6 reads:

LF-VM-O6 – Catlins FMU vision

By 2030 in the Catlins FMU:

- (1) *fresh water* is managed in accordance with the LF-WAI objectives and policies,
- (2) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained,
- (3) *water bodies* support thriving mahika kai and access of Kāi Tahu whānui to mahika kai,
- (4) the high degree of naturalness and ecosystem connections between the forests, *freshwater* and coastal environment are preserved,
- (5) *water bodies* and their catchment areas support the health and well-being of *coastal water*, ecosystems and indigenous species, including downstream kaimoana, and
- (6) healthy, clear and clean *water* supports opportunities for recreation and sustainable food production for future generations.

⁴¹⁵ 00226.171 Kāi Tahu ki Otago

⁴¹⁶ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁴¹⁷ 00139.088 DCC, 00305.020 Waka Kotahi

⁴¹⁸ Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00139.088 DCC, 00305.020 Waka Kotahi

⁴¹⁹ 00139.088 DCC

⁴²⁰ 00226.171 Kāi Tahu ki Otago

9.6.8.2. Submissions

612. Few submissions were received on this objective. Horticulture NZ and NZ Pork seek it be retained as notified.⁴²¹ Forest and Bird seeks amendments for consistency with their proposed overarching vision for Otago but does not specify the amendments sought.⁴²² The remaining submitters seek a range of amendments.
613. Ngāi Tahu ki Murihiku seeks that the objective is amended to use phrasing consistent with the overarching vision for Te Mata-au where the same outcome is intended for the provision, to help make it clear where distinct outcomes are sought for the Catlins / Te Ākau Tai Toka due to the characteristics of this FMU.⁴²³
614. Beef + Lamb and DINZ consider that public access needs to be considerate of and consistent with landowner needs in order to foster good relationships and safeguard the landowner's business against disruption or loss and to allow for health and safety and animal welfare matters. They seek amendments to clause (3) so that access of Kāi Tahu whānui to mahika kai is maintained and its improvement is promoted where appropriate.⁴²⁴
615. Federated Farmers seeks to replace the reference to "food production" in clause (6) with "primary production".⁴²⁵ Ravensdown and Federated Farmers seek the addition of a new clause to recognise the importance of primary production to this FMU.⁴²⁶

(7) innovative and sustainable land and water management practices support food production in the area and improve resilience to the effects of climate change.

616. DOC seeks to include a new clause to recognise the importance of fish passage to indigenous fish, which include the threatened kanakana and lamprey and at risk tuna and longfin eel:⁴²⁷

(7) indigenous species can migrate easily and as naturally as possible to and from the coastal environment

617. Ngāi Tahu ki Murihiku seeks to include a new clause requiring phasing out of direct discharges to water bodies in the Catlins / Te Ākau Tai Toka which I have addressed in section 9.6.2.3.

9.6.8.3. Analysis

618. I have addressed the submission point by Forest and Bird in section 9.6.2.1 of this report as it relates to their relief sought elsewhere for a region-wide freshwater vision. I do not

⁴²¹ 00236.061 Horticulture NZ, 00240.021 NZ Pork

⁴²² 00230.082 Forest and Bird

⁴²³ 00223.086 Ngāi Tahu ki Murihiku

⁴²⁴ 00237.029 Beef + Lamb and DINZ

⁴²⁵ 00239.083 Federated Farmers

⁴²⁶ 00121.055 Ravensdown, 00239.081 Federated Farmers

⁴²⁷ 00137.068 DOC

recommend the inclusion of a region-wide vision, so the consequential amendments to the existing objectives are not considered necessary.

619. Ngāi Tahu ki Murihiku seeks general amendments to ensure the phrasing of this objective is consistent with the vision for the Clutha Mata-au FMU. I note that the following clauses are replicated in both visions:

- Clause (1) of LF-VM-O5 and clause (2) of LF-VM-O2,
- Clause (2) of LF-VM-O5 and clause (3) of LF-VM-O2, and
- Clause (3) of LF-VM-O5 and clause (4) of LF-VM-O2.

620. I have recommended amendments to clauses (3) and (4) in LF-VM-O2 and therefore, in response to the submission by Ngāi Tahu ki Murihiku, recommend those changes are also reflected in LF-VM-O5. I recommend accepting this submission in part.

621. As described in the *Mana whenua* section of the pORPS, mahika kai is one of the cornerstones of Kāi Tahu cultural identity. As well as referring to the gathering of food and natural materials, and the places they are gathered, mahika kai also encompasses the traditions, customs, and collection methods. I understand that this is an important means of passing on cultural values and mātauraka to the next generation.

622. I agree with Beef + Lamb and DINZ that access to private property is not guaranteed and there will be good reasons to restrict public access in some areas or at some times of year. However, LF-WAI-O1, the expression of Te Mana o te Wai in Otago, requires the management of land and water to recognise and reflect that Kāi Tahu exercise rakatirataka, manaakitaka, and their kaitiakitaka duty of care and attention over wai and the life it supports. In addition to this, LF-WAI-P2(3) requires recognising and giving practical effect to Kāi Tahu rakatirataka in respect of freshwater by providing for a range of customary uses, including mahika kai, specific to each water body. Access to mahika kai is a fundamental part of implementing this direction.

623. I do not consider that the wording of clause (3) as notified establishes an expectation that access will be guaranteed, or that access could not be negotiated in a way that is considerate of and respects landowner needs. In my opinion, the amendments sought by the submitters would indicate that while current access should be maintained, improving access would be dependent on an assessment of whether it was “appropriate” or not. I am concerned that the lack of explanation about what “appropriate” means and how it would be applied would not encourage improvements in access. For these reasons, I do not recommend accepting this submission point.

624. I recommend a minor amendment in accordance with Clause (16)(2) of Schedule 1 of the RMA to amend the wording to be consistent with clause LF—VM—O4(3a).

625. As in other visions, Federated Farmers seeks to replace “food production” with “primary production”. The summary of feedback from community consultation on the Catlins FMU vision included the following:⁴²⁸

⁴²⁸ See Appendix 5 of the Section 32 Evaluation Report for the pORPS 2021.

- “The community values the FMU’s rural character and would largely prefer to maintain the agricultural base for the economy. This will require planning to manage extent and location of urban development, along with control of forestry development.” (p.29)
- Long-term aspiration: “Farming by NZ families is maintained as an important part of the regional economy.” (p.30)

626. I am not convinced that the views of the community extend to all of the activities listed in the definition of primary production from the Planning Standards. There is no mention of aquaculture, mining, or quarrying activities and I do not consider it would be an accurate reflection of the consultation to incorporate reference to those. In my opinion, the views expressed by the community are more closely aligned with the dictionary definition of agriculture.⁴²⁹ I agree that food production may not capture all aspects of this definition, such as wool production. On that basis, I consider that clause (6) could be amended to refer to agriculture, including food production, to more closely reflect the desires expressed by the community without expanding the scope of the clause significantly as sought by Federated Farmers. I recommend accepting this submission in part.

627. Federated Farmers and Ravensdown seek to include an additional clause regarding food production. In my view, the community consultation feedback did not highlight primary production as prominently as these submitters consider. I consider that the notified clause (6) is a more accurate reflection of the views expressed and do not recommend accepting these submission points.

628. DOC considers that the vision fails to recognise the importance of fish passage to indigenous fish, including the threatened kanakana/lamprey and at risk tuna/longfin eel, and seeks to include an additional clause to address this. The submitter has not provided any supporting information about the species found in the Catlins FMU or the extent to which fish passage is a significant issue. I note that LF-FW-O8(4), LF-FW-P7(2), and LF-FW-P14(3) specifically address fish passage so although it is not specifically addressed in the Catlins FMU vision, it is not overlooked. Without further evidence, I do not recommend accepting this submission point.

9.6.8.4. Recommendation

629. I recommend amending LF-VM-O6 to:

LF-VM-O6 – Catlins *FMU* vision

By 2030 in the Catlins *FMU*:

- (1) *fresh water* is managed in accordance with the LF-WAI objectives and policies,

⁴²⁹ “The science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products.” (Merriam-Webster)

- (2) the ongoing relationship of Kāi Tahu with *wāhi tūpuna* is sustained and, where degraded or lost, restored,⁴³⁰
- (3) *water bodies* support thriving ~~maḥika kai~~ *maḥika kai*⁴³¹ that are safe for consumption⁴³² and ~~access of~~⁴³³ Kāi Tahu whānui have access⁴³⁴ to ~~maḥika kai~~ *maḥika kai*,⁴³⁵
- (4) the high degree of naturalness and ecosystem connections between the forests, *freshwater* and coastal environment are preserved,
- (5) *water bodies* and their catchment areas support the health and well-being of *coastal water*, ecosystems and indigenous species, including downstream kaimoana, and
- (6) healthy, clear and clean *water* supports opportunities for recreation and sustainable agriculture, including food production,⁴³⁶ for future generations.

9.6.9. LF-VM-07 – Integrated management

9.6.9.1. Introduction

630. As notified, LF-VM-07 reads:

LF-VM-07 – Integrated management

Land and water management apply the ethic of ki uta ki tai and are managed as integrated natural resources, recognising the connections and interactions between fresh water, land and the coastal environment, and between surface water, groundwater and coastal water.

9.6.9.2. Submissions

631. Three submitters seek to retain this objective as notified.⁴³⁷ Ballance seeks amendments so that the objective requires recognising that “integrated solutions are a key mechanism to achieve water quality improvements.”⁴³⁸

9.6.9.3. Analysis

632. This objective requires land and water management to apply the ethic of ki uta ki tai. The amendment sought by Ballance addresses both a specific water management issue

⁴³⁰ 00101.031 Toitū te Whenua, 00223.086 Ngāi Tahu ki Murihiku

⁴³¹ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁴³² 00226.011 Kāi Tahu ki Otago, 00223.086 Ngāi Tahu ki Murihiku

⁴³³ Clause 16(2) Schedule 1, RMA

⁴³⁴ Clause 16(2) Schedule 1, RMA

⁴³⁵ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁴³⁶ 00239.083 Federated Farmers

⁴³⁷ 00138.057 QLDC, 00139.089 DCC, 00226.172 Kāi Tahu ki Otago

⁴³⁸ 00409.007 Ballance

(water quality improvement) and a preferred solution (integrated solutions). It is not the intention of the objective to get into that level of detail, or to begin identifying methods.

9.6.9.4. Recommendation

633. I recommend retaining LF-VM-O7 as notified.

9.6.10. LF-VM-P5 – Freshwater Management Units (FMUs) and rohe and MAP1

9.6.10.1. Introduction

634. As notified, FL-VM-P5 reads:

LF-VM-P5 – Freshwater Management Units (FMUs) and rohe

Otago’s *fresh water* resources are managed through the following *freshwater management units* or rohe which are shown on MAP1:

Table 1 – Freshwater Management Units and rohe

Freshwater Management Unit	Rohe
Clutha Mata-au	Upper Lakes Dunstan Manuherekia Roxburgh Lower Clutha
Taieri	n/a
North Otago	n/a
Dunedin & Coast	n/a
Catlins	n/a

635. LF-VM-P5 sets out the FMUs and rohe in Otago and refers to MAP1 which shows the boundaries of each area. For this reason, I have evaluated the submissions on these provisions together.

9.6.10.2. Submissions

636. Two submitters seek to retain LF-VM-P5 as notified with Ballance supporting, in particular, the division of the Clutha Mata-au FMU into five rohe.⁴³⁹

637. Kāi Tahu ki Otago wishes to retain the wording of the policy as notified but notes that their submission on MAP1 seeks amendments to the boundary between the North Otago and Dunedin & Coast FMUs so that the Waikouaiti catchment is included in the Dunedin

⁴³⁹ 00138.058 QLDC, 00409.008 Ballance

& Coast FMU instead of North Otago.⁴⁴⁰ There is only one other submission on MAP1, with Horticulture NZ seeking to retain the map as notified.⁴⁴¹

638. DCC seeks amendments to provide for review of the FMU boundaries and/or the establishment of additional rohe to enable effective implementation of the National Objectives Framework.⁴⁴² This amendment would allow for the formation of smaller management areas based on the anticipated water quality in the area, which would provide the ability for more effective monitoring and limit-setting.

9.6.10.3. Analysis

639. Kāi Tahu ki Otago considers that the Waikouaiti catchment is more appropriately located within the Dunedin & Coast FMU as this would better align management across all catchments that flow into the coastal receiving environment that is included in the East Otago Taiāpure (which encompasses marine and estuarine waters enclosed by Cornish Head, Brinns Point, Warrington Spit and Potato Point). The taiāpure boundary in comparison to the current FMU boundary is shown in Figure 2 below.



Figure 2: Boundary of East Otago Taiapure compared to current FMU boundary

640. I have sought advice from ORC's Land and Freshwater team (part of the Policy and Planning team) on the process adopted to develop the FMUs and rohe boundaries and the implications of amending the boundary as sought by Kāi Tahu ki Otago. That advice is attached to this report as Appendix 1. In summary, the advice concludes that the risk of amending the boundaries is negligible and there are potential benefits in ensuring that

⁴⁴⁰ 00226.173 Kāi Tahu ki Otago

⁴⁴¹ 00236.109 Horticulture NZ

⁴⁴² 00139.090 DCC

the planning framework for managing both estuaries that discharge into the East Otago Taiāpure are guided by the same vision in the pORPS.

641. In principle, I recommend accepting the submission point by Kāi Tahu ki Otago. However, there are technical details still to be worked out – in particular, the exact location of the new boundary. As raised in the advice referenced above, the Post Office Creek catchment also discharges into the Hawksbury Lagoon, which in turn discharges into the same bay as the Waikouaiti Estuary. It is not clear from the submission by Kāi Tahu ki Otago which FMU it considers this catchment should fall within. The submitter may wish to produce a map showing the location of the boundary as they propose it. At this stage, I recommend retaining the map as notified subject to confirmation of the boundary location.

642. DCC seeks amendments to provide for review of the FMU boundaries. In addition, or alternatively, DCC also seeks the establishment of additional rohe on the basis that smaller, catchment-based areas will allow for more effective implementation of the NPSFM.

643. The FMU boundaries were agreed by Council in April 2019 and have formed the basis for significant investment in science and planning work programmes as well as public consultation on freshwater visions and the development of the LWRP. In my experience, it is common for regional plans to manage catchments in smaller areas than FMU-scale. For example, the Selwyn Te Waihora sub-region in the Canterbury Land and Water Regional Plan sets different freshwater outcomes for different management units (e.g. natural state, spring-fed plains, etc). This option is open to ORC regardless of whether the pORPS specifically provides for additional rohe to be established.

644. DCC has not specified what the parameters or purpose of any review of the FMU boundaries would be, or how additional rohe could be developed. I am not aware of any reason that the FMU boundaries need to be reviewed and, in my view, the alternative relief (smaller management units within FMUs) is already available, though not in the form of rohe. In absence of further evidence supporting the inclusion of these provisions, I do not recommend the submission points be adopted.

9.6.10.4. [Recommendation](#)

645. I recommend, in principle, amending the boundaries of the North Otago and Dunedin & Coast FMUs so that the Waikouaiti catchment is included within the Dunedin & Coast FMU. However, subject to further evidence regarding the location of the new boundary, at this stage I recommend retaining the existing MAP1.

646. I therefore recommend amending LF-VM-P5 to:

LF-VM-P5 – Freshwater Management Units (FMUs) and rohe

Otago’s fresh water resources are managed through the following freshwater management units or rohe which are shown on MAP1:

Table 2 – Freshwater Management Units and rohe

<i>Freshwater Management Unit</i>	<i>Rohe</i>
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Clutha Mata-au	Upper Lakes Dunstan Manuherekia Roxburgh Lower Clutha
Taieri Taiari ⁴⁴³	n/a
North Otago	n/a
Dunedin & Coast	n/a
Catlins	n/a

9.6.11. LF-VM-P6 – Relationship between FMUs and rohe

9.6.11.1. Introduction

647. As notified, LF-VM-P6 reads:

LF-VM-P6 – Relationship between FMUs and rohe

Where rohe have been defined within FMUs:

- (1) *environmental outcomes* must be developed for the FMU within which the rohe is located,
- (2) if additional *environmental outcomes* are included for rohe, those *environmental outcomes*:
 - (a) set target *attribute* states that are no less stringent than the parent FMU *environmental outcomes* if the same *attributes* are adopted in both the rohe and the FMU, and
 - (b) may include additional *attributes* and target *attribute* states provided that any additional *environmental outcomes* give effect to the *environmental outcomes* for the FMU,
- (3) *limits* and action plans to achieve *environmental outcomes* may be developed for the FMU or the rohe or a combination of both,
- (4) any *limit* or action plan developed to apply within a rohe:
 - (a) prevails over any *limit* or action plan developed for the FMU for the same *attribute*, unless explicitly stated to the contrary, and
 - (b) must be no less stringent than any *limit* set for the parent FMU for the same *attribute*, and
 - (c) must not conflict with any *limit* set for the underlying FMU for *attributes* that are not the same, and

⁴⁴³ 00226.170 Kāi Tahu ki Otago

- (5) the term “no less stringent” in this policy applies to *attribute states* (numeric and narrative) and any other metrics and timeframes (if applicable).

9.6.11.2. Submissions

648. QLDC seeks to retain this policy as notified.⁴⁴⁴ Six submitters seek to amend the provision in a range of ways.
649. Wise Response seeks to amend clause (1) to clarify that environmental outcomes must be “based on a thorough review of local, national and international risks, limits and trends with the potential to significantly affect the environment and resources.”⁴⁴⁵
650. Kāi Tahu ki Otago generally supports LF-VM-P6 but seeks to include “must” at the beginning of clause (2)(a) to provide clarity around the relationship between rohe-specific provisions and the wider FMU provisions and ensure that any rohe-specific provisions are consistent with integrated management and support the outcomes of the wider FMU.⁴⁴⁶
651. Lynne Stewart and COES seek to amend clauses (2) and (3) to include setting additional environmental outcomes for the Manuherikia rohe and limits and action plans to achieve these outcomes.⁴⁴⁷ No specific wording has been proposed for these amendments.
652. Ballance seeks to amend the wording of clauses (2)(a) and (3) to include a requirement for consultation with iwi and community groups as part of the process of setting target attribute states, limits and action plans.⁴⁴⁸
653. Beef + Lamb and DINZ seek to amend the policy so that it properly reflects the requirements of the NPSFM.⁴⁴⁹ They consider that the policy wording confuses a number of terms and the relationships between these, and requests a number of changes:

- Action plans must achieve (not give effect to) target attribute states (not environmental outcomes) in clause (3),
- The reference to “attribute” in clause (4)(a) should read “target attribute state”,
- The test of “no less stringent” in clause (4)(b) is inappropriate because the NPSFM does not require limits to be the same between FMUs or within FMUs, and may apply at any scale so long as the limit achieves the target attribute state,
- Clause (4)(b) should refer to action plans as well as limits to more correctly reflect that methods may differ between rohe or FMUs, and
- The test of “must not conflict” is inappropriate and should also refer to action plans as well as limits

⁴⁴⁴ 00138.059 QLDC

⁴⁴⁵ 00509.073 Wise Response

⁴⁴⁶ 00226.174 Kāi Tahu ki Otago

⁴⁴⁷ 00030.016 Lynne Stewart, 00030.017 Lynne Stewart, 00202.021 COES, 00202.022 COES

⁴⁴⁸ 00409.009 Ballance

⁴⁴⁹ 00237.030 Beef + Lamb and DINZ

9.6.11.3. Analysis

654. I do not consider that it is appropriate to take an ‘overs and unders’ approach to managing water within an FMU. That is, declines in some areas cannot be offset against improvements elsewhere in order to maintain water quality across the FMU. Policy LF-VM-P6 clarifies the relationship between FMUs and rohe and, broadly, seeks to ensure that provisions at the rohe level cannot be less stringent than those adopted at the FMU level.

655. I consider the amendment sought by Wise Response would introduce uncertainty into the policy. It is unclear what the submitter means by “risks, limits and trends” or what would be considered a “significant” effect. Environmental outcomes have a specific definition in the NPSFM and there is a defined process that their development must follow including, in particular, clauses 3.9 (identifying values and setting environmental outcomes as objectives) and 3.10 (identifying attributes and their baseline states, or other criteria for assessing achievement of environmental outcomes).

656. The amendment proposed by Kāi Tahu ki Otago clarifies the direction in clause 2(a) and I recommend it be adopted.

657. I recommend a further minor amendment to the wording of clause (2) to improve the readability with the policy chapeau.

658. The types of provisions developed for the Manuherekiā rohe is a matter best addressed through the regional planning process and in consultation with mana whenua and communities. Those provisions, if any, will need to be developed alongside provisions for the whole of the Clutha Mata-au FMU. For these reasons, I do not recommend adopting the amendments sought by Lynne Stewart and COES.

659. As set out above, the purpose of this policy is to establish the relationship between rohe and FMU provisions. Methods LF-WAI-M1 and LF-VM-M3 set out the involvement of mana whenua and communities in these processes, therefore I do not consider the amendments sought by Ravensdown are necessary.

660. Beef + Lamb and DINZ consider the policy does not accurately reflect the requirements of the NPSFM and have sought a range of amendments. In clause (3), they consider that action plans must achieve (not give effect to) target attribute states (not environmental outcomes). I agree that “achieve” is the appropriate term rather than “give effect to”, but note that clause 3 already uses the former. I do not agree that achieving target attribute states is the only purpose of action plans. Clause 3.15 of the NPSFM sets out the requirements for preparing actions plans and states:

- in clause 1(b), that action plans prepared for the purpose of the NPSFM may set out a phased approach to achieving environmental outcomes, and
- in clause 3, if an action plan is prepared for the purpose of achieving a specific target attribute state or otherwise supporting the achievement of environmental outcomes then sub-clauses (a) and (b) apply.

661. In my view, the broad purpose of action plans is to achieve environmental outcomes, which may include achieving a specific target attribute state. To assist readers, I

recommend including an amendment to clarify that achieving environmental outcomes may include achieving specific target attribute states.

662. In clause (4)(a) of the policy, Beef + Lamb and DINZ consider the reference to “attribute” should be changed to “target attribute state”. I understand the effect of that amendment would be to narrow the application of clause (4) to only situations where limits or action plans at both the rohe and FMU level were developed for the same target attribute state. I consider that there may be instances where different target attributes states are set for the same attribute at the rohe and FMU levels. For example, the target attribute state for phytoplankton across the entire Clutha Mata-au FMU could be set at B band whereas within the Upper Lakes rohe, where there are lakes in their natural state, the target attribute state may be A band. In those situations, it is appropriate that the rohe limit or action plan prevails, so long as sub-clauses (b) and (c) are also met.

663. In clause (4)(b), Beef + Lamb and DINZ consider that the requirement for limits or action plans at the rohe level to be no less stringent than those at the FMU level is inappropriate because this is not a requirement of the NPSFM. In my opinion, the NPSFM does not explicitly provide for (or prevent) the establishment of ‘sub-FMU’ areas as a spatial scale. For partly that reason, this policy seeks to clarify the relationship between those two spatial scales. I agree that the NPSFM does not require limits to be the same between FMUs and do not consider this is what LF-VM-P6 requires. For the same reasons as I have set out above, I consider “attribute” is the correct term rather than “target attribute state”. I have not seen sufficient evidence to show that it would be appropriate, through a framework of Te Mana o te Wai, to allow for less stringent limits to be set at the rohe level for the same attribute being managed at the FMU level. The submitter may wish to address this further in their evidence.

664. Beef + Lamb and DINZ also consider that clauses (4)(b) and (c) should refer to action plans as well as limits. I agree this is appropriate and recommend accepting this amendment. Lastly, in relation to clause (4)(c), the submitter considers that “must not conflict with” is an inappropriate test to use, but has not suggested a specific alternative. In my view, this clause is attempting to prevent a rohe-level provision undermining the achievement of an FMU outcome. I appreciate that the language is not typical planning nomenclature. The submitter may wish to clarify their relief sought in their evidence.

665. I note that while clause 4(c) refers to the underlying FMU, clauses (2)(a) and (4)(c) refer to the parent FMU. All of these clauses have the same intent and I consider it would assist readers if they all used parent, to avoid any suggestion that there is an intentional difference. In my opinion, this is an amendment of minor effect that can be made under clause 16(2) of Schedule 1 of the RMA.

9.6.11.4. Recommendation

666. I recommend amending LF-VM-P6 to:

LF-VM-P6 – Relationship between *FMUs* and rohe

Where rohe have been defined within *FMUs*:

- (1) *environmental outcomes* must be developed for the *FMU* within which the rohe is located,
- (2) if any⁴⁵⁰ additional rohe-specific⁴⁵¹ *environmental outcomes* are included for rohe, those *environmental outcomes*.⁴⁵²
 - (a) must⁴⁵³ set target *attribute* states that are no less stringent than the parent *FMU environmental outcomes* if the same *attributes* are adopted in both the rohe and the *FMU*, and
 - (b) may include additional *attributes* and target *attribute* states provided that any additional *environmental outcomes* give effect to the *environmental outcomes* for the *FMU*,
- (3) *limits* and action plans to achieve *environmental outcomes*, including by achieving target attribute states,⁴⁵⁴ may be developed for the *FMU* or the rohe or a combination of both,
- (4) any *limit* or action plan developed to apply within a rohe:
 - (a) prevails over any *limit* or action plan developed for the *FMU* for the same *attribute*, unless explicitly stated to the contrary, and
 - (b) must be no less stringent than any *limit or action plan*⁴⁵⁵ set for the parent *FMU* for the same *attribute*, and
 - (c) must not conflict with any *limit set or action plan developed*⁴⁵⁶ for the underlying parent⁴⁵⁷ *FMU* for *attributes* that are not the same, and
- (5) the term “no less stringent” in this policy applies to *attribute states* (numeric and narrative) and any other metrics and timeframes (if applicable).

9.6.12. LF-VM-M3 – Community involvement

9.6.12.1. Introduction

667. As notified, LF-VM-M3 reads:

LF-VM-M3 – Community involvement

Otago Regional Council must work with communities to achieve the objectives and policies in this chapter, including by:

⁴⁵⁰ Clause 16(2) Schedule 1, RMA

⁴⁵¹ Clause 16(2) Schedule 1, RMA

⁴⁵² Clause 16(2) Schedule 1, RMA

⁴⁵³ 00226.174 Kāi Tahu ki Otago

⁴⁵⁴ 00237.030 Beef + Lamb and DINZ

⁴⁵⁵ 00237.030

⁴⁵⁶ 00237.030

⁴⁵⁷ Clause 16(2), Schedule 1, RMA

- (1) engaging with communities to identify *environmental outcomes* for Otago’s *FMUs* and rohe and the methods to achieve those outcomes,
- (2) encouraging community stewardship of *water* resources and programmes to address *freshwater* issues at a local catchment level,
- (3) supporting community initiatives that contribute to maintaining or improving the health and well-being of *water bodies*, and
- (4) supporting industry-led guidelines, codes of practice and environmental accords where these would contribute to achieving the objectives of this RPS.

9.6.12.2. Submissions

668. QLDC, Waitaki Irrigators, and NZ Pork seek to retain this method as notified.⁴⁵⁸ The remaining submitters seek a range of amendments.
669. Beef + Lamb and DINZ seek to amend the method so that it properly reflects the requirements of the NPSFM.⁴⁵⁹ They consider that values must be clearly identified in consultation with the community before environmental outcomes are identified. They also state that communities should be involved in identifying attributes, target attribute states, timeframes for achieving target attribute states, limits, and action plans.
670. DCC seeks to replace “communities” with “communities and territorial authorities” throughout the method.⁴⁶⁰ The submitter considers that territorial authorities provide key infrastructure and planning services related to water that support community well-being and that ORC should therefore consult and work with territorial authorities.
671. Kāi Tahu ki Otago supports the method but considers that the role of Kāi Tahu should be provided for, alongside communities. The submitter seeks to include references to Kāi Tahu in the chapeau and clause (1).⁴⁶¹
672. John Highton seeks unspecified amendments to include working with catchment groups to develop catchment plans and to provide a coordinated approach so that there are not too many different organisations working to separate plans in the same catchment.⁴⁶²
673. OWRUG supports the commitment to community involvement but strongly encourages ORC to engage in a more collaborative and meaningful way than has previously been the case. The submitter also suggests that water storage should be captured in the methods as it is likely to play a role in the future in meeting the visions of the FMU as well as water quality and climate change objectives. The submitter seeks to include reference to:⁴⁶³
- Partnering with communities in clause (1),

⁴⁵⁸ 00138.060 QLDC, 00213.018 Waitaki Irrigators, 00240.022 NZ Pork

⁴⁵⁹ 00237.031 Beef + Lamb and DINZ

⁴⁶⁰ 00139.096 DCC

⁴⁶¹ 00226.175 Kāi Tahu ki Otago

⁴⁶² 00014.052 John Highton

⁴⁶³ 00235.089 OWRUG

- Catchments groups in clause (2), and
- Water storage in clause (3).

674. Federated Farmers also seeks to include reference to water storage in clause (3) for the same reasons as OWRUG.⁴⁶⁴ Rayonier seeks to retain clause (3) as notified.

675. Fish and Game submits that clauses (3) and (4) may create a perverse outcome in that they would require community initiatives to be supported regardless of merit. The submitter seeks amendments clauses (3) and (4) so the direction is to “strongly consider” the actions listed, allowing ORC to choose which initiatives and guidelines it supports on a merit basis.⁴⁶⁵ Horticulture NZ seeks to retain (4).⁴⁶⁶

676. Greenpeace seeks to include a new clause in the method but does not provide any reasoning:⁴⁶⁷

(x) Support community transition and phase out of practices and approaches that degrade freshwater and groundwater systems and contribute to climate change, through a range of tools including rules (to phase out synthetic nitrogen fertiliser by 2024 and intensive grazing), financial instruments and other means to raise environmental standards beyond currently diminished ecological states and to achieve the objectives of the Government’s Essential Freshwater reforms, the NPS-FM and Te Mana o te Wai.

9.6.12.3. Analysis

677. I agree with Beef + Lamb and DINZ that identifying values in each FMU is a mandatory step before developing environmental outcomes and recommend including reference to values in clause (1). I do not consider that it is necessary to repeat the requirements of the NPSFM with regard to attributes, target attribute states, timeframes for achieving target attribute states, limits, and action plans. In my view, clause (1) refers broadly to “the methods to achieve [environmental] outcomes”, which encompasses all of the mandatory methods in the NPSFM (for example, identifying target attribute states) as well as any other methods (such as non-regulatory action). I recommend accepting this submission point in part.

678. Although I agree with DCC about the role of territorial authorities, I consider that they are part of the community. One of the purposes of local government (including territorial authorities) is to enable democratic local decision-making and action by, and on behalf of, communities.⁴⁶⁸ As territorial authorities make decisions and act on behalf of communities, then they are necessarily part of the community, in my opinion. To avoid uncertainty around what constitutes community in the engagement, I recommend

⁴⁶⁴ 00239.082 Federated Farmers

⁴⁶⁵ 00231.051 Fish and Game

⁴⁶⁶ 00020.010 Rayonier, 00236.062 Horticulture NZ

⁴⁶⁷ 00407.034 Greenpeace and 1259 supporters

⁴⁶⁸ Section 10(1)(a), Local Government Act 2002

extending clause (1) to apply to communities and stakeholders. Territorial authorities, and other group may see themselves in the term stakeholder, rather than community. I recommend accepting this submission point in part.

679. While Kāi Tahu are also part of the community, there is specific direction in the NPSFM about the involvement of tangata whenua in freshwater management, including:

- Every local authority must actively involve tangata whenua (to the extent they wish to be involved) in freshwater management (including decision-making processes), including in ... implementing the NOF,⁴⁶⁹
- For the purpose of implementing the NOF, every regional council must work collaboratively with, and enable, tangata whenua to identify any Māori freshwater values that apply to an FMU or part of an FMU and to be actively involved in decision-making processes relating to Māori freshwater values at each subsequent step of the NOF process,⁴⁷⁰ and
- Monitoring sites relating to Māori freshwater values must be determined in collaboration with tangata whenua,⁴⁷¹

680. Additionally, there are other provisions in the pORPS that set out the type of relationship sought with Kāi Tahu, including:

- MW-M1 – Collaboration with Kāi Tahu,
- MW-M2 – Work with Kāi Tahu,
- MW-M3 – Kāi Tahu relationships,
- MW-M4 – Kāi Tahu involvement in resource management, and
- LF-WAI-M1 – Mana whenua involvement.

681. With this context, I consider that it is appropriate to include reference to Kāi Tahu in order to recognise the specific requirements, in the NPSFM and pORPS, relating to relationships with Kāi Tahu and in particular Kāi Tahu rakatirataka in respect of freshwater. I recommend accepting this submission point.

682. OWRUG seeks to amend clause (1) to require ORC to partner with communities as well as engaging them. Elsewhere in the pORPS,⁴⁷² the term “partner” is used primarily to describe the relationship required between councils, including ORC and Kāi Tahu as mana whenua. In particular, LF-WAI-M1 requires partnering with Kāi Tahu in freshwater management and sets out a number of required actions in order to implement this requirement. I consider that the *MW – Mana whenua* chapter provides the context for these requirements, including by recognising the status of Kāi Tahu as a Treaty partner. I consider this is a special relationship that is different to ORC’s relationship with the wider community and do not recommend accepting the submission by OWRUG to ‘elevate’ the relationship with community to the same type as with mana whenua.

⁴⁶⁹ Clause 3.4(1)(c), NPSFM

⁴⁷⁰ Clause 3.4(2), NPSFM

⁴⁷¹ Clause 3.8(5)(b), NPSFM

⁴⁷² MW-P2, IM-M2, LF-WAI-M1.

683. I understand that there are many catchment groups established in Otago that are involved in various initiatives to improve water quality. I agree with John Highton that these groups can be a beneficial way to encourage community stewardship of water resources and establish programmes to address freshwater issues at a local catchment level. OWRUG seeks a similar amendment to clause (2) to recognise the role of catchment groups and I consider this is a useful addition. For grammatical reasons and because I consider both parts of the clause are relevant to catchment groups, I recommend including the wording suggested by OWRUG at the end of the clause. I therefore recommend accepting the submission points by John Highton and OWRUG in part.
684. As I have set out in response to other submissions in this section requesting particular recognition of water storage, while water storage may be one of the methods considered for managing freshwater in an FMU, I do not consider that it will always be the most appropriate method. Whether water storage can be provided will be case-specific and is, in my opinion, a matter better addressed in the LWRP once there is clarity about the environmental outcomes sought, limits on resource use, and, if applicable, any requirements to phase out over-allocation. I do not recommend accepting the submission points by OWRUG or Federated Farmers.
685. I do not agree with Fish and Game that clause (3) has the potential to create a perverse outcome. Clause (3) is clear that the community initiatives to be supported are those “that contribute to maintaining or improving the health and well-being of water bodies”. I consider that clause (4) is less clear, particularly by the reference to achieving the objectives of the pORPS which may refer to any objectives, not necessarily those in this section. I consider that supporting industry-led guidelines, codes of practice, and environmental accords could be included in clause (3), alongside community initiatives, and thereby subjecting them to the same limitation (i.e. the requirement for the action to contribute to maintaining or improving the health and well-being of water-bodies).
686. I do not recommend including the additional clause sought by Greenpeace. It is unclear what many of the terms are referring to (such as “practices and approaches that degrade freshwater and groundwater systems and contribute to climate change” and “financial instruments and other means”). There is no analysis in the submission to support the suggestion to require phasing out synthetic nitrogen fertiliser and intensive winter grazing, which I consider would have both negative and positive effects. I note that the NESF already manages both of these activities and whether communities wish to manage them more stringently than the NESF is a discussion more appropriately had during the development of the LWRP.

9.6.12.4. Recommendation

687. I recommend amending LF-WAI-M3 to:

LF-VM-M3 – Community involvement

Otago Regional Council must work with Kāi Tahu and⁴⁷³ communities to achieve the objectives and policies in this chapter, including by:

- (1) engaging with Kāi Tahu,⁴⁷⁴ communities and stakeholders⁴⁷⁵ to identify values and⁴⁷⁶ *environmental outcomes* for Otago's *FMUs* and rohe and the methods to achieve those outcomes,
- (2) encouraging community stewardship of *water* resources and programmes to address *freshwater* issues at a local catchment level, including through catchment groups,⁴⁷⁷
- (3) supporting community initiatives, industry-led guidelines, codes of practice and environmental accords that contribute to maintaining or improving the health and well-being of *water bodies*, ~~and~~
- (4) supporting industry-led guidelines, codes of practice and environmental accords where these would contribute to achieving the objectives of this RPS.⁴⁷⁸

9.6.13. LF-VM-M4 – Other methods

9.6.13.1. Introduction

688. As notified, LF-VM-M4 reads:

LF-VM-M4 – Other methods

In addition to method LF-VM-M3, the methods in the LF-WAI, LF-FW, and LF-LS sections are also applicable.

9.6.13.2. Submissions

689. QLDC and Kāi Tahu ki Otago seek to retain LF-VM-M4 as notified.⁴⁷⁹ DOC seeks to include reference to the *ECO – Ecosystems and indigenous biodiversity chapter* in the list of cross-referenced methods.⁴⁸⁰

9.6.13.3. Analysis

690. The purpose of this method is to highlight that all four sections in the *LF – Land and freshwater* chapter are relevant for implementing the policies in the *LF-VM – Visions and management* section as they form an integrated package. There will be many other methods in the pORPS that assist with implementing these policies, including *ECO –*

⁴⁷³ 00226.175 Kāi Tahu ki Otago

⁴⁷⁴ 00226.175 Kāi Tahu ki Otago

⁴⁷⁵ 00139.096 DCC

⁴⁷⁶ 00237.031 Beef + Lamb and DINZ

⁴⁷⁷ 00014.052 John Highton, 00235.089 OWRUG

⁴⁷⁸ 00231.051 Fish and Game

⁴⁷⁹ 00138.061 QLDC, 00226.176 Kāi Tahu ki Otago

⁴⁸⁰ 00137.069 DOC

Ecosystems and indigenous biodiversity, and I do not consider it is necessary to cross-reference them all. It is standard practice to read and apply all of the provisions of a regional policy statement.

9.6.13.4. Recommendation

691. I recommend retaining LF-VM-M4 as notified.

9.6.13.5. LF-VM-E2 – Explanation

692. As required by section 62(1)(d), LF-VM-E2 provides an explanation for the policies in this chapter. Kāi Tahu ki Otago seeks to retain LF-VM-E2 as notified.⁴⁸¹ OWRUG seeks consequential amendments to LF-VM-E2 to give effect to the relief sought.⁴⁸² I do not consider any amendments are required and therefore recommend accepting the submission point by Kāi Tahu ki Otago and rejecting the submission point by OWRUG.

9.6.14. LF-VM-PR2 – Principal reasons

693. As required by section 62(1)(f), LF-VM-PR2 provides the principal reasons for adopting the objectives, policies, and methods of implementation set out in this chapter. Kāi Tahu ki Otago seeks to retain LF-VM-PR2 as notified⁴⁸³ while OWRUG seeks consequential amendments to LF-VM-PR2 to give effect to the relief sought.⁴⁸⁴ I do not consider any amendments are required and therefore recommend accepting the submission point by Kāi Tahu ki Otago and rejecting the submission point by OWRUG.

9.6.15. LF-VM-AER3

694. As notified, LF-VM-AER3 reads:

LF-VM-AER3 The *fresh water* visions in this section underpin Otago’s planning framework and the outcomes they seek are achieved within the timeframes specified.

9.6.15.1. Submissions

695. QLDC seeks to retain LF-VM-AER3 as notified.⁴⁸⁵ Ngāi Tahu ki Murihiku considers that ki uta ki tai and Te Mana o te Wai underpin freshwater management in Otago, while the visions enable implementation specific to the characteristics of Te Mata-au and Te Ākau Tai Toka. The submitter seeks the following amendment:⁴⁸⁶

The freshwater visions in this section underpin Otago’s planning framework enable implementation of Te Mana o Te Wai according to the particular characteristics of

⁴⁸¹ 00226.177 Kāi Tahu ki Otago, 00226.178 Kāi Tahu ki Otago

⁴⁸² Uncoded submission point – p.54 of submission by OWRUG

⁴⁸³ 00226.177 Kāi Tahu ki Otago, 00226.178 Kāi Tahu ki Otago

⁴⁸⁴ Uncoded submission point – p.54 of submission by OWRUG

⁴⁸⁵ 00138.062 QLDC

⁴⁸⁶ 00223.087 Ngāi Tahu ki Murihiku

freshwater management units and rohe, and the outcomes they seek are achieved within the timeframes specified.

9.6.15.2. Analysis

696. I agree with Ngāi Tahu ki Murihiku that the amendments sought are a more accurate description of role freshwater visions play in Otago’s freshwater planning framework. I recommend accepting this submission point in part. I recommend amending the wording as sought by Ngāi Tahu ki Murihiku to remove “enable implementation of” – this is an AER and therefore the language should describe a result rather than an action.

9.6.15.3. Recommendation

697. I recommend amending LF-VM-AER3 to:

LF-VM-AER3 The *fresh water* visions in this section ~~underpin Otago’s planning framework~~ implement Te Mana o Te Wai according to the particular characteristics of freshwater management units and rohe,⁴⁸⁷ and the outcomes they seek are achieved within the timeframes specified.

9.7. LF-FW – Freshwater

9.7.1. Introduction

698. This section of the *LF – Land and freshwater* chapter sets out the more specific outcomes sought for all fresh water in Otago in order to implement Te Mana o te Wai and assist with achieving the long-term freshwater visions in the *LF-VM – Visions and management* section. The objectives respond to specific direction in the NPSFM, relevant matters from section 6 of the RMA and the significant resource management issues for the region and to iwi authorities (outlined in Part 2 of this report). In addition to region-wide provisions for managing all fresh water, this section contains specific policy direction for managing outstanding water bodies, natural wetlands, natural character, and stormwater and wastewater discharges.

699. The policies are intended to be implemented by regional and district plans primarily, as well as through the use of action plans as provided for by the NPSFM. Implementation is to be supported by the development of a long-term monitoring programme and the implementation of all other methods in the LF chapter.

700. The relevant provisions for this section are:

- LF-FW-O8 – Fresh water
- LF-FW-O9 – Natural wetlands
- LF-FW-O10 – Natural character
- LF-FW-P7 – Fresh water

⁴⁸⁷ 00223.087 Ngāi Tahu ki Murihiku

LF-FW-P8 – Identifying natural wetlands
 LF-FW-P9 – Protecting natural wetlands
 LF-FW-P10 – Restoring natural wetlands
 LF-FW-P11 – Identifying outstanding water bodies
 LF-FW-P12 – Protecting outstanding water bodies
 LF-FW-P13 – Preserving natural character
 LF-FW-P14 – Restoring natural character
 LF-FW-P15 – Stormwater and wastewater discharges
 LF-FW-M5 – Outstanding water bodies
 LF-FW-M6 – Regional plans
 LF-FW-M7 – District plans
 LF-FW-M8 – Action plans
 LF-FW-M9 – Monitoring
 LF-FW-M10 – Other methods
 LF-FW-E3 – Explanation
 LF-FW-PR3 – Principal reasons
 LF-FW-AER4
 LF-FW-AER5
 LF-FW-AER6
 LF-FW-AER7
 LF-FW-AER8
 LF-FW-AER9
 LF-FW-AER10
 LF-FW-AER11
 APP1 – Criteria for identifying outstanding water bodies

9.7.2. General themes

701. A number of submitters made general submissions on the LF-FW section which are addressed in this part of the report.

9.7.2.1. Submissions

702. Fish and Game and Ngāi Tahu ki Murihiku seek to retain the LF-FW section subject to relief sought elsewhere.⁴⁸⁸

703. WAI Wanaka seeks to include Lake Whakatipu, and its tributaries that are within scope of the Kawarau WCO, in policies LF-FW-P11 to LF-FW-P15.

704. McArthur Ridge seeks unspecified amendments to address water reliability and better recognise viticulture as a water efficient and desirable land use with limited ability to respond to water rationing.⁴⁸⁹

⁴⁸⁸ 00231.052 Fish and Game, 00223.094 Ngāi Tahu ki Murihiku

⁴⁸⁹ 00403.004 McArthur Ridge

9.7.2.2. Analysis

705. I have recommended amendments to provisions in response to submissions by Fish and Game and Ngāi Tahu ki Murihiku on the specific provisions in this section and therefore recommend accepting these submission points in part.
706. I have addressed the relief sought by WAI Wanaka in relation to the specific policies mentioned. In line with my recommendations on those provisions, I do not recommend accepting this submission point.
707. I have addressed the specific submission points of McArthur Ridge elsewhere in this report, however as no specific amendments are sought in this instance, I do not recommend accepting the submission point.

9.7.2.3. Recommendation

708. I do not recommend any amendments.

9.7.3. Definitions

709. There are a range of submissions relating to defined terms used in this section, some of which are addressed in other parts of this report. In summary:
- Defined terms used throughout the pORPS, including in this section, are addressed in *Report 2: Submissions on Part 1 – Introduction and general provisions*.
 - Defined terms used only in the LF chapter, but across two or more of the sections within the LF chapter, are addressed in section 9.4 of this report.
 - Defined terms used only in the LF-FW section are addressed in this section of the report.

9.7.3.1. Submissions and analysis

710. In relation to the final point above, submitters have sought new definitions for a number of terms, or to delete definitions of defined terms, that are specific to a provision in the LF-FW section. I have addressed these as follows:
- “Community drinking water supply” in LF-FW-M6,
 - “Off-stream storage of surface water” in LF-FW-M6,
 - “Natural hazard works”, “specified infrastructure” and “other infrastructure” in LF-FW-P9, and
 - “Reticulated system”, “stormwater system operator”, “wastewater system operator” and “water sensitive urban design / water sensitive design” in LF-FW-P15.
711. There are also matters arising from the use of defined terms used in multiple provisions, including “limits on resource use” and “loss of values”, as well as a submission on the definition of the term “natural wetland”.

712. I note that LF-FW-M6(5) includes reference to “limits on resource use”. I have recommended incorporating that term into LF-FW-P7 as well as the term “take limits”. “Limits on resource use” and “take limits” are terms that are defined in the NPSFM but have not been incorporated into the pORPS. The general approach adopted by the pORPS is to cross-reference definitions from higher order documents used in the pORPS in the Interpretation section of the pORPS and therefore I recommend including the definitions of “limits on resource use” and “take limits” from the NPSFM into the pORPS. In my opinion, this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.
713. “Loss of values” is defined in the pORPS and adopts the definition of the same term contained in the NPSFM, except that in the pORPS it is applied to all natural wetlands, not only natural inland wetlands. Forest and Bird submits that it is not clear whether consideration of loss of values in respect of natural wetlands would mean that there is no consideration for adverse effects or loss of values in respect of other wetlands as defined in the RMA. The submitter considers that the definition excludes considerations for the coastal environment necessary to give effect to the NZCPS and seeks:⁴⁹⁰
- Unspecified amendments to ensure the pORPS provides direction for the protection of wetlands as defined in the RMA and to achieve section 6(a), and
 - To add consideration for natural character of the coastal environment under (b).
714. Ngāi Tahu ki Murihiku seeks to retain the definition of “loss of values” as notified.⁴⁹¹
715. I am unsure what relief is being sought in relation to the first point above. In relation to the second, I do not consider that including natural character is necessary. The *CE – Coastal environment* chapter contains provisions managing the preservation of natural character in the coastal environment, which will include some natural wetlands. Additionally, I consider that natural character arises predominantly as a result of the matters listed in (b). For example, the ecosystems health of, indigenous biodiversity present at, hydrological functioning of, and amenity values of a natural wetland collectively make a significant contribution towards its overall natural character. I recommend accepting the submission point by Ngāi Tahu ki Murihiku and rejecting the submission point by Forest and Bird.
716. Ballance seeks to have the definition of natural wetland amended to align with the Ministry for the Environment’s guidance on the definition of a *natural wetland*, which had not been released at the time of the submission.⁴⁹² In September 2021, the Ministry released further guidance on the definitions of wetlands.⁴⁹³ This guidance provides further clarification on ‘natural wetland’ itself, in that it reinforces it is a subset of the RMA definition of ‘wetlands’, but excludes the three categories listed. The guidance document does provide more information about constructed wetlands, natural inland wetlands, geothermal wetlands and exclusion areas of improved pasture. The information in the guidance document will

⁴⁹⁰ 00230.010 Forest and Bird

⁴⁹¹ 00223.020 Ngāi Tahu ki Murihiku

⁴⁹² 00409.006 Balance

⁴⁹³ [Defining-natural-wetlands-and-natural-inland-wetlands.pdf \(environment.govt.nz\)](#)

assist in implementing the provisions within the pORPS and regional and district plans that refer to natural wetlands, but does not alter the definition itself therefore I do not consider any amendments to the definition are necessary. I do not recommend accepting the submission point by Ballance.

9.7.3.2. Recommendation

717. I recommend including the definitions of “limits on resource use” and “take limits” from the NPSFM in the *Interpretation* section of the pORPS.

9.7.4. Outstanding water bodies

718. The LF-FW – Freshwater section contains a series of provisions that collectively manage outstanding water bodies. These are:

- Objective LF-FW-O8 – Freshwater,
- Policy LF-FW-P11 – Identifying outstanding water bodies,
- Policy LF-FW-P12 – Protecting outstanding water bodies,
- Method LF-FW-M5 – Outstanding water bodies,
- Method LF-FW-M7(1) and (2) – District plans, and
- APP1 – Criteria for identifying outstanding water bodies.

719. Clause (5) of LF-FW-O8 requires that in Otago’s water bodies and their catchments, the significant and outstanding values of Otago’s outstanding water bodies are identified and protected. LF-FW-P11 identifies some water bodies as outstanding water bodies and states that, in addition to those water bodies, outstanding water bodies also include:

- Any water bodies identified as being wholly or partly within an outstanding natural feature or landscape in accordance with NFL-P1, and
- Any other water bodies identified in accordance with APP1.

720. LF-FW-P12 requires that the significant and outstanding values of outstanding water bodies are identified in the relevant regional and district plans and protected by avoiding adverse effects on those values.

721. LF-FW-M5 sets out a multi-step process for identifying outstanding water bodies as follows:

- In partnership with Kāi Tahu, undertake a review based on existing information and develop a list of water bodies likely to contain outstanding values, including those water bodies already identified as outstanding water bodies,
- Identify the outstanding values of those water bodies (if any) in accordance with APP1,
- Consult with the public during the identification process,
- Map outstanding water bodies and identify their outstanding and significant values in the relevant regional plan(s),

- Include provisions in regional plans to avoid the adverse effects of activities on the significant and outstanding values of outstanding water bodies.

722. Mirroring the requirements of LF-FW-M5, clauses (1) and (2) of LF-FW-M7 require outstanding water bodies to be mapped and their significant and outstanding values identified in district plans. Provisions are also required to be included to avoid the adverse effects of activities on the significant and outstanding values of outstanding water bodies.

723. Finally, APP1 sets out the criteria for identifying outstanding water bodies.

724. There is a common theme in submissions across these provisions which generally seek to align the provisions more closely with the wording of the NPSFM. As this matter is raised throughout the provisions, I have addressed it first in this section and then proceeded to evaluate the remainder of submissions on the specific provisions in the order I have set out above.

9.7.4.1. Alignment with the NPSFM

Submissions

725. Forest and Bird considers that LF-FW-O8(5) is inconsistent with the NPSFM and seeks the following amendment:⁴⁹⁴

- (5) *the ~~significant and outstanding values of Otago's outstanding water bodies are identified and~~ their significant values are protected.*

726. Meridian considers there is no difference between outstanding values and significant values and seeks to delete references to “outstanding values” in LF-FW-O8(5), LF-FW-P12, and LF-FW-M5.⁴⁹⁵

727. Forest and Bird states that the requirement in the NPSFM is to identify water bodies that are outstanding by their outstanding values and then to protect the significant values of the outstanding water body. The submitter considers this means that if a water body is outstanding for a recreational or use value, it is not necessarily the recreation or use that is protected but rather the significant values of the water body. As a result, Forest and Bird seeks to amend LF-FW-O8(5) and LF-FW-P12 by deleting the requirement to identify the significant and outstanding values of outstanding water bodies and instead amend the wording so that outstanding water bodies are identified and their significant values are protected, mirroring the wording in the NPSFM.

728. Federated Farmers submits that the NPSFM requires the significant values of outstanding water bodies to be protected, which it considers is substantially different to LF-FW-P12 in particular. Federated Farmers considers this provision introduces the concept of outstanding values and should be amended to reflect the NPSFM by deleting reference

⁴⁹⁴ 00230.084 Forest and Bird

⁴⁹⁵ 00306.033 Meridian, 00306.037 Meridian, 00306.038 Meridian

to “outstanding values.”⁴⁹⁶ For the same reason, Federated Farmers also seeks amendments throughout LF-FW-M5 to delete references to “outstanding values”.⁴⁹⁷

Analysis

729. The NPSFM contains little direction on the identification or management of outstanding water bodies. Policy 8 requires that:

The significant values of outstanding water bodies are protected.

730. This is supported by a definition of the term “outstanding water body” (my emphasis added):

***outstanding water body** means a water body, or part of a water body, identified in a regional policy statement, a regional plan, or a water conservation order as having one or more outstanding values*

731. A considerable amount of research and literature review occurred as part of the *Community Environment Fund – Outstanding water bodies project* jointly undertaken by Hawke’s Bay RC, Auckland Council, and the Ministry for the Environment. That project has informed the development of the provisions for outstanding water bodies in the pORPS.

732. I do not agree with Meridian’s interpretation that “outstanding” and “significant” have the same meaning. This issue was canvassed through the reports prepared as part of the *Outstanding freshwater body project* which summarised the distinction as follows: (Harper, 2017, p. ix)

“An outstanding value has a higher threshold than a significant value. An outstanding value will always be significant, but a significant value will not necessary [sic] be outstanding (based on legal advice and case law in context of s6 RMA). ...

Significant values of outstanding water bodies are different from outstanding values and it is more appropriate that these be determined by councils during the RMA Schedule 1 plan change process with community input.”

733. The legal advice referred to above is included as Appendix 5 to the report and states:

“Are “outstanding values” as referred to the definition of outstanding water bodies the same as “significant values” referred to in Objectives A2(a) and Objective B4 in the NPSFM?

There is no case law on this specific question in the context of the NPSFM, but case law in relation to water conservation orders and outstanding natural features and landscapes indicates that the threshold for “outstanding” is high. In our opinion, it is open to regional councils to assess what is outstanding at a regional scale for the purposes of the NPSFM. Based on our review of case law, we consider that “outstanding values” is a higher threshold than “significant values”. We anticipate

⁴⁹⁶ 00239.088 Federated Farmers

⁴⁹⁷ 00239.090 Federated Farmers

that an outstanding value will always be significant, but a significant value will not necessarily be outstanding.”

734. I agree with the report above that there is a distinction between “significant” and “outstanding” values and therefore do not recommend accepting the part of the submission point by Meridian seeking to delete references to “outstanding values”.
735. Identifying outstanding water bodies requires assessing whether the values of a water body are “outstanding” or not. Practically, that will require identifying those values. The direction in the NPSFM is to protect the significant values of outstanding water bodies, which is a lower degree of importance than outstanding. In my opinion, the amendment sought by Forest and Bird does not fundamentally alter the clause but does introduce uncertainty by remaining silent on how outstanding values are to be managed. I also consider that identification of both outstanding and significant values is important for informing development of plan provisions to protect those values. For these reasons, I do not recommend accepting the submission point by Forest and Bird.
736. It is not clear to me why Federated Farmers seeks to delete the references to “outstanding values”. In my opinion, both outstanding values and significant values are referenced in the NPSFM and form part of the management framework. Outstanding values are used for identification and significant values are to be protected. In my opinion, the pORPS provisions differ from the NPSFM in two main ways:
- The pORPS requires identifying both significant and outstanding values. The NPSFM does not specifically require identifying either type of value; rather it states that an outstanding water body is one that is identified as having one or more outstanding values.
 - The pORPS requires protecting both significant and outstanding values. Policy 8 of the NPSFM only requires protecting the significant values of outstanding water bodies.
737. In my opinion, outstanding values must be identified in order to determine whether a water body is an outstanding water body or not. I consider it is therefore appropriate for the pORPS to require the identification of the outstanding values of outstanding water bodies and for them to be included in the regional plan as this assists with managing those water bodies. I acknowledge that the NPSFM does not require identifying significant values, however in my view decision-making would be assisted by identifying significant values so that it is clear how protection should occur and in relation to which values the outstanding water body has.
738. I also acknowledge that the NPSFM does not require protecting the outstanding values of outstanding water bodies. However, in my opinion, it clarifies the policy framework to set out how outstanding values are to be managed given that they are required to be identified and they are the values that determine whether or not a water body is an outstanding water body. Additionally, if significant values must be protected then to my mind it is consistent to apply the same requirement to outstanding values. Federated Farmers makes reference to the pORPS provisions not reflecting the NPSFM and applying “the wrong tests from the NPSFM”. I am unsure what the submitter means by this. I do

not agree that different policy direction is necessarily inconsistent or wrong, and in my opinion the pORPS provisions, while not repeating verbatim the requirements of the NPSFM, still give effect to Policy 8.

739. While I do not recommend accepting these parts of the submission points by Meridian, Forest and Bird, or Federated Farmers at this stage, that is not necessarily my final recommendation. I do not consider that I fully understand the arguments being made by submitters or what they consider the implications of their relief sought to be. The submitters may wish to expand on these matters in their evidence.

Recommendation

740. I do not recommend any specific amendments to provisions in response to these submissions.

9.7.4.2. LF-FW-O8(5)

Introduction

741. As notified, LF-FW-O8(5) reads:

LF-FW-O8 – Fresh water

In Otago’s *water bodies* and their catchments:

...

- (5) the significant and outstanding values of Otago’s *outstanding water bodies* are identified and protected.

Submissions

742. The submission points by Forest and Bird and Meridian on clause (5) of LF-FW-O8 are addressed above. The remainder of Meridian’s submission point relates to APP1 which I have addressed separately in section 9.7.27 of this report.
743. Lynne Stewart and COES seek expansion of clause (5) to include reference to maintaining healthy ecological function and the natural character of all water bodies - not just “outstanding water bodies”.⁴⁹⁸ Wise Response seeks amendments which additionally provide for the restoration of outstanding water bodies where degraded.⁴⁹⁹
744. Trojan and Wayfare submit that it is not appropriate to have blanket unqualified protection and seek that outstanding water bodies are identified and protected from inappropriate subdivision, use and development.⁵⁰⁰

⁴⁹⁸ 00030.018 Lynne Stewart, 00202.023 COES

⁴⁹⁹ 00509.074 Wise Response Inc

⁵⁰⁰ 00206.029 Trojan, 00411.041 Wayfare

Analysis

745. Clause (5) of LF-FW-O8 responds to the direction in Policy 8 of the NPSFM and is, in my opinion, appropriately targeted to outstanding water bodies for that reason. Region-wide direction regarding the ecological function and natural character of all water bodies is set out in LF-WAI, the rest of LF-FW-O8, LF-FW-O10, LF-FW-P7, and LF-FW-P13. I do not consider the amendments sought by Lynne Stewart and COES are necessary and do not recommend accepting these submission points.
746. I acknowledge that some water bodies may have had outstanding values in the past that have been degraded. In my opinion, an assessment of whether values are “outstanding” or not can only be based on whether those values are still outstanding at the time of assessment. While some values may be outstanding but also have been degraded in some way, I do not consider that it is necessary to restore those values. “Outstanding” is a very high threshold and restoration is unlikely to be a wise investment of resources. For these reasons, I do not recommend accepting the submission point by Wise Response.
747. Trojan and Wayfare do not set out why they consider blanket unqualified protection is inappropriate. In my view, “outstanding” is a high bar and protection is an appropriate management approach that gives effect to the NPSFM. I do not recommend accepting these submission points.

Recommendation

748. I recommend retaining LF-FW-O8(5) as notified.
- 9.7.4.3. LF-FW-P11 – Identifying outstanding water bodies

Introduction

749. As notified, LF-FW-P11 reads:

LF–FW–P11 – Identifying *outstanding water bodies*

Otago’s *outstanding water bodies* are:

- (1) the Kawarau River and tributaries described in the Water Conservation (Kawarau) Order 1997,
- (2) Lake Wanaka and the outflow and tributaries described in the Lake Wanaka Preservation Act 1973,
- (3) any *water bodies* identified as being wholly or partly within an outstanding natural feature or landscape in accordance with NFL–P1, and
- (4) any other *water bodies* identified in accordance with APP1.

Submissions

750. QLDC, DCC and Kāi Tahu ki Otago support LF-FW-P11 and seek to retain it as notified.⁵⁰¹

⁵⁰¹ 00138.070 QLDC, 00139.104 DCC, 00226.186a Kāi Tahu ki Otago

751. Federated Farmers seeks to include “as described” in clauses (1) and (2).⁵⁰² The reasoning provided is that these amendments make it clear that the Kawarau WCO and Lake Wanaka Preservation Act 1973 contain specific values for specific areas and that the matter is more complex than simply declaring those areas as outstanding.
752. WAI Wanaka seeks to amend clause (1) by highlighting that the WCO also includes Lake Whakatipu and most of its tributaries, which the submitter states is a significant but barely visible and easily overlooked part of the WCO.⁵⁰³ WAI Wanaka also seeks that Lake Hāwea is specifically identified as an outstanding waterbody on the basis that it would be an almost perfect match for the values and attributes criteria in APP1 and APP9.⁵⁰⁴
753. Beef + Lamb and DINZ and Federated Farmers oppose clause (3) and seek its deletion.⁵⁰⁵ Beef + Lamb and DINZ believe not all waterbodies in an outstanding natural feature or landscape will themselves be outstanding; rather they may be an outstanding part of the outstanding natural feature or landscape, or incidental to it.⁵⁰⁶ Federated Farmers submits that the policy as drafted automatically overrides the criteria in APP1 when a waterbody falls into all or part of an outstanding natural feature or landscape. To remedy this, Federated Farmers also seeks deletion of “any other” in clause (4).⁵⁰⁷

Analysis

754. I do not consider that the amendments sought by Federated Farmers in clauses (1) and (2) would have the effect that the submitter considers. In my view, there is only a minor grammatical difference between the notified version and the version amended as sought by the submitter. In my view, the intent is unchanged. I am reluctant to make the amendment sought, however, as it is clear the submitter considers there is a difference. At this stage I do not recommend accepting this submission point. The submitter may wish to expand on this point in evidence.
755. I do not consider it is necessary to specify which waters are within the Kawarau WCO as the schedules to the WCO contain lists of the waters as well as map references which are more accurate than a narrative description. Lake Hāwea has not been examined through the types of processes that the water bodies in (1) and (2) have and, in my opinion, should therefore be assessed under either or both clauses (3) or (4) to determine whether it qualifies as an outstanding water body. I do not recommend accepting the submission point by WAI Wanaka.
756. APP9 contains the criteria for identifying outstanding and highly valued natural features, landscapes, and seascapes which are commonly used across New Zealand. Criterion (b) is “the presence of water including in seas, lakes, rivers, and streams.” I do not consider that water bodies within a landscape can be divorced from the wider landscape (or

⁵⁰² 00239.087 Federated Farmers (not in SODR)

⁵⁰³ 00222 WAI Wanaka (not in SODR)

⁵⁰⁴ 00222.017 WAI Wanaka

⁵⁰⁵ 00237.037 Beef + Lamb and DINZ, 00239.087 Federated Farmers

⁵⁰⁶ 00237.037 Beef + Lamb and DINZ

⁵⁰⁷ 00239.087 Federated Farmers

natural feature), particularly in Otago where there are a number of highly valued water bodies that undoubtedly contribute to the overall landscape values of areas. I do not agree with Federated Farmers and Beef + Lamb and DINZ that clause (3) should be deleted. However, I acknowledge that as currently worded clause (3) could require identifying a whole water body as outstanding even if only part of it is within an outstanding natural landscape. I recommend accepting these submissions in part and amending “any water bodies identified as being wholly or partly within...” to “any water body or part of a water body identified as being within”.

757. In section 9.1.1.7, and for the reasons set out in that section, I recommend amending APP1 to adopt the decisions version of the criteria from HBRC’s Plan Change 7, with the following amendments:

- A placeholder for cultural and spiritual values, to recognise that Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku have proposed different approaches to identifying those values and that more evidence on those approaches is needed before a recommendation can be made, and
- Replacing the landscape values criteria with the text of LF-FW-P11(3), recognising that ORC does not wish to apply a second landscape assessment for water bodies that have already been determined as being within an outstanding natural feature or landscape.

758. When considering LF-LW-P11, I noted that the title of the policy refers to identification, however it is LF-LW-P12 that requires identifying outstanding water bodies. I recommend changing the title of LF-FW-P11 to “Otago’s outstanding water bodies” and consider this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.

Recommendation

759. I recommend amending LF-FW-P11 as follows:

LF-FW-P11 – ~~Identifying~~ Otago’s outstanding water bodies⁵⁰⁸

Otago’s outstanding water bodies are:

- (1) the Kawarau River and tributaries described in the Water Conservation (Kawarau) Order 1997,
- (2) Lake Wanaka and the outflow and tributaries described in the Lake Wanaka Preservation Act 1973,
- (3) any ~~water bodies~~ body or part of a water body⁵⁰⁹ identified as being ~~wholly or partly~~⁵¹⁰ within an outstanding natural feature or landscape in accordance with NFL-P1, and

⁵⁰⁸ Clause 16(2), Schedule 1, RMA

⁵⁰⁹ 00237.037 Beef + Lamb and DINZ, 00239.087 Federated Farmers

⁵¹⁰ 00237.037 Beef + Lamb and DINZ, 00239.087 Federated Farmers

- (4) any other *water bodies* identified in accordance with APP1.

9.7.4.4. LF-FW-P12 – Protecting outstanding water bodies

Introduction

760. As notified, LF-FW-P12 reads:

LF–FW–P12 – Protecting outstanding water bodies

The significant and outstanding values of outstanding water bodies are:

- (1) identified in the relevant regional and district plans, and
- (2) protected by avoiding adverse effects on those values.

Submissions

761. QLDC, DCC and Kāi Tahu ki Otago support LF-FW-P12 as drafted and seek to retain it as notified.⁵¹¹ The broader submission points by Forest and Bird and Meridian on LF-FW-P12 are addressed above in section 9.7.4.1.

762. Forest and Bird, Federated Farmers, and Meridian submit that the wording of the policy needs to be clarified to avoid confusion.⁵¹² Federated Farmers and Meridian consider the policy should only reference those significant values of outstanding waterbodies and seek the deletion of “outstanding”.⁵¹³ Forest and Bird seek the following amendments:⁵¹⁴

~~The significant and outstanding values of~~ outstanding water bodies are identified and their significant values are protected by:

- (1) ~~identified~~ identifying outstanding water bodies in the relevant regional and district plans, and during consenting process and
- (2) protected by avoiding adverse effects on ~~those~~ their values.

763. Five submitters consider the policy incorrectly interprets the protection directions of the NPSFM by requiring additional avoidance.⁵¹⁵ Blackthorn Lodge, Trojan, and Wayfare seek to amend clause (2) to clarify that protecting significant values requires avoiding, remedying, or mitigating adverse effects.⁵¹⁶ Beef + Lamb and DINZ seek the following amendments to clause (2) which they consider better reflect the wording of the NPSFM:⁵¹⁷

~~protected~~ sustained by avoiding more than minor adverse effects on those values.

⁵¹¹ 00138.071 QLDC, 00139.105 DCC, 00226.186b Kāi Tahu ki Otago

⁵¹² 00230.091 Forest and Bird, 00239.088 Federated Farmers, 00306.037 Meridian

⁵¹³ 00239.088 Federated Farmers, 00306.037 Meridian

⁵¹⁴ 00230.091 Forest and Bird

⁵¹⁵ 00119.011 Blackthorn Lodge, 00206.033 Trojan, 00237.038 Beef + Lamb and DINZ, 00318.014 Contact, 00411.045 Wayfare

⁵¹⁶ 00119.011 Blackthorn Lodge, 00206.033 Trojan, 00411.045 Wayfare

⁵¹⁷ 00237.038 Beef + Lamb and DINZ

764. Contact considers the issue can be resolved by amending the content of FW-P12 to read:
- The significant and outstanding values of outstanding water bodies are:
- (1) identified in the relevant regional and district plans, and
- (2) maintained or protected by avoiding adverse effects on those values.
765. Alluvium and Stoney Creek consider the terminology used does not reflect the direction in section 6 of the RMA which seeks to protect outstanding water bodies, and avoidance of adverse effects is not always possible, especially for activities with a functional need to operate in certain locations.⁵¹⁸ The following amendments are sought:⁵¹⁹
- (2) protected by avoiding adverse effects on those values from inappropriate subdivision, use and development.
766. Queenstown Airport considers the policy has no regard for the scale or significance of adverse effects that ought to be avoided and instead requires the blanket avoidance of adverse effects, even if such effects are minor. The submitter seeks to delete the same phrase as Alluvium and Stoney Creek above but does not seek to introduce any alternative wording.
767. OWRUG, Aurora Energy, Waka Kotahi, and Transpower consider that the policy as drafted is impractical for infrastructure that may have a functional and operational need to locate in such areas. OWRUG, Aurora Energy and Waka Kotahi seek to include a new clause (3) applying the direction in EIT-INF-P13 instead of LF-FW-P12(2).⁵²⁰
768. Transpower seeks to delete the policy and insert a new policy in the EIT-INF section that sets out specific direction in respect of the National Grid in the coastal environment that, in the event of conflict, prevails over the LF provisions. Alternatively, Transpower seeks the following new clause in LF-FW-P12:⁵²¹
- (3) in the case of the operation, maintenance, development and upgrade of the National Grid, seeking to avoid adverse effects on significant and outstanding values of outstanding water bodies, and (2) above does not apply.
769. Wise Response considers LF-FW-P12 should be extended by including an additional clause which provides for the restoration and protection of outstanding water bodies where they have been degraded.⁵²²

Analysis

770. For the reasons I have set out in section 9.7.4.1 of this report, I do not agree with the interpretation of the NPSFM set out by Forest and Bird, Federated Farmers, and Meridian and do not consider that “outstanding values” is a new concept. As I have set out

⁵¹⁸ 00016.007 Alluvium and Stoney Creek

⁵¹⁹ 00313.010 Queenstown Airport

⁵²⁰ 00235.095 OWRUG, 00315.032 Aurora Energy, 00305.023 Waka Kotahi

⁵²¹ 00314.024 Transpower

⁵²² 00509.078 Wise Response

previously, “outstanding values” and “significant values” are not the same. I consider that removing reference to outstanding values introduces ambiguity about the management approach to these values. Subject to further clarification from Forest and Bird, Federated Farmers and Meridian, I do not recommend accepting these submission points.

771. The reasons for the amendments sought by Forest and Bird refer back to the submitter’s comments on LW-FW-O8, which are that:

“The NPSFM is to [sic] identify water bodies that are outstanding by their outstanding values and then to protect the significant values of the outstanding water body. This means that if a waterbody is outstanding for a recreational or use value, it is not necessarily the recreation or use that is protected but rather the significant values of the waterbody.”

772. I agree that significant values may be broader and support outstanding values. That is partly why LF-FW-P12 requires identifying and protecting both types of values. It is not clear to me from the submission why Forest and Bird considers that the reference to outstanding values does not give effect to the direction in the NPSFM. In my experience, implementing directions to avoid adverse effects on particular values is greatly assisted by those values being identified in plans. While I appreciate that the NPSFM requires significant values to be protected, rather than outstanding values, the relationship between those values is important and identification of both types would assist decision-makers to understand how the adverse effects of an activity may impact on those values.

773. I am also unsure of the intent behind providing for outstanding water bodies to be identified during consenting processes. In my opinion, it would be difficult to determine whether a water body is outstanding on a regional scale through a resource consent application that may only affect one water body or part of one water body. I understand ORC has recently commenced a project to identify outstanding water bodies as part of the development of the LWRP, which I consider is the appropriate avenue. I do not recommend accepting the submission point by Forest and Bird.

774. I do not agree with Blackthorn Lodge, Trojan, and Wayfare that protection can be achieved by avoiding, remedying, or mitigating adverse effects. In my view, this is the ‘baseline’ approach in the RMA to managing any adverse effects, and protection requires a more stringent approach.

775. Beef + Lamb and DINZ state that it is not necessary to avoid all adverse effects in order to protect the significant values of an outstanding water body. I agree that some adverse effects may be able to occur without degrading an outstanding water body. But I do not agree with Beef + Lamb and DINZ that “sustained” is the same as “protected” and consider that it is clearer for plan users for the direction to align with the NPSFM, which requires protection.

776. I do not agree with Contact that maintaining significant values is an option provided by the NPSFM. In my view, protection is a more stringent requirement than maintenance and it is protection that is required by Policy 8 of the NPSFM. I do not consider that deleting “by avoiding adverse effects on those values” assists with establishing what protection means in this context or what is required from lower order documents.

777. Alluvium and Stoney Creek state that section 6 of the RMA requires protecting outstanding water bodies from inappropriate subdivision, use, and development. In my opinion, the submitter has confused outstanding water bodies with outstanding natural features and landscapes. The relevant direction is in Policy 8 of the NPSFM, as stated above. The amendment sought by the submitters introduces the concept of “inappropriate” subdivision, use, or development, but there is no further clarification in the submission about what should be considered “inappropriate”. In my view, this reduces the clarity and certainty of the provision and ‘delegates’ responsibility for determining the management of these water bodies to lower order plans. I do not recommend accepting this submission.
778. The amendment sought by Queenstown Airport would remove the clarification provided by the policy about what protection means in this context. I do not consider that is a helpful amendment.
779. That said, I agree with Blackthorn Lodge, Trojan, Wayfare, Beef + Lamb NZ and DINZ, Contact, Alluvium and Stoney Creek, and Queenstown Airport that the direction in the pORPS is more stringent than the NPSFM and that it may be appropriate to allow some level of adverse effects on the significant values of outstanding water bodies. While I do not consider any of the amendments sought by submitters resolve this matter in an appropriate way, I am not opposed to including a degree of flexibility in this policy. At this stage, I do not recommend accepting the submission points by these submitters but note that the submitters may wish to address this further in their evidence.
780. I agree with OWRUG, Aurora Energy, Waka Kotahi, and Transpower that infrastructure may not be able to practically give effect to this policy. In my view, the direction set out in EIT-INF-P13 should apply. This would provide some ‘leeway’ for nationally and regionally significant infrastructure, but retain the requirement to avoid adverse effects on significant or outstanding values for other types of infrastructure. In my opinion, this is an appropriate reflection of the difference in importance of those types of infrastructure. Rather than include an additional clause, I consider a reference to EIT-INF-P13 could be incorporated into LF-FW-P12(2). I recommend accepting in part the submission points by OWRUG, Aurora Energy, Waka Kotahi, and Transpower.
781. As I have set out previously, while some significant or outstanding values may have been degraded in some way, I do not consider that it is necessary to restore those values. “Outstanding” is a very high threshold and restoration is unlikely to be a wise investment of resources. For these reasons, I do not recommend accepting the submission point by Wise Response.
782. When considering LF-LW-P12, I noted that the title of the policy refers to protecting outstanding water bodies, however the policy requires protecting the significant and outstanding values of outstanding water bodies, not the outstanding water bodies themselves. The policy also requires identifying outstanding water bodies. I recommend changing the title of LF-FW-P12 to “Identifying and managing outstanding water bodies” and consider this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.

Recommendation

783. I recommend amending LF-FW-P12 to:

LF-FW-P12 – ~~Protecting~~ Identifying and managing ⁵²³ *outstanding water bodies*

~~The significant and outstanding values of *outstanding water bodies* are:~~

~~(1) identified in the relevant *regional* and *district plans*, and~~

~~(2) protected by avoiding adverse effects on those values.⁵²⁴~~

Identify *outstanding water bodies* and their significant and outstanding values in the relevant *regional plans* and *district plans* and protect those values by avoiding adverse effects on them, except as provided by EIT-INF-P13 and EIT-INF-P13A.⁵²⁵

9.7.4.5. LF-FW-M5 – Outstanding water bodies

Introduction

784. As notified, LF-FW-M5 reads:

LF-FW-M5 – *Outstanding water bodies*

No later than 31 December 2023, Otago Regional Council must:

- (1) in partnership with Kāi Tahu, undertake a review based on existing information and develop a list of *water bodies* likely to contain outstanding values, including those *water bodies* listed in LF-VM-P6,
- (2) identify the outstanding values of those *water bodies* (if any) in accordance with APP1,
- (3) consult with the public during the identification process,
- (4) map *outstanding water bodies* and identify their outstanding and significant values in the relevant *regional plan(s)*, and
- (5) include provisions in *regional plans* to avoid the adverse effects of activities on the significant and outstanding values of *outstanding water bodies*.

Submissions

785. Nāi Tahu ki Murihiku seeks general amendments to more accurately reflect cultural interests and values in relation to landscapes. Specifically, the submitter seeks amendments to include “wāhi tūpuna” in the provision title as well as a new clause for identifying wāhi tūpuna relevant to freshwater management, in accordance with APP7.⁵²⁶

786. Similar to Ngāi Tahu ki Murihiku, Kāi Tahu ki Otago seeks amendments to reflect the cultural values of outstanding water bodies. The submitter states that the ranking of

⁵²³ Clause 16(2), Schedule 1, RMA

⁵²⁴ 00230.091 Forest and Bird

⁵²⁵ 00235.095 OWRUG, 00315.032 Aurora Energy, 00305.023 Waka Kotahi,

⁵²⁶ 00223.089 Ngāi Tahu ki Murihiku,

water bodies as being ‘outstanding’ or otherwise is inconsistent with the nature of the iwi relationship with wai māori and seeks the following amendments:⁵²⁷

- (1) ~~in partnership with Kāi Tahu~~, undertake a review based on existing information and develop a list of water bodies likely to contain outstanding values, including those water bodies listed in LF-VM-P6,
- (2) ...
- (2a) in partnership with Kāi Tahu, identify Kāi Tahu cultural and spiritual values associated with the water bodies identified,
- (3) ...
- (4) map outstanding water bodies and identify their outstanding and significant values, as well as Kāi Tahu cultural and spiritual values associated with the water bodies, in the relevant regional plan(s), and
- (5) include provisions in regional plans to avoid the adverse effects of activities on the significant and outstanding values of outstanding water bodies and on any Kāi Tahu cultural and spiritual values associated with the water bodies.

787. These amendments are supported by the further submission of Te Rūnanga o Ngāi Tahu.⁵²⁸
788. ECan and Waitaki Irrigators submit that the cross-reference in clause (1) to LF-VM-P6 should be to LF-FW-P11.⁵²⁹ Meridian seeks to include a cross-reference to APP1 in clause (1) for clarity.⁵³⁰
789. Federated Farmers seeks a range of amendments to the method, primarily focused on deleting references to outstanding values and clarifying that any values to be identified are significant values. The submitter also seeks to identify the extent of outstanding water bodies, as well as their significant values, in plans.⁵³¹
790. ECan and QLDC consider provision should be made to require consultation with local authorities in the identification of outstanding water bodies to promote integrated management across local authority boundaries.⁵³² QLDC seeks amendment to clause (2),⁵³³ while ECan seeks amendment to clause (3).⁵³⁴

⁵²⁷ 00226.190 Kāi Tahu ki Otago

⁵²⁸ 00234.182 Te Rūnanga o Ngāi Tahu

⁵²⁹ 00013.012 ECan, 00213.020 Waitaki Irrigators

⁵³⁰ 00306.038 Meridian

⁵³¹ 00239.090 Federated Farmers

⁵³² 00013.012 ECan, 00138.075 QLDC

⁵³³ 00138.075 QLDC

⁵³⁴ 00013.012 ECan

791. QLDC submits that as drafted clause (4) reads that two types of values need to be considered being “outstanding and “significant”.⁵³⁵ The submitter seeks clarity regarding the intent of these two words to support interpretation and application.
792. Blackthorn Lodge, Trojan, Beef + Lamb and DINZ and Wayfare submit that clause (5) imposes an inappropriately high test on adverse effects when significant and outstanding values of outstanding water bodies are yet to be identified and seek relief accordingly.⁵³⁶ Toitū Te Whenua considers the provision should apply this test to “all values”, not just those identified as significant and outstanding,⁵³⁷

Analysis

793. As I have set out in section 9.7.4.7 in this report regarding APP1, Ngāi Tahu ki Murihiku and Kāi Tahu ki Otago seek differing relief in relation to the recognition of the cultural and spiritual values of outstanding water bodies. At this stage, pending further clarification from the submitters in their evidence, I do not recommend accepting the submission points by these submitters on LF-FW-M5 as they are consequential to the relief sought on APP1.
794. I agree with ECan and Waitaki Irrigators that the reference to LF-VM-P6 in clause (1) is an error and that the correct reference is to LF-FW-P11. I recommend accepting these submission points.
795. Meridian seeks to include reference to APP1 in clause (1). In my view, the submitter has misunderstood the process set out in this method. The first step (in clause (1)) is intended to be a broad literature review that does not involve any assessments of water bodies. It is the second step of the process where APP1 becomes relevant, as stated in the method. I do not recommend accepting this submission point.
796. Meridian and Federated Farmers seek amendments that are based on their interpretation of the NPSFM. I have set out and addressed these matters in section 9.7.4.1.
797. I do not consider it is necessary to include reference to identifying the extent of outstanding water bodies in this method as clause (4) already requires mapping outstanding water bodies, which necessarily requires identifying their extent. I do not recommend accepting this part of the submission point by Federated Farmers.
798. I agree with ECan and QLDC that it will be important to consult with relevant local authorities during the identification process (both regional councils and territorial authorities). I prefer the relief sought by ECan to amend clause (3) but consider that the reference to relevant local authorities should be included alongside the public rather than at the end of the clause. I recommend accepting these submission points in part.
799. I have discussed the difference between “significant” and “outstanding” values previously in section 9.7.4.1 of this report. I consider that my recommendation elsewhere

⁵³⁵ 00138.075 QLDC

⁵³⁶ 00119.013 Blackthorn Lodge, 00206.037 Trojan, 00237.041 Beef + Lamb and DINZ, 00411.049 Wayfare

⁵³⁷ 00101.040 Toitū Te Whenua

to replace APP1 with more detailed criteria for identifying outstanding values assists with addressing the concern raised by QLDC and recommend accepting this submission in part.

800. LF-FW-M5(5) reflects the direction set in LF-FW-P12. As I have set out in relation to that policy, I agree with Blackthorn Lodge, Trogan, Wayfare, and Beef + Lamb and DINZ that it may be appropriate to allow for some level of adverse effects. Without further evidence from those submitters (and others) on an appropriate replacement test for LF-FW-P12, I do not recommend accepting these submission points at this stage.

Recommendation

801. I recommend the following amendments to LF-FW-M5:

LF-FW-M5 – *Outstanding water bodies*

No later than 31 December 2023, Otago Regional Council must:

- (1) undertake a review based on existing information and develop a list of *water bodies* likely to contain outstanding values, including those *water bodies* listed in ~~LF-VM-P6~~ LF-FW-P11,⁵³⁸
- (2) identify the outstanding values of those *water bodies* (if any) in accordance with APP1,
- (3) consult with the public and relevant local authorities⁵³⁹ during the identification process,
- (4) map *outstanding water bodies* and identify their outstanding and significant values in the relevant *regional plan(s)*, and
- (5) include provisions in *regional plans* to avoid the adverse effects of activities on the significant and outstanding values of *outstanding water bodies*.

- 9.7.4.6. LF-FW-M7(1) and (2) – District plans

Introduction

802. As notified, LF-FW-M7 reads:

LF-FW-M7 – *District plans*

Territorial authorities must prepare or amend and maintain their *district plans* no later than 31 December 2026 to:

- (1) map *outstanding water bodies* and identify their outstanding and significant values using the information gathered by Otago Regional Council in LF-FW-M5, and
- (2) include provisions to avoid the adverse *effects* of activities on the significant and outstanding values of *outstanding water bodies*,

⁵³⁸ 00013.012 CRC, 00213.020 Waitaki Irrigators

⁵³⁹ 00013.012 ECan

...

Submissions

803. Kāi Tahu ki Otago seeks to include a new clause to implement Policy LF-FW-P13 as the submitter considers this is a shared responsibility across regional and territorial jurisdictions. The following amendments are sought:⁵⁴⁰
- (1) map outstanding water bodies and identify their outstanding and significant values, as well as any Kāi Tahu cultural and spiritual values associated with the water bodies, using the information gathered by Otago Regional Council in LF-FW – M5, and
 - (2) include provisions to avoid the adverse effects of activities on the significant and outstanding values of outstanding water bodies, and on any Kāi Tahu cultural and spiritual values associated with the water bodies,
804. Jim Hopkins opposes clause (1), stating that it is an “unfunded mandate that properly sits with ORC,” and seeks that the clause be deleted, at least until funding and resourcing have been agreed between ORC and affected councils.⁵⁴¹ QLDC seeks to amend clause (1) to reflect that it is not only the regional council but also territorial authorities who contribute to identification of these values, as follows:⁵⁴²
- (1) map outstanding water bodies and identify their outstanding and significant values using the information gathered through ~~Otago Regional Council~~ in LF-FW-M5, and
805. Wise Response considers the method requires more emphasis to recognise and provide for climate change and regenerative land use practices. In relation to clause (2), the submitter seeks the following:⁵⁴³
- (2) include provisions to avoid the adverse effects of activities on the significant and outstanding ~~values of outstanding~~ water bodies and associated values,
806. Meridian, and Beef + Lamb and DINZ, seek to adopt the same or similar wording for clauses (1) and (2) of this provision as in Policy 8 of the NPSFM.⁵⁴⁴ Meridian seeks the following specific amendments:
- (1) map outstanding water bodies and identify their ~~outstanding~~ and significant values using the information gathered by Otago Regional Council in LF-FW-M5, and
 - (2) include provisions to avoid the adverse effects of activities on the significant ~~and outstanding~~ values of outstanding water bodies,

⁵⁴⁰ 00226.192 Kāi Tahu ki Otago

⁵⁴¹ 00420.016 Jim Hopkins

⁵⁴² 00138.077 QLDC

⁵⁴³ 00509.083 Wise Response

⁵⁴⁴ 00306.040 Meridian, 00237.043 Beef + Lamb and DINZ

807. Blackthorn Lodge, Trojan, and Wayfare seek to amend clause (2) to include ‘remedy or mitigate,’ with Trojan and Wayfare stating that it is inappropriate, impractical and unreasonable to avoid adverse effects of activities on the significant and outstanding values to outstanding water bodies. The submitters seek the following amendments:⁵⁴⁵
- (2) include provisions to avoid, remedy or mitigate the adverse effects of activities on the significant and outstanding values of outstanding water bodies,

Analysis

808. The amendments sought by Kāi Tahu ki Otago to clauses (1) and (2) reflect the relief sought by this submitter in relation to LF-FW-M5 and APP1. As I have set out in my evaluations of the submissions on those provisions, I have not recommended accepting those submission points at this stage, pending further evidence from the submitter (and others). Accordingly, I do not recommend accepting the submission point on LF-FW-M7 at this stage, noting that this recommendation may change if further evidence is provided in relation to the other provisions.
809. I consider that Jim Hopkins has misunderstood the requirements of clause (1). The identification of outstanding water bodies is clearly a task for ORC, as set out in LF-FW-M5. It is the results of this identification process that are to be incorporated into district plans, reflecting that adverse effects on these water bodies may arise from activities that are managed by territorial authorities. I do not recommend accepting this submission point.
810. I agree with QLDC that the identification process will not be undertaken solely by ORC and that deletion of this reference in clause (1) is appropriate. I recommend accepting this submission point in part and instead referring to implementation of LF-FW-M5.
811. I consider that Wise Response has misunderstood the national direction regarding outstanding water bodies and do not consider the amendment sought would helpfully assist with interpretation or application. I do not recommend accepting this part of the submission point.
812. The amendments sought by Meridian and Beef + Lamb and DINZ reflect the issues raised by these submitters in regard to alignment with the NPSFM. I have addressed these in section 9.7.4.1 of this report and, for the same reasons I have set out there, do not recommend accepting these submission points.
813. Similarly, the amendments sought by Blackthorn Lodge, Trojan, and Wayfare reflect amendments those submitters have sought in relation to LF-FW-P12. For the same reasons I have set out in relation to that provision, I do not recommend accepting these submission points.

⁵⁴⁵ 00119.014 Blackthorn Lodge, 00206.039 Trojan, 00411.051 Wayfare

Recommendation

814. I recommend amending LF-FW-M7(1) and (2) as follows:

LF-FW-M7 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* no later than 31 December 2026 to:

- (1) map *outstanding water bodies* and identify their outstanding and significant values using the information gathered by Otago Regional Council in through implementation of⁵⁴⁶ LF-FW-M5, and
- (2) include provisions to avoid the adverse *effects* of activities on the significant and outstanding values of *outstanding water bodies*,

...

9.7.4.7. APP1 – Criteria for identifying outstanding water bodies

Introduction

815. APP1 sets out the criteria for identifying outstanding water bodies.

816. As notified, APP1 reads:

APP1 – Criteria for identifying *outstanding water bodies*

Outstanding water bodies include any *water body* with one or more of the following outstanding values, noting that sub-values are not all-inclusive:

Table 3: Values of outstanding water bodies

Values	Description	Example sub-values
Cultural and spiritual	A <i>water body</i> which has outstanding cultural and spiritual values.	Wāhi tapu, wāhi taoka, wai tapu, rohe boundary, battle sites, pa, kāika, tauraka waka, mahika kai, pa tuna; and acknowledged in korero tuku iho, pepeha, whakatauki or waiata
Ecology	A <i>water body</i> which has outstanding ecological value as a habitat for: <ul style="list-style-type: none">• Native birds• Native fish• Salmonid fish• Other aquatic species	Native birds, native fish, native plants, aquatic macroinvertebrates
Landscape	A <i>water body</i> which forms a key component of a landscape that is “conspicuous, eminent, remarkable or iconic” within the region, or is critical to an outstanding natural feature.	Scenic, association, natural characteristics (includes hydrological, ecological and geological features)

⁵⁴⁶ 00138.077 QLDC

Natural character	A <i>water body</i> with high naturalness that exhibits an exceptional combination of natural processes, natural patterns and natural elements with low levels of modification to its form, ecosystems and the surrounding landscape.	Natural characteristics (includes hydrological, ecological and geological features)
Recreation	A <i>water body</i> which is recognised as providing an outstanding recreational experience for an activity which is directly related to the <i>water</i> .	Angling, fishing, kayaking, rafting, jetboating
Physical	A <i>water body</i> which has an outstanding geomorphological, geological or hydrological feature which is dependent on the <i>water body's</i> condition and functioning.	Science

Submissions

817. Federated Farmers and Trustpower consider the criteria are unclear and open to interpretation and submit that, as notified, any water body in the region may be considered “outstanding”. Trustpower seeks amendments to align APP1 with current best practice and specifically with the use of screening criteria developed by the Ministry for the Environment, Hawkes Bay Regional Council, and Auckland Council in the report titled *Water Conservation Order review: Outstanding values – key features* which the submitter states has been adopted in the decisions version of the HBRC’s Plan Change 7 (Outstanding water bodies).⁵⁴⁷
818. Federated Farmers seeks to delete the current table and align with the NPSFM or, alternatively:⁵⁴⁸
- Clarify and substantiate the basis for the contents of APP1 and amend to ensure more than one criterion needs to be met, and
 - Resolve the uncertainty and confusion between APP1 and APP9.
819. DOC considers that APP1 fails to recognise other values which could justify a water body being considered outstanding and seeks unspecified amendments to include all appropriate values.⁵⁴⁹ DOC also seeks unspecified amendments to provide clear guidance for assessing whether values are outstanding.⁵⁵⁰
820. Fish and Game considers APP1 does not contain criteria but rather a description of values that can be considered as contributing to the outstanding values identified for a water body. The submitter states that this does not assist in determining a particular threshold required in order to meet ‘outstanding’ or not. The submitter seeks the following:⁵⁵¹

⁵⁴⁷ 00311.062 Trustpower, 00311.020 Trustpower

⁵⁴⁸ 00239.184 Federated Farmers

⁵⁴⁹ 00137.156 DOC

⁵⁵⁰ 00137.156 DOC

⁵⁵¹ 00231.092 Fish and Game

- Further develop the table to include criteria.
- Set the spatial context clearly at the regional level.
- Explicitly refer to the current Kawarau WCO and the water bodies it recognises.

821. Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku consider APP1 is generally appropriate to achieve the requirements of the NPSFM but seek to delete references to cultural and spiritual values in Table 4 which are inconsistent with cultural relationships with freshwater.⁵⁵² Kāi Tahu ki Otago further seeks the following addition to Table 4 to ensure values associated with identified water bodies are also recognised and protected:⁵⁵³

Kāi Tahu cultural and spiritual values: Kāi Tahu cultural and spiritual values are not included in the criteria for identifying outstanding water bodies, because ranking of water bodies in respect to the cultural and spiritual values associated with wai Māori is not consistent with the nature of the Kāi Tahu relationship with freshwater. Instead, when a water body is identified as outstanding in accordance with the criteria in Table 4, Kāi Tahu values associated with the water body will also be identified and will be protected under LF-FW-P12 and LF-FW-M5(5) in the same way as outstanding values identified using the criteria.

822. Forest and Bird seeks amendments to ensure that the significant values of outstanding water bodies are protected, including through stringent provisions to restrict activities which would be inconsistent with protection, and identification of the significant values in consent processes.⁵⁵⁴

823. Federated Farmers and Beef + Lamb and DINZ submit that Table 4 provides for salmonoid fish which they highlight are exotic species and seek deletion of this reference.⁵⁵⁵

824. Meridian states that while criteria set out in Appendix 1 identify values required to be present for “outstanding” water bodies, there is a paucity of information which sets out what criteria must be met for a value to be “significant”.⁵⁵⁶

Analysis

825. The NPSFM itself contains little direction on the identification of outstanding water bodies. Between 2014 and 2017, a project on outstanding water bodies was partly funded through the Community Environment Fund and led by Hawke’s Bay Regional Council, with assistance from Auckland Council and the Ministry for the Environment. That project represents the most significant investment in and research into outstanding water bodies at this time and included expert input, technical advisory group reports, reviews of overseas literature, and New Zealand examples of Water Conservation Orders and what qualifies as “outstanding.” The final report produced as part of that project:

⁵⁵² 00226.30 Kāi Tahu ki Otago, 0223.133 Ngāi Tahu ki Murihiku

⁵⁵³ 00226.30 Kāi Tahu ki Otago

⁵⁵⁴ 00230.146 Forest and Bird

⁵⁵⁵ 00226.326 Federated Farmers, 00237.066 Beef + Lamb and DINZ

⁵⁵⁶ 00306.033 Meridian

“...summarises the key values considered in WCO reports and recommendations by value-type. It discusses the key factors and characteristics used by the various courts and tribunals when determining if a value is nationally outstanding for WCO purposes, and sets out the factors and characteristics that have emerged for each value set.

...Based on these findings, an OWB identification screening framework has been included in Appendix 1 for use in a regional context.” (Harper, 2020, p. 7)

826. As Trustpower identifies, the framework in this report has been tested and refined through Hawke’s Bay RC’s Plan Change 7 (Outstanding water bodies) to the Regional Resource Management Plan. The report by the hearing panel for that plan change⁵⁵⁷ recommended a number of amendments to the framework put forward by Harper (2020) as a result of applying the framework to a series of water bodies in the Hawke’s Bay region.
827. The hearing panel stated that:
- *“We observe that some of the proposed screening criteria are based on the language that has been found to describe what has qualified as “outstanding” in [a WCO]. The language has included “conspicuous, eminent, especially because of its excellence” and “remarkable in”. ... Other screening criteria are based on the findings of Special Tribunals and/or the Environment Court.” (p.33)*
 - *“Submitters at the hearing had no significant criticism of the screening criteria ... being added to [HBRC’s Plan Change 7]. Those who commented generally supported the screening criteria being included in [Plan Change 7].”*
828. HBRC’s Plan Change 7 was notified in August 2019 and its content informed the development of APP1 in the pORPS. Notably, APP1 adopted the values and sub-values described in Table 1 of Plan Change 7.⁵⁵⁸ The final report of the outstanding water bodies project that contained the screening criteria was made public in September 2020 and its content was recommended for inclusion in HBRC’s Plan Change 7 through the hearing officer’s section 42A report in October 2020. A hearing on Plan Change 7 was held in November and December 2020. In early 2021, when the draft pORPS was being finalised for notification, no decision had been made on the submissions and provisions of Plan Change 7. The pORPS did not adopt the screening criteria at that time as the outcome of its testing through Plan Change 7 had not been released.
829. Trustpower now seeks to align APP1 with the screening criteria developed by Harper (2020). I consider that those criteria have been developed through a thorough literature review of relevant decisions on WCOs, which relate to water bodies and use the

⁵⁵⁷ *Decision of the Independent Hearing Panel on Proposed Plan Change 7 to the Regional Resource Management Plan – Outstanding water bodies.* (June 2021). Available from <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/Decision-of-the-Independent-Hearing-Panel-PC7.pdf>

⁵⁵⁸ *Proposed Plan Change 7 (Outstanding water bodies) to the Regional Resource Management Plan.* (August 2019). Available from <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/1.-Other-supporting-information/Plan-Change-7.pdf>

“outstanding” test. In my view, the criteria have now been tested through HBRC’s Plan Change 7 and have been found to be fit for purpose. I note that there are some differences between the original criteria and those recommended by the hearing panel on Plan Change 7. In summary:

- Minor wording changes to the beginning sentences of each value, so that the description refers directly to the water body.
- The original criteria contained two values relating to tangata whenua: Tikanga Māori and cultural and spiritual. The hearing panel recommended combining the two values and better situating the criteria in a region-wide context.
- The hearing panel recommended two additional values for natural character and geology.

830. Having read the hearing panel’s report and the basis for making those amendments, I agree that they improve the original criteria. I recommend accepting the submission by Trustpower in part. I agree with the submitter that the screening criteria prepared by Harper (2020) are more robust and clearer than the notified content of APP1. However, I consider it would be more appropriate to adopt an amended version of the criteria recommended by the hearing panel on HBRC’s Plan Change 7 as that set of criteria has been applied and tested in practice, with refinements made on that basis. I consider this would address the submission points by Federated Farmers, DOC, and Fish and Game and therefore recommend accepting those in part. The amendments to that version of the criteria that I recommend are set out below in relation to cultural and spiritual values and landscape values.

831. It is evident from the hearing panel’s recommendation report on HBRC’s Plan Change 7 that consideration of cultural and spiritual values, and tikanga Māori, took some time and thought. As part of the development of that Plan Change, there had been engagement with iwi and cultural values reports prepared for many water bodies. In Hawke’s Bay there are 11 iwi groups, 91 hapū, and 97 marae.⁵⁵⁹ In comparison, in Otago there is one iwi group with seven papatipu rūnaka with interests in the region.

832. I acknowledge that for Kāi Tahu ki Otago, ‘ranking’ water bodies does not reflect the relationship of Kāi Tahu with water. Both Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku seek to delete reference to cultural and spiritual values from APP1 as notified. However, the submitters vary on the additional relief sought. Kāi Tahu ki Otago seeks to include a paragraph describing a process for identifying cultural and spiritual values associated with water bodies identified in accordance with the remainder of the criteria in APP1. This would essentially create a two-step process whereby outstanding values are identified (excluding cultural and spiritual values) and then, for those outstanding water bodies, ORC would work in partnership with Kāi Tahu to identify cultural and spiritual values for those water bodies.

833. Ngāi Tahu ki Murihiku seeks instead to separate the process for identifying outstanding water bodies with communities and the process for identifying wāhi tūpuna relevant to

⁵⁵⁹ Hawke’s Bay Regional Council. (n.d.). *Tangata whenua*. Retrieved from <https://www.hbrc.govt.nz/our-council/tangata-whenua/>

freshwater management. I understand that Ngāi Tahu ki Murihiku view their takiwā as an interconnected cultural landscape, or series of cultural landscapes, that can be interpreted according to cultural values and mātauraka. Wāhi tūpuna is defined in the pORPS as:

...landscapes and places that embody the relationship of manawhenua and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taoka

834. Ngāi Tahu ki Murihiku seeks amendments throughout the pORPS to ensure that there is no confusion regarding interpretation of cultural landscapes or wāhi tūpuna in practice, and that Ngāi Tahu ki Murihiku expression of cultural landscapes is accommodated, including in relation to outstanding water bodies. In relation to APP1 and outstanding water bodies, Ngāi Tahu ki Murihiku notes that wāhi tūpuna may overlap with outstanding water bodies identified under APP1 but should be identified in their own right through APP7.
835. Both Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku made further submissions but neither specifically submitted on these parts of each other's submissions, so it is unclear what their views are on the proposals of the other. I am not opposed in principle to the relief sought by either submitter, however I am struggling to reconcile the two approaches and am mindful that I am not best placed to resolve this type of difference between the rūnaka.
836. I would prefer to delete the "cultural and spiritual" value from APP1 as sought by the submitters, but I am reluctant to do so without being able to incorporate an alternative approach to recognising these values lest it be misinterpreted as a recommendation to delete consideration of those values entirely. At this stage, I do not recommend accepting either submission point and would encourage those submitters to address this matter in more detail in their evidence. I recommend leaving cultural and spiritual values in APP1 but with a placeholder at this stage.
837. The criteria adopted by the HBRC hearing panel included landscape values. In the pORPS, LF-FW-P11(3) identifies that water bodies, or parts of water bodies, that are within outstanding natural features or landscapes identified in accordance with NFL-P1 are outstanding water bodies. I consider that it would not be efficient to require a second landscape assessment to occur. I recommend leaving landscape values in APP1 but instead of criteria, including the text from LF-FW-P11(3) to clarify that these values are identified through a different process.
838. The amendments sought by Forest and Bird are not appropriate for APP1 which simply lists the criteria for identifying outstanding water bodies, not the mechanisms for managing those water bodies. I note the submitter has made similar submission points on LF-FW-O8 and LF-FW-P12 which I have addressed in relation to those provisions, where the management framework for outstanding water bodies is set out. I do not recommend accepting this submission point.
839. Federated Farmers seeks to amend APP1 so that more than one criterion must be met for a water body to be identified as an outstanding water body. I do not consider that is

consistent with the definition of “outstanding water body” in the NPSFM, which explicitly states that it includes water bodies that have been identified as having “one or more outstanding values”. I do not recommend accepting this part of the submission point.

840. I understand the points raised by Federated Farmers and Beef + Lamb and DINZ in relation to salmonoids and the predation risk they can pose to native fish. However, I note that the protection of the habitats of trout and salmon is provided for in section 7(h) of the RMA and that these habitats can support other types of outstanding values, such as recreational values. I do not recommend accepting these submission points.

841. I agree with Meridian that APP1 does not specifically outline the tests for determining whether a value is “significant”. The submitter does not seek any specific amendments, however, so without further evidence about the relief sought I do not recommend accepting this submission.

Recommendation

842. I recommend deleting the content of APP1 and replacing it with the following:

APP1 – Criteria for identifying *outstanding water bodies*

Outstanding water bodies include any water body with one or more of the following outstanding values. For the avoidance of doubt, evidential sources include but are not limited to those listed.⁵⁶⁰

Table 4: Values of outstanding water bodies

Value	Sub values / Outstanding indicators	Evidential sources can include but not limited to the following
Ecology	Habitat for aquatic birds (native and migratory)	
	<p><u>Water body provides an outstanding habitat for aquatic birds where it meets:</u></p> <ul style="list-style-type: none"> • <u>at least one matter in List A;</u> • <u>and</u> • <u>all matters in List B.</u> <p>List A</p> <p>a. <u>One of the highest regional populations of a native aquatic bird species which is endangered, threatened or distinctive.</u>⁹¹</p> <p>b. <u>One of the highest natural diversity of aquatic birds (native and migratory) in the region, which includes endangered or threatened species.</u></p> <p>List B</p>	<p><u>International Union for Conservation of Nature (IUCN) criteria.</u></p> <p><u>RAMSAR site criteria reports.</u></p> <p><u>New Zealand threat classification system.</u></p> <p><u>IUCN red list.</u></p> <p><u>Expert evidence.</u></p>

⁵⁶⁰ All amendments in this appendix attributable to 00311.062 Trustpower

<p>a. <u>Evidence is provided in support of outstanding features.</u></p>	
<p><u>Native fish habitat</u></p>	
<p><u>Water body provides an outstanding habitat for native fish where it meets:</u></p> <ul style="list-style-type: none"> • <u>at least one matter in List A;</u> <u>and</u> • <u>all matters in List B.</u> <p><u>List A</u></p> <p>a. <u>A unique species or distinctive assemblage of native fish not found elsewhere in the region.</u></p> <p>b. <u>Native fish that are landlocked and not affected by presence of introduced species.</u></p> <p>c. <u>One of the highest diversities of native fish species in the region, which includes a threatened, endangered, or distinctive species.</u></p> <p>d. <u>An outstanding customary fishery.</u></p> <p><u>List B</u></p> <p>a. <u>Evidence is provided in support of outstanding native fish habitat value.</u></p>	<p><u>Waters of National Importance. Expert evidence.</u></p>
<p><u>Habitat for indigenous plant communities</u></p>	
<p><u>Water body provides an outstanding habitat for an indigenous plant community where it meets:</u></p> <ul style="list-style-type: none"> • <u>at least one matter in List A;</u> <u>and</u> • <u>all matters in List B.</u> <p><u>List A</u></p> <p>a. <u>The indigenous plant community has a high diversity of habitats, or rare and threatened plant species in the region.</u></p> <p>b. <u>The indigenous plant community contains special features not found elsewhere in the region.</u></p>	<p><u>New Zealand Geopreservation Inventory. Protected Natural Area (PNA) surveys. Expert evidence.</u></p>

	<p>List B</p> <p>a. <u>The indigenous plant community is reliant on the river flows, other aquatic characteristics, or is an integral part of the water body.</u></p> <p>b. <u>Evidence is provided in support of outstanding features.</u></p>	
	<p>Habitat for trout and salmon</p>	
	<p><u>Water body provides an outstanding habitat for trout and salmon where it meets all matters in List A.</u></p> <p>List A</p> <p>a. <u>Has an outstanding angling amenity, or is critical to maintaining an outstanding angling amenity elsewhere in the catchment.</u></p> <p>b. <u>Supports a self-sustaining population of wild trout or salmon (i.e. fish population not periodically restocked from hatcheries).</u></p> <p>c. <u>Evidence is provided in support of outstanding features.</u></p>	<p><u>Waters of National Importance. Headwater trout fisheries (NIWA).</u> <u>Expert evidence.</u></p>
<p>Recreation</p>	<p>Angling amenity (trout and salmon)</p>	
	<p><u>Water body provides an outstanding recreational fishing experience (angling amenity) where it meets:</u></p> <ul style="list-style-type: none"> • <u>at least one matter in List A;</u> <li style="padding-left: 20px;"><u>and</u> • <u>at least one matter in List B;</u> <li style="padding-left: 20px;"><u>and</u> • <u>all matters in List C.</u> <p>List A</p> <p>a. <u>Trophy trout (over 4kg in size)</u></p> <p>b. <u>High numbers of large trout (water body supports the highest number of large trout in the region).</u></p> <p>c. <u>High number of trout (water body supports the highest trout numbers in the region)</u></p>	<p><u>National Angling Survey. Headwater trout fisheries (NIWA).</u> <u>Testimonies from anglers. National Inventory of Wild Scenic River.</u> <u>Expert evidence.</u></p>

	<p><u>or the highest trout biomass in the region).</u></p> <p>List B</p> <p>a. <u>Variety of high quality angling experiences.</u></p> <p>b. <u>Specialised high quality angling experience (scenic, solitude, challenging, high catch rate, ability to spot and fish to a particular trout).</u></p> <p>List C</p> <p>a. <u>Wild trout fishery (self-sustaining trout population through natural replacement).</u></p> <p>b. <u>Water body is accessible and suitable to fish (high water quality and suitable flows).</u></p> <p>c. <u>A regional, national or international reputation as an exceptional trout fishery or high non-local usage (high numbers of anglers come from outside of the area).</u></p> <p>d. <u>Evidence is provided in support of outstanding recreational experience.</u></p>	
	<p>Rafting</p> <p><u>Water body provides an outstanding rafting experience (amenity) where it meets:</u></p> <ul style="list-style-type: none"> • <u>at least one matter in List A;</u> • <u>and</u> • <u>all matters in List B.</u> <p>List A</p> <p>a. <u>Variety of high quality rafting experiences found in few other water bodies in the region.</u></p> <p>b. <u>A specialised high quality rafting experience found in few other water bodies in the region.</u></p> <p>List B</p> <p>a. <u>The water body provides an outstanding rafting experience which is reliable and predictable for most of the year under normal flows</u></p>	<p><u>1991 River Use Survey.</u> <u>New Zealand Recreational River Survey.</u> <u>Testimonies from rafters and their local or national associations.</u> <u>Expert evidence.</u></p>

	<p><u>(i.e. the experience is not reliant on dam release water or high flows, or subject to low flows).</u></p> <p><u>b. Regional, national or international significance as an exceptional rafting experience.</u></p> <p><u>c. High non-local usage (high numbers of participants come from outside of the area).</u></p> <p><u>d. Evidence is provided in support of an outstanding rafting experience.</u></p>	
<u>Kayaking (include canoeing)</u>		
	<p><u>Water body provides an outstanding kayaking experience (amenity) where it meets:</u></p> <ul style="list-style-type: none"> • <u>at least one matter in List A;</u> • <u>and</u> • <u>all matters in List B.</u> <p><u>List A</u></p> <p><u>a. Variety of high quality kayaking experiences found in few other water bodies in the region.</u></p> <p><u>b. A specialised high quality kayaking experience found in few other water bodies in the Otago region.</u></p> <p><u>List B</u></p> <p><u>a. The water body provides an outstanding kayaking experience which is reliable and predictable for most of the year under normal flows (i.e. the experience is not reliant on dam release water or high flows, or subject to low flows).</u></p> <p><u>b. Regional, national or international significance as an exceptional kayaking experience.</u></p> <p><u>c. High non-local usage (high numbers of participants come from outside of the area).</u></p>	<p><u>1991 River Use Survey.</u></p> <p><u>New Zealand Recreational River Survey.</u></p> <p><u>New Zealand Whitewater: 120 Great Kayaking Runs.</u></p> <p><u>Testimonies from kayakers and their local or national associations.</u></p> <p><u>Expert evidence.</u></p>

	<p>d. <u>Evidence is provided in support of an outstanding kayaking experience.</u></p>	
	<p>Jet boating</p>	
	<p><u>Water body provides an outstanding jet boating experience (amenity) where it meets:</u></p> <ul style="list-style-type: none"> • <u>at least one matter in List A;</u> <u>and</u> • <u>all matters in List B.</u> <p>List A</p> <p>a. <u>Variety of high quality jet boating experiences found in few other water bodies in the Otago region.</u></p> <p>b. <u>A specialised high quality jet boating experience found in few other water bodies in the region.</u></p> <p>List B</p> <p>a. <u>The water body provides an outstanding jet boating experience which is reliable and predictable for most of the year under normal flows (i.e. the experience is not reliant on high flows or subject to low flows).</u></p> <p>b. <u>Regional, national or international significance as an exceptional jet boating experience.</u></p> <p>c. <u>High non-local usage (high numbers of participants come from outside of the area).</u></p> <p>d. <u>Evidence is provided in support of an outstanding jet boating experience.</u></p>	<p><u>New Zealand Recreational River Survey.</u> <u>Testimonies from jet boaters and their local or national associations.</u></p>
Landscape	<p>Landscape</p> <p><u>Any water body identified as being wholly or partly within an outstanding natural feature or landscape in accordance with NFL-P1.</u></p>	
Karst system / subterranean waters	<p>Karst system / subterranean waters</p> <p><u>A karst system and/or subterranean waters is outstanding where the following is met:</u></p>	
		<p><u>New Zealand Geopreservation Inventory.</u> <u>Expert evidence.</u></p>

	<ul style="list-style-type: none"> • <u>At least one matter in List A; and</u> • <u>All matters in List B.</u> <p>List A</p> <p>a. <u>A specialised high quality experience present in few other water bodies in the region.</u></p> <p>b. <u>Wild and/or scenic values that contain distinctive qualities which ‘stand out’ and are present in few other water bodies in the Otago region.</u></p> <p>c. <u>Unique or unusual scientific or ecological values present in few other water bodies in the region.</u></p> <p>List B</p> <p>a. <u>International or national reputation and/or high non-local usage.</u></p> <p>b. <u>Evidence if provided in support of outstanding values.</u></p>	
<p><u>Natural character</u></p>	<p><u>Natural character</u></p> <p><u>Water body has outstanding natural character values where it meets all matters in List A.</u></p> <p>List A</p> <p>a. <u>The water body is highly natural with little or no human modification, including to the flow, bed and riparian margins, water quality, flora and fauna, within a largely indigenous landscape.</u></p> <p>b. <u>The natural character values are conspicuous, eminent and/or remarkable in the context of the Otago Region.</u></p> <p>c. <u>Evidence is provided in support of outstanding natural character values by way of an expert assessment or independent evidence sources.</u></p>	<p><u>Expert evidence.</u></p>
<p><u>Geology</u></p>	<p><u>Geology</u></p>	

	<p><u>Water body has outstanding geology values where it meets all matters in List A.</u></p> <p>List A</p> <p>a. <u>The geomorphological, geological or hydrological feature is dependent on the water body's condition and functioning.</u></p> <p>b. <u>The geology values are conspicuous, eminent and/or remarkable in the context of the Otago Region.</u></p> <p>c. <u>The geomorphological, geological or hydrological feature is classified as Class A on the New Zealand Geopreservation Inventory.</u></p> <p>d. <u>Evidence is provided in support of outstanding geology values by way of an expert assessment or independent evidence sources.</u></p>	<p><u>New Zealand Geopreservation Inventory.</u></p> <p><u>Expert evidence.</u></p>
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9.7.5. LF-FW-08 – Fresh water (excluding clause (5))

9.7.5.1. Introduction

843. As notified, LF-FW-08 reads:

LF-FW-08 – Fresh water

In Otago's *water bodies* and their catchments:

- (1) the health of the wai supports the health of the people and thriving mahika kai,
- (2) water flow is continuous throughout the whole system,
- (3) the interconnection of *fresh water* (including *groundwater*) and *coastal waters* is recognised,
- (4) native fish can migrate easily and as naturally as possible and taoka species and their habitats are protected, and

...

844. LF-FW-08 sets out the outcomes sought for all freshwater, reflecting the policy direction outlined in the LF-WAI section for Te Mana o te Wai. Sub-clause (5) reflects the direction in Policy 8 of the NPSFM.

845. This section does not evaluate the submissions on clause (5) as these relate to outstanding water bodies and are addressed above in section 9.7.4.

9.7.5.2. Submissions

846. QLDC, DCC, Waitaki DC, and Ballance support LF-FW-O8 and seek to retain it as notified.⁵⁶¹ Fish and Game and John Highton generally support the intent of LF-FW-O8, but request amendments to provide for introduced species. Specifically, they seek to protect and restore trout and salmon “insofar as this is consistent with that of indigenous species”.⁵⁶² Fish and Game also seeks the insertion of an additional clause as follows:⁵⁶³

(A1) the health, well-being and resilience of water bodies is prioritised,

847. Beef + Lamb and DINZ consider that LF-FW-O8 restates matters that are captured more specifically in LF-VM. They seek to delete the objective in its entirety or if retained, deleted in part.⁵⁶⁴ They consider clauses (3) and (5) could be retained but seek amendments to clause (5) replacing “protected” with “sustained” to recognise the living character of waterbodies and allow for adaptation and change.

848. Federated Farmers, OWRUG, Horticulture NZ, and NZ Pork seek to amend clause (1) to include reference to the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.⁵⁶⁵ The submitters consider this better reflects the purpose of the RMA and better aligns with the NPSFM.

849. Greenpeace and Wise Response both seek similar amendments to clause (1) which require reference to restoring the important values of rivers within given timeframe.⁵⁶⁶ Specifically, Greenpeace refer to legislated timeframes,⁵⁶⁷ and Wise Response stipulate 2035.⁵⁶⁸

850. There are many submission points on clause (2). Federated Farmers and Meridian seek its deletion as they consider the matter is addressed in other parts of LF-FW-O8, particularly clause (3).⁵⁶⁹ Federated Farmers submits that in some places surface water flow naturally disconnects and that it is not always hydrologically possible or representative of a system, particularly where there are ephemeral and intermittent waterways. Meridian considers the clause is unclear.

⁵⁶¹ 00138.063 QLDC, 00139.097 DCC, 00140.018 Waitaki DC, 00409.010 Ballance

⁵⁶² 00231.053 Fish and Game, 00014.053 John Highton

⁵⁶³ 00231.053 Fish and Game

⁵⁶⁴ 00237.032 Beef + Lamb and DINZ

⁵⁶⁵ 00239.083 Federated Farmers, 00235.093 OWRUG, 00236.063 Horticulture NZ, 00240.023 NZ Pork

⁵⁶⁶ 00407.035 Greenpeace, 00509.074 Wise Response

⁵⁶⁷ 00407.035 Greenpeace

⁵⁶⁸ 00509.074 Wise Response

⁵⁶⁹ 00239.083 Federated Farmers, 00306.033 Meridian

851. A number of submitters seek clarification of clause (2) to support implementation, and particularly what is meant by “the whole system”.⁵⁷⁰ PWCG, OWRUG, Waitaki Irrigators and Lloyd McCall submit that the objective should recognise that water flows are naturally variable and will not always be continuous.⁵⁷¹ To address this variability, the submitters seek different but similar amendments to clarify that the clause applies to natural systems:

- OWRUG seeks to include at the end of the clause “where this is consistent with the natural system”;⁵⁷² and
- PWCG and Lloyd McCall seek to reference “natural” water flows.⁵⁷³
- Waitaki Irrigators seeks to amend the clause as follows:⁵⁷⁴

(2) where possible, connected water flow systems are maintained-is continuous throughout catchments-the whole system.

852. Greenpeace considers clause (2) as currently drafted is inadequate to provide for ecosystems and habitats at low flows and seeks the following amendment:⁵⁷⁵

water flow is continuous throughout the system and at volumes and levels that support ecosystem health, habitat, and resilience as measured by biological thresholds and ecological and biological community health

853. Moutere Station considers clause (2) potentially encourages the movement of non-native fish at the detriment of non-migratory indigenous species and seeks to include “where appropriate” for clarification.⁵⁷⁶

854. Kāi Tahu ki Otago considers LF-FW-O8 generally achieves Te Mana o te Wai but seeks that clause (4) also requires sustaining the habitats of taoka species as well as protecting them.⁵⁷⁷

855. Moutere Station seeks to insert “where appropriate” at the beginning of the clause.⁵⁷⁸ The submitter considers that not all native fish need to migrate, and this clause could provide for the movement of non-native fish at the detriment of non-migratory indigenous species.

856. Contact submits that “as easily and as naturally as possible” is a very high threshold and that arguably achieving natural migration is possible in every circumstance by removing all physical barriers. Contact notes that it facilitates the passage of tuna and kanakana up

⁵⁷⁰ 00207.002 PWCG, 00213.019 Waitaki Irrigators, 00235.093 OWRUG, 00306.033 Meridian, 00509.074 Wise Response, 00213.019 Waitaki Irrigators

⁵⁷¹ 00207.002 PWCG, 00235.093 OWRUG, 00239.083 Federated Farmers, 00213.019 Waitaki Irrigators, 00319.002 Lloyd McCall

⁵⁷² 00235.093 OWRUG

⁵⁷³ 00235.093 OWRUG, 00207.002 PWCG, 00319.002 Lloyd McCall

⁵⁷⁴ 00213.019 Waitaki Irrigators

⁵⁷⁵ 00407.036 Greenpeace and 1259 supporters

⁵⁷⁶ 00026.007 Moutere Station

⁵⁷⁷ 00226.179 Kāi Tahu ki Otago

⁵⁷⁸ 00026.008 Moutere Station

and down the Clutha Mata-au via trap and transfer which it considers is not “natural.” The submitter also notes that the direction in the NPSFM is that fish passage is “maintained, or improved” by in-stream structures. Contact seeks to amend the objective so that it either seeks to provide the best practicable option for fish passage within Otago’s water bodies or achieves consistency with the NPSFM with regard to fish passage requirements.⁵⁷⁹

857. Fish and Game seeks consistency with Policies 9 and 10 of the NPSFM by inserting an additional clause (4a) which provides specifically for the protection and restoration of habitats for trout and salmon while considering those habitats of indigenous species.⁵⁸⁰
858. A number of submitters consider LF-O8 requires additional clause(s) to address a variety of outstanding issues discussed below.⁵⁸¹
859. DOC considers the objective fails to address a number of significant issues, including those related to indigenous fish.⁵⁸² DOC raises concern that in some cases providing for fish passage is inappropriate, as it can pose risk to indigenous species, an issue which is echoed by Moutere Station.⁵⁸³ DOC seeks to insert the following new clauses:⁵⁸⁴

- (6) fresh water sustains indigenous aquatic life,
- (7) non-diadromous galaxiid and Canterbury mudfish populations and their habitats are protected
- (8) habitats that are essential for specific components of the life cycle of indigenous species, including breeding and spawning grounds, juvenile nursery areas, important feeding areas and migratory and dispersal pathways, are protected
- (9) changes to flows, fish passage or fish barriers only occur where doing so would not enable the passage of undesirable fish species where it is considered necessary to prevent their passage in order to protect desired fish species, their life stages, or their habitats.

860. As an alternative to the relief sought above, DOC suggests the insertion of clause 3.26 of the NPSFM.
861. AWA, OWRUG, and Federated Farmers submit that the pORPS as currently drafted does not adequately address the issue of water allocation and seek to include an additional clause.⁵⁸⁵ The clauses sought are:

⁵⁷⁹ 00318.012 Contact

⁵⁸⁰ 00231.053 Fish and Game

⁵⁸¹ 00239.083 Federated Farmers, 00407.037 Greenpeace, 00502.005 AWA, 00509.074 Wise Response, 00235.093 OWRUG, 00230.084 Forest and Bird, 00137.070 DOC

⁵⁸² 00137.070 DOC

⁵⁸³ 00137.070 DOC, 00026.008 Moutere Station

⁵⁸⁴ 00137.070 DOC

⁵⁸⁵ 00502.005 AWA

- AWA: The taking and use of the wai supports cultural, social and economic wellbeing and drives better environmental outcomes including reduced GHG emissions in line with regional targets.⁵⁸⁶
- OWRUG and Federated Farmers: Sustainable and integrated water allocation and abstraction supports food and fibre production.⁵⁸⁷

862. Greenpeace seeks an additional clause as follows:⁵⁸⁸

(6) restore and enhance degraded freshwater ecosystems through management of adverse activities and inputs

863. Wise Response seeks to include two additional clauses to clarify and extend the objective to other important processes:⁵⁸⁹

(6) all land is assessed, managed, and supported as “whole systems” to promote overall resilience, biophysical capacity and collective wellbeing

(7) soils and cover are managed to maximise the natural capture, retention and infiltration of rainfall within the land and minimise the need for fertiliser.

864. For clarity, Forest and Bird seeks the insertion of a new clause (6) to ensure the visions for catchments in Otago referenced in LF-VM-O1 to LF-VM-O6 are achieved:⁵⁹⁰

(6) the objectives set out in LF-VM-O1 – LF-VM-O6 are achieved.

9.7.5.3. Analysis

865. I do not consider that the new clause sought by Fish and Game is necessary as LF-WAI-P1 already requires this and applies alongside LF-FW-O8. I do not recommend accepting this submission point.

866. Beef + Lamb and DINZ consider most of this objective is already provided for in other provisions. I agree that there is similarity. In my view, LF-WAI sets out the strategic direction and underlying principles for the management of freshwater and land in Otago. That section sits ‘above’ the remainder of the chapter for that reason. The freshwater visions in LF-VM set out the specific long-term outcomes sought in Otago’s FMUs. The provisions in LF-FW and LF-LS then set a region-wide ‘bar’ to support those visions. In general, the freshwater visions set more ambitious targets for FMUs because of their longer timeframes. The LF-FW and LF-LS objectives are therefore a subset of the wider FMU visions. I presume from the submission that the submitters seek to delete clauses (1), (2), and (4) on the basis that they are inconsistent with the freshwater visions, but it is not clear which parts of the visions the submitters consider deal with these matters. I do not recommend accepting this submission point.

⁵⁸⁶ 00502.005 AWA, 00239.083 Federated Farmers, 00235.093 OWRUG

⁵⁸⁷ 00239.083 Federated Farmers, 00235.093 OWRUG

⁵⁸⁸ 00407.037 Greenpeace

⁵⁸⁹ 00509.074 Wise Response

⁵⁹⁰ 00230.084 Forest and Bird

867. In my view, LF-FW-O8 describes the outcome sought for Otago’s water bodies and catchments, rather than the uses of those resources. I do not agree with Federated Farmers, OWRUG, Horticulture NZ, or NZ Pork that including referencing to providing for the social, economic, and cultural well-being of people and communities better aligns with the NPSFM, which clearly requires (in the objective) prioritising the health and well-being of water bodies and freshwater ecosystems, and the health needs of people, above other uses. I do not recommend accepting these submissions. I note that these submissions mirror a general theme in submissions on the pORPS which is addressed in section 1.4.1 of *Report 1: Introduction and General themes*. For the same reason, I do not recommend accepting the submission points by AWA seeking a new clause (6) regarding the take and use of water or by Federated Farmers and OWRUG seeking a new clause regarding allocation and abstraction for food and fibre production.
868. I do not consider it is necessary to include timeframes in clause (1) as sought by Greenpeace and DOC. The freshwater visions in LF-VM set out the longer-term objectives to be achieved in each FMU. The NPSFM requires developing environmental outcomes for each value identified in an FMU and setting target attribute states for every attribute identified for a value.⁵⁹¹ Every target attribute state must specify a timeframe for its achievement or, if it has already been achieved, the state it will be maintained at from a specific date.⁵⁹² In my view, that is the appropriate level of detail at which to determine more specific timeframes. For this reason, and because the submitters have not provided any evidence to support their relief sought, I do not recommend accepting these submission points.
869. Clause (2) requires that water flow is continuous throughout the whole system. This wording has been drawn from the feedback provided by Kāi Tahu ki Otago during consultation on the freshwater visions:⁵⁹³

“2. The waterways are restored to the way they were when tūpuna knew them:

- *Water flow is continuous through the whole system*
- *There is no further modification of river shape or braided stretches*
- *Existing wetlands are restored and the area of wetlands is increased.”*

870. In that same document, Kāi Tahu ki Otago describes the interconnectedness across a catchment:⁵⁹⁴

“The mauri of different parts of the water body system cannot be separated. The water body must be treated as a whole system, with all tributaries and riparian areas, including their natural characteristics and indigenous biodiversity, contributing to the vision.”

⁵⁹¹ Causes 3.9 to 3.11, NPSFM.

⁵⁹² Clause 3.11(5)(a), NPSFM.

⁵⁹³ Appendix 6 (p.2) of the Section 32 Evaluation Report for the pORPS 2021.

⁵⁹⁴ Appendix 6 (p.1) of the Section 32 Evaluation Report for the pORPS 2021.

871. While this feedback focused on freshwater visions, I consider that it provides context to LF-FW-O8(2). I understand that clause (2) is expressing a desire for water flow to be uninterrupted, for example by damming or diversions of water in main stems, tributaries, or riparian areas or by other modifications, so that the ‘system’ of the water body remains connected, ki uta ki tai. This links closely with LF-WAI-P3(1) which requires recognising and sustaining the connections and interactions between water bodies (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral) when managing the use of freshwater and land.
872. Rivers in particular travel long distances and often have many connections with other water bodies, for example aquifers, wetlands, lakes, and lagoons. Over years of human use, many water bodies have been modified to such an extent that those natural connections have been degraded or lost. This affects the condition of the water which is seen as a reflection of the people. In my opinion, this clause describes an outcome that is fundamental to the mauri of the wai and the relationship of Kāi Tahu with wai.
873. That said, I acknowledge that some submitters have found the wording unclear and questioned the meaning of the terms used. I understand the intent of the amendments sought by submitters, but I am not convinced that any of the amendments sought provide the certainty required. In particular, what is “natural” or not is debatable and often difficult to determine for modified water bodies. The amendments sought by Greenpeace introduce a number of terms that require further explanation, such as “biological thresholds” and “ecological and biological community health”. I do not consider these assist with clarifying the intent or application of the clause.
874. I do not agree with the interpretation of clause (2) by Moutere Station as fish movement is addressed in clause (4). I do not recommend accepting this submission point.
875. I consider the amendments sought by Waitaki Irrigators better express the intended meaning, but the term “systems” has been raised by other submitters as being unclear. Based on my understanding of Kāi Tahu values, which I acknowledge is not my area of expertise, I consider replacing clause (2) as notified with the following wording may address the concerns of Waitaki Irrigators and others in a way that preserves most of the original intent of the provision:
- Within catchments (ki uta ki tai), artificial interruption of water flow is minimised to the smallest degree reasonably practicable.
876. The submitters on this clause may wish to confirm in their evidence whether this amended wording satisfies their concerns.
877. I agree with Kāi Tahu ki Otago that it would be consistent with LF-WAI-P3(3) to require sustaining habitats as well as protecting them. I recommend accepting this submission point.
878. I consider that the nuance in providing for fish passage as identified by Moutere Station is not appropriate for an objective. The wording of clause (4) is not ‘absolute’ in my view, which allows for these types of nuances to be teased out in lower order provisions. I note that clause 3.26 of the NPSFM contains a mandatory policy for insertion into regional plans which provides the level of detail sought by the submitter regarding the

circumstances when it is appropriate to restrict fish passage. That clause sets out a detailed programme of work on providing for fish passage that is targeted at regional plans. In my opinion, it is appropriate for this objective to take a higher-level approach to the management of this activity. I do not recommend accepting the submission point by Moutere Station.

879. In response to the submission point by Contact, I agree that “trap and transfer” methods of fish passage are not “natural” but note that the clause requires migration be “as natural as possible” which recognises that there will be situations where natural solutions are not possible. I note that clause 3.1(2)(a) of the NPSFM states that nothing in Part 3 prevents a local authority from adopting more stringent measures than required by the NPSFM. RMIA-WAI-I1 outlines how barriers to fish passage have contributed to significant negative impacts on Kāi Tahu, leading to material and cultural deprivation for Kāi Tahu ki Otago. This is particularly due to the impacts on mahika kai and associated mātauraka. For these reasons, I do not recommend accepting the submission point by Contact.
880. I have addressed a suite of submission points by Fish and Game regarding the habitats of trout and salmon in section 1.4.9 of *Report 1: Introduction and general themes*. In summary, in response to those submissions, I have recommended deleting the word “native” from clause (4) of LF-FW-O8 so that it applies to the habitats of trout and salmon. I therefore recommend accepting in part the submission points by Fish and Game and John Highton.
881. In my opinion, new clause (6) sought by DOC is unnecessary as this is already provided through LF-WAI-P3 and particularly LF-WAI-P3(3). In response to other submissions on this objective, I have recommended including reference to sustaining habitats in clause (4) which I consider also addresses the clause sought by DOC.
882. I understand that there are a number of non-diadromous galaxiids that are endemic to, or predominantly occur in, the Otago region including some that are threatened.⁵⁹⁵ I do not dispute the importance of protecting those species or their habitats. However, I consider it is probable that these populations and their habitats are likely to be identified through the process set out in the ECO chapter for identifying significant natural areas, noting that one of the criteria for identification is that an area supports “an indigenous species that is threatened, at risk, or uncommon, nationally or within an ecological district or coastal marine biogeographic region”.⁵⁹⁶ There are therefore a number of provisions in the ECO chapter that will assist with protecting the habitats of these species, in addition to the broader policy direction in LF-WAI and LF-FW. In addition, “threatened species” is a compulsory value in the NPSFM and therefore must be identified as a value in all of Otago’s FMUs, meaning environmental outcomes and target attribute states need to be set. I consider that level of detail is best developed at the regional plan level rather than in the pORPS.

⁵⁹⁵ Statement of Evidence of Dr Nicholas Rex Dunn on behalf of the Director-General of Conservation dated 5 February 2021 (prepared for Plan Change 7 to the Regional Plan: Water for Otago)

⁵⁹⁶ APP2 – Significance criteria for indigenous biodiversity

883. New clauses (8) and (9) as sought by DOC include a high degree of detail that I consider is generally not appropriate for an objective. Additionally, the content of new clause (8) is within the scope of existing provisions (particularly LF-WAI-P3, LF-FW-O8(4), and LF-FW-P7(2)). I have previously discussed the wider work programme regarding fish passage that is required by the NPSFM and my view that the nuances of that are best addressed outside the pORPS. I do not recommend accepting the submission point by DOC.
884. I consider that the direction regarding restoration and enhancement in the new clause sought by Greenpeace is already set out in LF-FW-P7(1). The remainder of the new clause is unclear and open to interpretation (for example, what an “adverse activity” is). I do not recommend accepting this submission point.
885. I do not consider that either of the new clauses sought by Wise Response are necessary. Integrated management is addressed through LF-WAI-P3, LF-VM-O7, and LF-LS-P16. Management of land and soil is addressed through the provisions of the LF-LS section. I do not recommend accepting this submission point.
886. I agree with Forest and Bird that LF-FW-O8 is relevant to achieving the visions in LF-VM, however I do not consider that a specific cross-reference is necessary. All of the provisions in the LF-FW and LF-LS sections will assist with achieving the visions, not only this objective, and the ordinary principles of interpretation apply (i.e. all relevant provisions are read together). I do not recommend accepting the submission point by Forest and Bird.
- 9.7.5.4. Recommendation
887. I recommend amending LF-FW-O8 to:

LF-FW-O8 – Fresh water

In Otago’s *water bodies* and their catchments:

- (1) the health of the wai supports the health of the people and thriving ~~ma~~ *ma*hika kai⁵⁹⁷,
- (2) ~~water flow is continuous throughout the whole system,~~ within catchments (ki uta ki tai), artificial interruption of water flow is minimised to the smallest degree reasonably practicable,⁵⁹⁸
- (3) the interconnection of *fresh water* (including groundwater) and *coastal waters* is recognised,
- (4) ~~native~~⁵⁹⁹ fish can migrate easily and as naturally as possible and taoka species and their habitats are protected and sustained,⁶⁰⁰ and

⁵⁹⁷ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁵⁹⁸ 00207.002 PWCG, 00213.019 Waitaki Irrigators, 00235.093 OWRUG, 00306.033 Meridian, 00509.074 Wise Response, 00213.019 Waitaki Irrigators

⁵⁹⁹ 00231.053 Fish and Game

⁶⁰⁰ 00226.179 Kāi Tahu ki Otago

...

9.7.6. LF-FW-09 – Natural wetlands

9.7.6.1. Introduction

888. As notified, LF-FW-09 reads:

LF-FW-09 – Natural wetlands

Otago's natural wetlands are protected or restored so that:

- (1) mahika kai and other *mana whenua* values are sustained and enhanced now and for future generations,
- (2) there is no decrease in the range and diversity of indigenous ecosystem types and habitats in *natural wetlands*,
- (3) there is no reduction in their ecosystem health, hydrological functioning, *amenity values*, extent or *water* quality, and if degraded they are improved, and
- (4) their flood attenuation capacity is maintained.

889. Lf-FW-09 sets out the vision to protect and restore the values of natural wetlands, responding in part to the requirements of Policy 6 of the NPSFM. The values of natural wetlands may have been identified through the NOF process or any of the following: ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, amenity. This objective applies to the broader category of natural wetlands rather than the narrower sub-category of natural inland wetlands specified in Policy 6, meaning the direction applies to natural wetlands that may also be partly located within the coastal marine area.

9.7.6.2. Submissions

890. QLDC, DCC, Forest and Bird, Te Waihangā, and Ballance support LF-FW-09 and seek to retain it as notified.⁶⁰¹

891. Federated Farmers considers this objective is different to the direction in the NPSFM and a duplication of provisions located in *ECO – Ecosystems and indigenous biodiversity* and seeks its deletion.⁶⁰² Similarly, Beef + Lamb and DINZ highlight parallels with objectives which provide for wetlands within the LF-VM – *Visions and management* section and seek clarification regarding which provisions prevail.⁶⁰³

892. DOC seeks to replace “or” with “and” in the chapeau so that natural wetlands are required to be both protected and restored. The submitter considers the wording, as notified, is inconsistent with Policy 6 of the NPSFM which requires that wetland values

⁶⁰¹ 00138.064 QLDC, 00139.098 DCC, 00230.085 Forest and Bird, 00321.032 Te Waihangā, 00409.011 Ballance

⁶⁰² 00239.084 Federated Farmers

⁶⁰³ 00237.033 Beef + Lamb and DINZ

are protected and their restoration is promoted.⁶⁰⁴ DOC also submits that ephemeral wetlands can have significant natural and biodiversity values but are not always recognised as wetlands so should be specifically referenced in the chapeau for the avoidance of doubt.⁶⁰⁵

893. Beef + Lamb and DINZ seek unspecified amendments to clause (1) to clarify what needs to be enhanced, to what level, and what the end point of enhancement is.⁶⁰⁶
894. Fish and Game considers that the order of clause (2) may be misinterpreted as meaning that “habitats” refers only to “indigenous habitats” and therefore seeks to move “habitats” to before “indigenous ecosystem types.”⁶⁰⁷ Beef + Lamb and DINZ also seek clarification about what “the range” (of indigenous ecosystem types and habitats) means in clause (2).⁶⁰⁸ Toitū Te Whenua seeks amendments to improve alignment with the NPSFM which they consider is intended to improve overall water quality, not simply prevent its decrease. The submitter seeks to delete “there is no decrease” from clause (2) and instead require that the range and diversity of indigenous ecosystem types and habitats in natural wetlands are enhanced.⁶⁰⁹ To better contextualise the objective, Fulton Hogan seeks to include “across the region” at the end of clause (2).⁶¹⁰
895. Beef + Lamb and DINZ seek that clause (3) identifies an end state for improvement but does not specify the amendments sought. The submitters also consider that wetlands do not need to be aesthetically pleasing and that reference to amenity values, which the submitters consider to be purely anthropocentric, should be deleted.⁶¹¹ Blackthorn, Trojan, and Wayfare also seek to remove reference to amenity values as they consider these unnecessary to the protection of wetlands.⁶¹²
896. For the same reasons as the relief sought to clause (2), Toitū te Whenua seeks to delete “there is no reduction” from the beginning of clause (3) and instead require that the ecosystem health, hydrological functioning, amenity values, extent, and water quality of natural wetlands are enhanced.⁶¹³ As with clause (2), Fulton Hogan considers the objective needs to be contextualised and seeks the following amendments to (3):⁶¹⁴

(3) ~~there is no reduction in their~~ regionally, wetland ecosystem health, hydrological functioning, amenity values, and extent or water quality is maintained, and if degraded ~~they are~~ is improved, and...

⁶⁰⁴ 00137.071 DOC

⁶⁰⁵ 00137.071 DOC

⁶⁰⁶ 00237.033 Beef + Lamb and DINZ

⁶⁰⁷ 00231.054 Fish and Game

⁶⁰⁸ 00237.033 Beef + Lamb and DINZ

⁶⁰⁹ 00101.034 Toitū Te Whenua

⁶¹⁰ 00322.019 Fulton Hogan

⁶¹¹ 00237.033 Beef + Lamb and DINZ

⁶¹² 00119.009 Blackthorn Lodge, 00206.030 Trojan, 00411.042 Wayfare

⁶¹³ 00101.034 Toitū Te Whenua

⁶¹⁴ 00322.019 Fulton Hogan

897. Blackthorn, Trojan, and Wayfare submit that some small reduction in ecosystem health and amenity values could be appropriate and highlight the examples provided for in the NPSFM (such as infrastructure). The submitters seek to amend the reference to “no discernible reduction”.⁶¹⁵

898. Kāi Tahu ki Otago considers the objective generally gives effect to the NPSFM and provides for the relationship of Kāi Tahu with wai māori, but seeks the following amendments to clauses (3) and (4) to improve clarity:⁶¹⁶

(3) there is no reduction in their ecosystem health, hydrological functioning, amenity values, extent or water quality, and if these have been degraded, they are improved, and

(4) their flood attenuation and water storage capacity is maintained.

899. DOC submits that the objective fails to recognise the importance of wetlands to mobile species and seeks to include a new clause (5):⁶¹⁷

(5) the provision of habitat for mobile species such as waterfowl and rails is maintained.⁶¹⁸

900. Greenpeace seeks to add the following new text but does not provide any reasons:⁶¹⁹

Restore and enhance degraded wetlands through management of adverse activities and inputs such as synthetic nitrogen fertiliser and intensive farming.

901. It is unclear whether the submitter intends this to replace LF-FW-09 in its entirety or if it is to be a new subclause.

9.7.6.3. Analysis

902. I agree with Federated Farmers that LF-FW-09 differs from Policy 6 of the NPSFM, but I do not consider this is problematic. The pORPS is required to give effect to the NPSFM which does not necessarily require reproducing the text of the NPSFM. In my opinion, the outcomes sought by this objective are consistent with the NPSFM. It is not clear which provisions in the *ECO – Ecosystems and indigenous biodiversity* chapter the submitter considers duplicate the content of this objective. I do not recommend accepting this submission point.

903. Beef + Lamb and DINZ have not identified the parts of the objectives in the LF-VM section that they consider already provide for wetlands, so it is difficult to provide a specific response. In my opinion, achieving the objectives in LF-FW will assist with achieving (in the longer term) the objectives in LF-VM. While both are sets of objectives to be achieved, they operate on different timescales. I do not consider that there is inconsistency to address and therefore do not recommend accepting this submission point.

⁶¹⁵ 00119.009 Blackthorn Lodge, 00206.030 Trojan, 00411.042 Wayfare

⁶¹⁶ 00226.180 Kāi Tahu ki Otago

⁶¹⁷ 00137.071 DOC

⁶¹⁸ 00137.071 DOC

⁶¹⁹ 00407.039 Greenpeace and 1259 supporters

904. I disagree with DOC that the NPSFM requires protecting and restoring wetlands. As stated in the submission by DOC, Policy 6 requires:

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

905. In my opinion, promoting restoration is less stringent than requiring restoration and the latter is not required by the NPSFM. Policies LF-FW-P9 and P10 provide additional direction on what “protection” and “restoration” mean and, in line with the NPSFM, in the latter case uses the qualifier “where possible”. I also note that restoration will not always be required – some wetlands will already meet the outcomes sought by this objective. I do not recommend accepting this part of the submission point by DOC.

906. The definition of “natural wetland” used in the pORPS (and adopted from the NPSFM) relies on the definition of “wetland” in the RMA:

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

907. I consider the reference to “intermittently wet areas” clearly anticipates wetlands that are not permanently wet, including ephemeral wetlands, and therefore additional reference in this objective is unnecessarily. I do not recommend accepting this part of the submission by DOC.

908. I do not consider that the level of specificity sought by Beef + Lamb and DINZ regarding the “end point” of enhancement or the “level” of enhancement in clause (1) is necessary, as that is the role of plans. Clause 3.4(2)(a) of the NPSFM requires ORC to work collaborative with, and enable, tangata whenua to identify any Māori freshwater values (in addition to mahinga kai) that apply to any FMU or part of an FMU in the region. In my opinion, that is part of implementing the NOF which is a regional plan exercise. I do not recommend accepting this submission point.

909. I understand the concerns raised in the submission by Fish and Game regarding a potential narrowing of scope by referring only to indigenous habitats, which may host an array of indigenous and exotic species within them. While I agree that exotic species can support indigenous species (for example, by providing habitat), I am also aware that lowland wetlands in Otago, which are most vulnerable to degradation, face pressure from the invasion of exotic grasses and herbs (Wildlands, 2021, p. 12). Over 90% of drained freshwater wetlands in New Zealand are now in grasslands (Wildlands, 2021). I am not convinced that the amendment sought by Fish and Game would result in the same outcome currently described by the objective and consider that, in the context of the threats to natural wetlands, there is good reason for the objective to require no decrease in the range and diversity of indigenous habitats. I do not recommend accepting this submission point.

910. The dictionary definition of “range” includes:⁶²⁰

⁶²⁰ Merriam Webster, retrieved from <https://www.merriam-webster.com/dictionary/range>

1 a (1) a series of things in a line

...

1 b an aggregate of individuals in one order

...

6 a the space or extent included, covered, or used

911. On this basis, I agree with Beef + Lamb and DINZ that it is not clear what the term “range” in clause (2) is referring to. Given the clause already refers to diversity, which would cover the variation in ecosystem types and habitats, in my opinion the term “range” was intending to refer to the spatial element, or (6 a) in the definition above. I agree with Beef + Lamb and DINZ that for consistency with the NPSFM, “extent” is preferable and recommend accepting this part of the submission point.

912. I consider that the amendments sought by Toitū te Whenua to clause (2) would introduce uncertainty into the provision. The management direction is contained in the chapeau (“...wetlands are protected or restored so that...”) with the clauses describing the desired outcomes. Amending the provision as sought by Toitū te Whenua would remove the description of the outcome and instead repeat part of the management direction. I do not recommend accepting this submission point.

913. The chapeau of the objective begins “Otago’s natural wetlands are...”. I do not agree with Fulton Hogan that further contextualisation is necessary given that the objective already states it is focused on Otago’s natural wetlands. I consider the amendment sought attempts to apply the sub-clauses on a regional basis, rather than on a water body basis. I do not consider that this type of “unders and overs” approach gives effect to Policy 6 of the NPSFM or LF-WAI-O1. I do not recommend accepting this submission point.

914. As LF-FW-O9 is an objective in a regional policy statement, I do not consider it is necessary for the exact ‘end point’ to be determined in the manner suggested by Beef + Lamb and DINZ in clause (3). Policy LF-FW-P10 provides additional direction on achieving this part of the objective by setting out the purpose of restoration and the actions to be taken. In terms of specific ‘end points’, I consider that is a matter for the regional plan to determine. I do not recommend accepting this submission point.

915. “Amenity values” are defined in section 2 of the RMA as follows:

***Amenity values** means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*

916. On this basis, I do not agree with Beef + Lamb and DINZ that a reference to “amenity values” in clause (3) is a reference only to how “aesthetically pleasing” a wetland is. Further, Policy LF-FW-P9 requires protecting natural wetlands by avoiding a reduction in their values or extent. The term “loss of values” is defined in the pORPS as follows (my emphasis added):

has the same meaning as in clause 3.21(1) of the National Policy Statement for Freshwater Management 2020 (as set out in the box below) and in this RPS also

refers to natural wetlands in relation to a natural inland wetland or river, means the wetland or river is less able to provide for the following existing or potential values:

- a. any value identified for it under the NOF process; or*
- b. any of the following, whether or not they are identified under the NOF process:*

- i. ecosystem health*
- ii. indigenous biodiversity*
- iii. hydrological functioning*
- iv. Māori freshwater values*
- v. amenity*

917. I consider that the amenity values of wetlands are therefore a relevant consideration and should not be deleted as sought by Beef + Lamb and DINZ, Blackthorn, Trojan, and Wayfare.

918. For the same reasons as I have set out in relation to clause (2), I do not recommend accepting the submission point by Toitū te Whenua on clause (3). I consider the amendment sought would reduce the clarity of the provision. Similarly, for the same reasons as in clause (2), I do not recommend accepting the submission by Fulton Hogan. As with clause (2), I consider the amendments sought have the potential to invite an “unders and overs” approach to wetland management at the regional level, which was not the intent of the provision.

919. I agree with Blackthorn, Trojan, and Wayfare that the NPSFM does allow for a loss of values in certain circumstances, which is reflected in LF-FW-P9. Although the wording of LF-FW-O9(2) reflects the language in Policy 6 of the NPSFM, which is that there is “no further loss of extent of natural inland wetlands”, this is muddled somewhat by the mandatory policy set out in clause 3.22 which contains exceptions to that requirement. In my view, between Policy 6 and clause 3.22, the NPSFM allows for some loss of extent in limited circumstances. I consider that is implemented through LF-FW-O9 and LF-FW-P9 in a similar way to Policy 6 and clause 3.22 of the NPSFM. However, I do not consider it is helpful for an objective to describe an outcome that is not implemented through the policies and therefore consider that an amendment is necessary to LF-FW-O9 to reflect the direction in LF-FW-P9. I am not convinced that “discernible” is an appropriate substitute and prefer “minimal” which I consider has a more well-understood meaning. I recommend accepting the submission points by Blackthorn, Trojan, and Wayfare in part.

920. I consider the amendment sought by Kāi Tahu ki Otago to clause (3) improves the grammar and clarity of the provisions and recommend accepting this submission point. Similarly, I agree that clause (4) should be amended to include water storage capacity as wetlands play an important role in the storage of water generally, not only in flood conditions. This is also important for their hydrological functioning.

921. I do not agree with DOC that the objective fails to recognise the importance of wetlands to mobile species. In particular, clauses (2) and (3) set out a range of matters and values

that support the health of wetlands generally, including the habitat they provide to species (mobile or not). Wetlands are important habitat for a number of species which are not identified specifically in this objective and I do not consider it is necessary to single out mobile species in the way sought by this submitter. I do not recommend accepting this submission point.

922. LF-FW-O9 is an objective. The purpose of objectives is to state what is to be achieved through the resolution of a particular issue. The amendments sought by Greenpeace are actions, which are more appropriately located in policies. The submitter has also not provided any reasoning for the amendment. I do not recommend accepting this submission point.

9.7.6.4. Recommendation

923. I recommend amending LF-FW-O9 to:

LF-FW-O9 – Natural wetlands

Otago's natural wetlands are protected or restored so that:

- (1) ~~māhika kai~~ māhika kai⁶²¹ and other *mana whenua* values are sustained and enhanced now and for future generations,
- (2) there is ~~no~~ minimal⁶²² decrease in the ~~range~~ extent⁶²³ and diversity of indigenous ecosystem types and habitats in *natural wetlands*,
- (3) there is ~~no~~ minimal⁶²⁴ reduction in their ecosystem health, hydrological functioning, *amenity values*, extent or *water quality*, and if these have been⁶²⁵ degraded they are improved, and
- (4) their flood attenuation and water storage⁶²⁶ capacity is maintained.

9.7.7. LF-FW-O10 – Natural character

9.7.7.1. Introduction

924. As notified, LF-FW-O10 reads:

LF-FW-O10 – Natural character

The natural character of *wetlands*, *lakes* and *rivers* and their margins is preserved and protected from inappropriate subdivision, use and development.

⁶²¹ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁶²² 00119.009 Blackthorn, 00206.030 Trojan, 00411.042 Wayfare

⁶²³ 00237.033 Beef + Lamb and DINZ

⁶²⁴ 00119.009 Blackthorn, 00206.030 Trojan, 00411.042 Wayfare

⁶²⁵ 00226.180 Kāi Tahu ki Otago

⁶²⁶ 00226.180 Kāi Tahu ki Otago

9.7.7.2. Submissions

925. Seven submitters, including QLDC, DCC and Kāi Tahu ki Otago support LF-FW-O10 and seek it be retained as notified.⁶²⁷
926. Beef + Lamb and DINZ submit that this provision simply restates the RMA and should add clarity and substance. The submitters consider the objective should clarify what “inappropriate” means and seek to amend this provision in favour of a hierarchy for addressing effects on natural character in rivers, lakes, and wetlands similar to the NZCPS or Horizons One Plan, but do not provide specific wording.⁶²⁸
927. Te Waihanga submits that the objective and associated policies do not clearly explain that nationally or regionally significant infrastructure that has a functional or operational need to be located in an area is not “inappropriate” for the purposes of this objective. Like Beef + Lamb and DINZ, the submitter seeks that clarity is provided on what “inappropriate” means but does not seek specific wording.⁶²⁹

9.7.7.3. Analysis

928. In my view, objectives are not the appropriate provision in which to determine the matters sought by the submitters and clarity on the direction is provided by LF-FW-P13. I am unsure what relief is sought by Beef + Lamb and DINZ in relation to an effects management hierarchy, or which provision of the NZCPS or Horizons One Plan they are referring to. I do not recommend accepting these submission points.

9.7.7.4. Recommendation

929. I recommend retaining LF-FW-O10 as notified.

9.7.8. LF-FW-P7 – Fresh water

9.7.8.1. Introduction

930. As notified, LF-FW-P7 reads:

LF-FW-P7 – Fresh water

Environmental outcomes, attribute states (including target attribute states) and limits ensure that:

- (1) the health and well-being of *water bodies* is maintained or, if *degraded*, improved,
- (2) the habitats of indigenous species associated with *water bodies* are protected, including by providing for fish passage,

⁶²⁷ 00138.065 QLDC, 00139.099 DCC, 00201.013 CODC, 00226.181 Kāi Tahu ki Otago, 00230.086 Forest and Bird, 00314.022 Transpower, 00315.030 Aurora Energy

⁶²⁸ 00237.034 Beef + Lamb and DINZ

⁶²⁹ 00321.033 Te Waihanga

(3) *specified rivers and lakes* are suitable for primary contact within the following timeframes:

(a) by 2030, 90% of *rivers* and 98% of *lakes*, and

(b) by 2040, 95% of *rivers* and 100% of *lakes*, and

(4) *mahika kai* and *drinking water* are safe for human consumption,

(5) existing *over-allocation* is phased out and future *over-allocation* is avoided, and

(6) *fresh water* is allocated within environmental limits and used efficiently.

9.7.8.2. Submissions

931. QLDC, DCC, and the Ministry of Education support LF-FW-P7 and seek it be retained as notified.⁶³⁰ Horticulture NZ seeks the deletion of LF-FW-P7 in its entirety, considering it is too generalised, specifically in relation to drinking water targets which are “unachievable and unnecessary for the health and wellbeing of water bodies and freshwater ecosystems”.⁶³¹ Beef + Lamb and DINZ seek that ORC undertakes the relevant and necessary analysis to inform this sort of regulatory instrument and, once completed, replace LF-FW-P7 with one based on an analysis of current state and costs of achievement.⁶³²

932. The Minister for the Environment highlights that the chapeau of LF-FW-P7 could be interpreted as excluding the use of environmental flows and levels as a mechanism to achieve the objectives, which is inconsistent with the NPSFM.⁶³³

933. Graymont and Ballance consider amendments to LF-FW-P7 are required to recognise and ensure environmental limits are set in consultation with those affected by the setting of environmental outcomes, attribute states and limits. Both submitters seek to amend the chapeau to refer to limits being set in consultation with Kāi Tahu and the community.⁶³⁴

934. Four submitters seek amendments to clause (1), including:

- UCAC seeks refinement of the term “if degraded, improved” to provide improved specificity and clarity,⁶³⁵
- Toitū Te Whenua seeks greater aspiration and proposes replacing “maintained or, if degraded, improved” with “maintained or enhanced”,⁶³⁶ and

⁶³⁰ 00138.066 QLDC, 00139.100 DCC, 00421.001 Ministry of Education

⁶³¹ 00236.064 Horticulture NZ

⁶³² 00237.035 Beef + Lamb and DINZ

⁶³³ 00136.006 Minister for the Environment

⁶³⁴ 00022.018 Graymont, 00409.013 Ballance

⁶³⁵ 00220.004 UCAC

⁶³⁶ 00101.035 Toitū Te Whenua

- Forest and Bird and Fish and Game seek to include reference to resilience in clause (1),⁶³⁷
- Fish and Game also seeks the following amendments to clause (1) as well as a related new clause (1b):⁶³⁸

(1) the health, ~~and~~ well-being and resilience of water bodies is ~~maintained or, if degraded, improved~~ protected and restored,

(1b) all activities related to freshwater support the health, well-being and resilience of water bodies, ...⁶³⁹

935. Several submitters request amendments to clause (2). Meridian and Trustpower raise concern regarding the alignment of clause (2) with national direction.⁶⁴⁰ Meridian considers the provision is significantly more limiting than section 6(c) of the RMA and seeks that it is amended to refer to the habitats of “significant” indigenous species.⁶⁴¹ Trustpower notes that the NPSFM acknowledges there may be circumstances where the provision of fish passage may not be required and request “where appropriate” be added to the end of clause (2).⁶⁴² Moutere Station submits that providing fish passage could cause unintended consequences to indigenous species as non-native fish movement could also occur. The submitter requests the deletion of “including by providing for fish passage” from clause (2).⁶⁴³ Toitū te Whenua submits that the expectations around “freedom for fish passage” are not clear and questions whether this includes dams as well as how ORC proposes to achieve the outcome sought.

936. Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu submit that it is not enough to protect the habitats of indigenous species but that they should also be “sustained” to ensure greater resilience.⁶⁴⁴

937. Fish and Game seeks an additional clause which provides specifically for trout and salmon and proposes the following amendment:⁶⁴⁵

(2a) the habitats of trout and salmon associated with water bodies are protected and restored, including by providing for fish passage, insofar as it is consistent with ECO-P11,

938. John Highton seeks unspecified amendments to provide for valued introduced species, the protection of their habitat, and the need for migration to maintain healthy populations.⁶⁴⁶

⁶³⁷ 00230.087 Forest and Bird, 00231.055 Fish and Game

⁶³⁸ 00231.055 Fish and Game

⁶³⁹ 00231.055 Fish and Game

⁶⁴⁰ 00306.034 Meridian, 00311.015 Trustpower

⁶⁴¹ 00306.034 Meridian

⁶⁴² 00311.015 Trustpower

⁶⁴³ 00026.009 Moutere Station

⁶⁴⁴ 00226.182 Kāi Tahu ki Otago, 00234.029 Te Rūnanga o Ngāi Tahu

⁶⁴⁵ 00231.005 Fish and Game

⁶⁴⁶ 00014.054 John Highton

939. Five submissions have been received in relation to clause (3). Wise Response seeks to amend clause (3) to require that the entire length of specified rivers and lakes and all water bodies in the Upper Lakes rohe are suitable for primary contact and free of eutrophication.⁶⁴⁷ Beef + Lamb and DINZ, Federated Farmers and OWRUG raise concern about the dates and targets identified and question the robustness of the figures. They seek a more in-depth analysis of the Section 32 Report to inform dates and targets for Otago which reflect national direction.⁶⁴⁸ OWRUG specifically seeks adjustment of figures in clause (3)(a) and (b) to 80% by 2030, and 95% by 2040,⁶⁴⁹ and similarly, Ravensdown seeks adjustment to 80% by 2030, and 90% by 2040.⁶⁵⁰

940. With regard to clause (4), PWCG and Lloyd McCall seek amendments to remove the reference to drinking water and an additional clause be inserted to provide for “existing and new drinking water sources which are safe for human consumption”.⁶⁵¹

941. Wise Response, Lynne Stewart and COES seek amendments to clause (5) to provide clarification. These amendments include:

- Identifying what substances are to be phased out,⁶⁵² and
- Specifying timeframes by which over-allocation is to be phased out,⁶⁵³

942. Greenpeace supports clause (5) with the following amendment:

(5) existing over-allocation is phased out and future over-allocation is avoided, so that ecological values are prioritised in keeping with Te Mana o te Wai.⁶⁵⁴

943. In relation to clause (6), DOC submits that by referring to “environmental limits”, the policy could encourage “managing down” to limits which would fail to give effect to the RMA and NPSFM. The submitter seeks that “limits” is replaced with “environmental flows and levels”.⁶⁵⁵

944. Fish and Game seeks amendments to clauses (5) and (6) so that they are read together to support clarification and interpretation, as well as the insertion of a new clause (5a):⁶⁵⁶

(5) existing over-allocation is phased out and future over-allocation is avoided, ~~and~~

(5a) fresh water is allocated within environmental limits and used efficiently, and

(6) discharges to freshwater are allocated within environmental limits ~~and used efficiently.~~

⁶⁴⁷ 00509.075 Wise Response

⁶⁴⁸ 00237.035 Beef + Lamb and DINZ, 00239.085 Federated Farmers, 00235.094 OWRUG

⁶⁴⁹ 00235.094 OWRUG

⁶⁵⁰ 00121.057 Ravensdown

⁶⁵¹ 00207.003 PWCG, 00319.003 Lloyd McCall

⁶⁵² 00509.075 Wise Response

⁶⁵³ 00030.020 Lynne Stewart, 00202.025 COES

⁶⁵⁴ 00407.038 Greenpeace and 1259 supporters

⁶⁵⁵ 00137.072 DOC

⁶⁵⁶ 00231.055 Fish and Game

945. The submitter considers that clause (6) does not appropriately address discharges, which are a form of allocation.

946. Te Rūnanga o Ngāi Tahu submit that as currently drafted clause (6) could be read as encouraging maximum resource use rather than encouraging allocation within limits. The following amendment is sought by Te Rūnanga o Ngāi Tahu:⁶⁵⁷

(6) allocation of fresh water is allocated within environmental limits, the amounts taken are reasonable for the proposed activity when water is used efficiently, and wastage is avoided.

947. Kāi Tahu ki Otago seeks similar amendments to the beginning of clause (6) as Te Rūnanga o Ngāi Tahu as well as a grammatical correction to clarify that “water is” used efficiently.⁶⁵⁸

948. OWRUG and Wise Response consider efficient water use is contextual.⁶⁵⁹ Wise Response seeks amendments that require a catchment approach to determining efficiency of water use.⁶⁶⁰ OWRUG seeks the following amendment and insertion of a new clause (7) to reflect the land use it is intended abstracted water is used for:⁶⁶¹

(6) fresh water is allocated within environmental limits, and ~~used efficiently.~~

(7) freshwater is used efficiently taking in to account the nature of the waterbody that water is to be taken from and the land-use activity the water will be used for.

949. A number of other submitters also seek the inclusion of additional clauses to LF-FW-P7. In relation to natural character, Lynne Stewart and COES seek the following new clause be inserted:⁶⁶²

(x) The natural character of all water bodies, where possible, should be maintained or, if degraded, restored.

950. Trustpower submits that there is no specific recognition of the value of hydroelectricity within the region, or nationally, in LF-FW-P7. The submitter considers that it is fundamental that explicit recognition of renewable electricity generation and its strategic role in achieving national climate change objectives is taken into account when implementing the NOF and to ensure consistency with the NPSREG. The following new clause is sought to be included:⁶⁶³

(7) the existing and future generation output of hydroelectric power schemes is recognised, maintained, and protected.

⁶⁵⁷ 00234.029 Te Rūnanga o Ngāi Tahu

⁶⁵⁸ 00226.182 Kāi Tahu ki Otago

⁶⁵⁹ 00235.094 OWRUG, 00509.075 Wise Response

⁶⁶⁰ 00509.075 Wise Response

⁶⁶¹ 00235.094 OWRUG

⁶⁶² 00030.019 Lynne Stewart, 00202.024 COES

⁶⁶³ 00311.015 Trustpower

951. The Fuel Companies consider that the strict “avoidance” of over-allocation does not account for the need for essential temporary construction dewatering takes which may be required in over-allocated catchments and will not necessarily be considered non-consumptive. The submitter considers there is a risk that these types of activities may be prohibited in over-allocated catchments despite not affecting the stated outcomes and limits. The submitter seeks that the policy is amended, or a new policy is included, to ensure that essential temporary construction dewatering takes necessary to facilitate operation, maintenance, upgrade, and development of infrastructure in over-allocated catchments are not prohibited.⁶⁶⁴
- 9.7.8.3. Analysis
952. I do not agree with Horticulture NZ that the provision is too generalised and note that it implements a number of requirements from the NPSFM. I do not recommend accepting this submission point.
953. It is unclear what relief Beef + Lamb and DINZ seek. Without further evidence or clarification, I do not recommend accepting this submission point.
954. I agree with the Ministry for the Environment that the lack of reference to environmental flows and levels may unintentionally limit the scope of the policy. I recommend accepting these submissions in part – I consider that the wording sought by the Minister for the Environment is appropriate but is better located before “limits” than after, as limits may apply to either quality or quantity.
955. Method LF-LW-M10 states that all the methods in the LF-WAI, LF-VM, and LF-LS sections are also relevant to LF-FW. Method LF-VM-M3(1) requires ORC to work with communities to achieve the objectives and policies in the LF-VM section, including by engaging with communities to identify environmental outcomes for Otago’s FMUs and rohe and the methods to achieve those outcomes. In my view, the relief sought by Graymont and Ballance is already provided through these provisions, therefore I do not recommend accepting those submission points.
956. The maintenance (or, if degraded, improvement) of the health and well-being of water bodies is required by Policy 5 of the NPSFM. The NOF sets out the process required to be undertaken to implement this direction and the term “degraded” is defined in the NPSFM (and replicated in the pORPS). I am unsure what type of clarity UCAC seeks but consider that implementing the NOF through the regional plan will provide clarity about the specific outcomes for water bodies. I do not recommend accepting this submission point.
957. I do not consider that the amendment sought by Toitū te Whenua improves the clarity of the clause because it does not identify in which circumstances enhancement would be required. The wording is also inconsistent with Policy 5 of the NPSFM. I do not recommend accepting this submission point.
958. I do not consider that specific reference to resilience in clause (1) is necessary as sought by Fish and Game and Forest and Bird. The clause already refers to “health and well-

⁶⁶⁴ 00510.022 The Fuel Companies

being” which I consider incorporates resilience. I note that the wording of this clause reflects the objective of the NPSFM, which expresses Te Mana o te Wai. The Environment Court has previously found that:⁶⁶⁵

“When we speak about Te Mana o te Wai we are referring to the integrated and holistic wellbeing of a freshwater body. Upholding Te Mana o te Wai acknowledges and protects the mauri of water. While mauri is not defined under the NPS-FM, ... the mauri of water sustains hauora (health): the health of the environment, the health of the waterbody and the health of the people.”

959. In my view, the health and well-being of water bodies is holistic and incorporates resilience.

960. Fish and Game also seeks to replace the ‘maintain or improve’ wording in clause (1) with ‘protect and restore’. The submission does not clearly state the reasons for this amendment. I consider the wording as notified reflects the requirements of Policy 5 of the NPSFM, which states:

“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.”

961. In my opinion, the additional clause sought by Fish and Game is already set out in LF-WAI-P1 which requires, in all management of freshwater in Otago, prioritising first the health and well-being of water bodies and freshwater ecosystems, te hauora o te wai and te hauora o te taiao. For these reasons, I do not recommend accepting this submission.

962. I understand the concern raised by Meridian but do not agree that the amendment sought is an appropriate solution. It is not clear what Meridian means by “significant indigenous species” and this is not terminology used in the RMA. I note that Policy 9 of the NPSFM requires:

“Policy 6: The habitats of indigenous freshwater species are protected.”

963. I consider aligning the terminology in clause (2) with Policy 6 would assist with addressing the concern raised by Meridian in a way that is consistent with the NPSFM. I am aware that some indigenous freshwater species are migratory, including some *Galaxiids* species found in Otago and I understand those species were intended to be captured by the references to species associated with water bodies. For the avoidance of doubt, I recommend clarifying that indigenous freshwater species includes migratory species. I recommend accepting this submission point in part.

964. Clause 3.26 in the NPSFM provides detailed direction on managing fish passage. I agree with Trustpower that the direction includes maintaining or improving fish passage, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats. The content of clause 3.26 is explicitly relevant to regional plans, not regional policy statements and contains a range

⁶⁶⁵ NZEnvC 208 [2019] *Aratiatia Livestock Limited and others vs Southland Regional Council*, Interim Decision of the Environment Court, 20 December 2019, paragraph 17.

of additional management tools for providing for fish passage. I do not consider that the wording of clause (2) is absolute – “providing for fish passage” does not, in my opinion, require enabling fish passage in every circumstance. The nuance of how provision is to occur will occur when ORC follows the process set out in clause 3.26. I do not recommend accepting this submission point.

965. As described in RMIA-WAI-I1, the loss and degradation of water resources through drainage, abstraction, pollution, and damming has resulted in material and cultural deprivation for Kāi Tahu ki Otago. The explanation of this issue notes that barriers to fish passage as a result of damming have had significant negative impacts on Kāi Tahu and these activities degrade the mauri of the wai and the habitats and species it supports, therefore also degrading mahika kai. This is also referenced in RMIA-WAI-I3 which notes that activities such as the construction of barriers to fish passage all impact on access to and use of mahika kai resources.
966. In this context, I consider it is appropriate, and consistent with the NPSFM, to include reference to providing for fish passage in clause (2). The detailed management framework, as set out in clause 3.26, is a matter to be addressed through the regional plan as directed by the NPSFM, and the required action plan. For these reasons, I do not recommend accepting the submission point by Moutere Station. Toitū te Whenua has not sought any relief and I do not consider any further clarity is necessary given that fish passage requirements will be implemented outside the pORPS. I do not recommend accepting this submission point.
967. I note that LF-WAI-P3(3) requires that an integrated management approach sustains and, wherever possible, restores the habitats of mahika kai and indigenous species, including taoka species associated with the water body. On this basis, I recommend accepting the submission point by Kāi Tahu ki Otago and Te Rūnanga o Ngāi Tahu.
968. I have addressed a suite of submission points by Fish and Game regarding the habitats of trout and salmon in section 1.4.9 of *Report 1: Introduction and general themes*. In summary, in response to those submissions, I recommend including a new clause (2A) regarding the habitats of trout and salmon. I therefore recommend accepting in part the submission points by Fish and Game and John Highton.
969. Many submitters seek to amend the swimmability targets in clause (3) or seek a more in-depth analysis of the section 32 report to inform the dates and targets. Amendments to the NPSFM in 2017 introduced national targets for the “swimmability” of specified rivers and lakes. By 2018, regional councils were required to set both interim and final regional targets so that it was clear how each region would contribute to achieving the national target. The process followed by ORC, including information about the consultation which occurred on the targets and the modelling that underpinned the analysis, is publicly available from the Council’s website.⁶⁶⁶ I do not consider any of the submitters have provided sufficient evidence to support amending the targets from what the Council formally decided on after consulting with the community. I do not recommend accepting

⁶⁶⁶ <https://www.orc.govt.nz/managing-our-environment/water/water-quality/regional-swimming-targets-for-otago>

the submission points by Beef + Lamb and DINZ, Federated Farmers, OWRUG, and Ravensdown.

970. The term “drinking water” is defined in the pORPS as:

has the same meaning as in Standard 14 of the National Planning Standards 2019 (as set out in the box below)

means water intended to be used for human consumption; and includes water intended to be used for food preparation, utensil washing, and oral or other personal hygiene.

971. In my opinion, Lloyd McCall and PWCG have misread clause (4) as requiring all water bodies to be “drinkable” which is not the case. I do not recommend accepting these submission points.

972. The extent and nature of over-allocation in Otago’s water bodies will not be known in full until the Council has developed its new regional plan containing environmental outcomes, environmental flows and levels, target attribute states, and limits on resource use. Therefore, the specific requirements for phasing out over-allocation will be determined through that process. The definition of “over-allocation” in the NPSFM (and adopted in the pORPS) is clear that the term applies to both water quality and quantity. Similarly, the timeframes for phasing out over-allocation need to consider the extent and nature of the over-allocation, as well as the duration of existing resource consents. I note that timeframes for phasing out over-allocation are required to be included in the land and water regional plan in accordance with LF-FW-M6(5)(b). As a result, I do not consider any amendments are necessary in response to the submission points by Wise Response, COES, and Lynne Stewart and do not recommend accepting these submission points.

973. I consider it is apparent from the NPSFM that the purpose of phasing out over-allocation is to ensure that environmental outcomes for FMUs can be achieved. These outcomes must be developed for each value identified within the FMU and are broader than only ecological health. For example, the other compulsory values (aside from ecosystem health) are human contact, threatened species, and mahinga kai and some of the values that must be considered are drinking water supply, transport and tauranga waka, and hydro-electric power generation. For this reason, I consider the amendment sought by Greenpeace would inappropriately limit the application of clause (5) and therefore do not recommend accepting this submission point.

974. I do not agree with DOC’s interpretation of the NPSFM. Clause 3.16(2) of the NPSFM states that environmental flows and levels must be set at a level that achieves the environmental outcomes sought for the values relating to the FMU. Clause 3.17(1) then requires “take limits” in order to meet environmental flows and levels. In my opinion, it is the take limits (or limits on resource use when used in relation to the achievement of target attribute states) that allocate resources, not the flows and levels. That said, a number of submitters have interpreted this clause differently so for clarity I recommend accepting this submission point in part and amending “environmental limits” to “limits on resource use” which is defined in the NPSFM and includes take limits as well as other types of limits.

975. I understand the issue Fish and Game raises in relation to the allocation of discharges but do not agree that clauses (5) and (6) need to be split further. In my opinion, freshwater allocation can refer to both water quality (i.e. discharges) and water quantity – this is apparent from the definition of “over-allocation” in the NPSFM, which explicitly refers to both water quantity and quality. When used in relation to quality, allocation generally refers to the assimilative capacity of the water body rather than the physical resource itself. While normally used in relation to abstraction, in my opinion efficient use is also a relevant matter for quality-related uses, such as discharges to water bodies. As with abstraction, users should be encouraged to discharge water or contaminants with the least waste. I do not recommend accepting this submission point.
976. It appears Te Rūnanga o Ngāi Tahu has also interpreted clause (6) as applying only to water quantity. As I have explained above, this is not the case. I consider that my recommended amendments in response to other submissions on this clause assist with clarifying that this clause applies to both water quantity and quality. I do not consider the other amendments sought by Te Rūnanga o Ngāi Tahu are appropriate in this context as they are focused specifically on uses that abstract water. I recommend accepting this submission point in part, insofar as it reflects the relief sought by Kāi Tahu ki Otago. I consider that the amendments sought by Kāi Tahu ki Otago clarify the application of the clause and recommend accepting this submission point.
977. I agree with OWRUG and Wise Response that what is “efficient” will depend on the circumstances and consider therefore that the regional plan is the most appropriate location for more specific direction on efficiency of use, as it is the regional plan that allows (or not) the use of water. I do not consider that the additional clause sought by OWRUG provides any additional clarity about the term “efficient use” and again consider this is a matter best addressed by the regional plan, particularly once environmental outcomes have been developed. I do not recommend accepting these submission points.
978. The policy direction on managing natural character is set out in LF-FW-P13 and P14 and I do not consider it needs to be repeated in LF-FW-P7. For this reason, I do not recommend accepting the submission points by COES and Lynne Stewart.
979. The EIT-EN section of the pORPS addresses renewable electricity generation in detail. In particular, I note that EIT-EN-P2(2) requires decisions on the allocation and use of resources (including fresh water) consider at least maintaining current generation capacity. I do not consider it is necessary to repeat this direction in the LF-FW section given that the chapters of the pORPS are to be read together. I do not recommend accepting this submission point.
980. In my opinion, the issues raised by The Fuel Companies are a matter to address through the regional plan, which will include provisions to manage dewatering. Whether LF-FW-P7 requires it or not, the NPSFM ultimately requires phasing out over-allocation and avoiding over-allocation in the future. I do not recommend accepting this submission point.
981. Meridian seeks to include a new clause in LF-WAI-P3 regarding the management of freshwater as part of New Zealand’s integrated response to climate change. I do not

consider that policy is the appropriate place for such direction and have instead recommended including the clause in LF-FW-P7 as new clause (7). My reasons for this are set out in section 9.5.7.3 of this report.

982. When considering this provision, I noted that the term “limits” is used in the chapeau but not italicised. That term is defined in the NPSFM and its definition is applicable and relevant to this provisions. I recommend italicising the term and including the definition from the NPSFM in the pORPS. In my opinion, this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.

9.7.8.4. Recommendation

983. I recommend amending LF-FW-P7 to:

LF-FW-P7 – Fresh water

*Environmental outcomes, attribute states (including target attribute states), environmental flows and levels,*⁶⁶⁷ and *limits* ensure that:

- (1) the health and well-being of *water bodies* is maintained or, if *degraded*, improved,
- (2) the habitats of indigenous freshwater species ~~associated with water bodies~~⁶⁶⁸ are protected and sustained,⁶⁶⁹ including by providing for fish passage,
- (2a) the habitats of trout and salmon are protected, including by providing for fish passage, insofar as protection is consistent with (2),⁶⁷⁰
- (3) *specified rivers and lakes* are suitable for primary contact within the following timeframes:
 - (a) by 2030, 90% of *rivers* and 98% of *lakes*, and
 - (b) by 2040, 95% of *rivers* and 100% of *lakes*, and
- (4) ~~*māhika kai*~~ *māhika kai*⁶⁷¹ and *drinking water* are safe for human consumption,
- (5) existing *over-allocation* is phased out and future *over-allocation* is avoided, and
- (6) allocation of fresh water is ~~allocated~~⁶⁷² within environmental limits on resource use⁶⁷³ and used efficiently, and

⁶⁶⁷ 00136.006 Minister for the Environment

⁶⁶⁸ 00306.034 Meridian

⁶⁶⁹ 00226.182 Kāi Tahu ki Otago, 00234.029 Te Rūnanga o Ngāi Tahu

⁶⁷⁰ 00231.055 Fish and Game

⁶⁷¹ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁶⁷² 00226.182 Kāi Tahu ki Otago

⁶⁷³ 00137.072 DOC

(7) the role of freshwater management as part of New Zealand’s integrated response to climate change is recognised.⁶⁷⁴

9.7.9. LF-FW-P8 – Identifying natural wetlands

9.7.9.1. Introduction

984. As notified, LF-FW-P8 reads:

LF-FW-P8 – Identifying *natural wetlands*

Identify and map *natural wetlands* that are:

- (1) 0.05 hectares or greater in extent, or
- (2) of a type that is naturally less than 0.05 hectares in extent (such as an ephemeral *wetland*) and known to contain threatened species.

9.7.9.2. Submissions

985. QLDC, DCC, Kāi Tahu ki Otago, and CODC support LF-FW-P8 and seek to retain it as notified.⁶⁷⁵

986. Forest and Bird supports the retention of LF-FW-P8 but notes that to give full effect to the NPSFM a method is required to ensure mapping is completed by 2030.⁶⁷⁶ The inclusion of a timeframe within the policy is also sought by Lynne Stewart and COES.⁶⁷⁷

987. PWCG and Lloyd McCall raise concern about the size of wetlands to be identified and mapped and seek amendment from 0.05 hectares to 1 hectare.⁶⁷⁸ City Forests considers the area thresholds for wetlands requiring protection outlined in the NESPF are more reasonable and achievable and seeks to replace 0.05 hectares with 0.25 hectares.⁶⁷⁹

988. DOC submits that saline wetlands should be recognised along with ephemeral wetlands.⁶⁸⁰

9.7.9.3. Analysis

989. I agree with Forest and Bird that clause 3.23(4) of the NPSFM requires mapping to occur within ten years of the commencement date of the NPSFM (being 3 September 2020). I do not consider a separate method is required to acknowledge that and recommend including the date requirement in LF-FW-P8. I recommend accepting the submission points by Forest and Bird, COES, and Lynne Stewart in part.

⁶⁷⁴ 00306.032 Meridian

⁶⁷⁵ 00138.067 QLDC, 00139.101 DCC, 00226.183 Kāi Tahu ki Otago, 00201.014 CODC

⁶⁷⁶ 00230.088 Forest and Bird

⁶⁷⁷ 00030.021 Lynne Stewart, 00202.026 COES

⁶⁷⁸ 00207.004 PWCG, 00319.004 Lloyd McCall

⁶⁷⁹ 00024.008 City Forests

⁶⁸⁰ 00137.073 DOC

990. Clause 3.23(1)(a) of the NPSFM requires regional councils to identify and map all natural inland wetlands 0.05 hectares or greater in extent. The amendments sought by PWCG, Lloyd McCall, and City Forests would not implement that requirement, therefore I do not recommend accepting those submission points.

991. I do not consider that the amendment sought by DOC is necessary. The direction in the NPSFM applies to “natural inland wetlands”, which are natural wetlands that are not in the coastal marine area. In recognition of the important connections between fresh and coastal waters, and the requirement in LF-WAI-P3(1) to manage the use of freshwater and land using an integrated approach that recognises and sustains the connections and interactions between water bodies (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral), the pORPS has deliberately used the term “natural wetlands” instead of “natural inland wetlands”. “Natural wetlands” are defined in the pORPS as:

has the same meaning as in clause 3.21 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)

means a wetland (as defined in the Act) that is not:

- a. a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or*
- b. a geothermal wetland; or*
- c. any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling*

992. In my opinion, there is nothing in the definition above that would prevent saline wetlands being identified as natural wetlands. DOC has not provided any evidence that saline wetlands are commonly naturally less than 0.05 hectares, so I do not consider that it is appropriate to highlight them as an example in the same way as ephemeral wetlands, where there is a clear reason for their size potentially fluctuating. I do not recommend accepting this submission point.

9.7.9.4. Recommendation

993. I recommend amending LF-FW-P8 to:

LF-FW-P8 – Identifying *natural wetlands*

By 3 September 2030, identify identify⁶⁸¹ and map *natural wetlands* that are:

- (1) 0.05 hectares or greater in extent, or
- (2) of a type that is naturally less than 0.05 hectares in extent (such as an ephemeral *wetland*) and known to contain threatened species.

⁶⁸¹ 00230.088 Forest and Bird

9.7.10. LF-FW-P9 – Protecting natural wetlands

9.7.10.1. Introduction

994. As notified, LF-FW-P9 reads:

LF–FW–P9 – Protecting *natural wetlands*

Protect natural wetlands by:

(1) avoiding a reduction in their values or extent unless:

(a) the *loss of values* or extent arises from:

- (i) the customary harvest of food or resources undertaken in accordance with tikaka Māori,
- (ii) restoration activities,
- (iii) scientific research,
- (iv) the sustainable harvest of sphagnum moss,
- (v) the construction or maintenance of *wetland utility structures*,
- (vi) the maintenance of operation of *specific infrastructure*, or *other infrastructure*,
- (vii) natural hazard works, or

(b) the Regional Council is satisfied that:

- (i) the activity is necessary for the construction or upgrade of *specified infrastructure*,
- (ii) the *specified infrastructure* will provide significant national or regional benefits,
- (iii) there is a *functional need* for the *specified infrastructure* in that location,
- (iv) the *effects* of the activity on indigenous *biodiversity* are managed by applying either ECO–P3 or ECO–P6 (whichever is applicable), and
- (v) the other *effects* of the activity (excluding those managed under (1)(b)(iv)) are managed by applying the *effects management hierarchy*, and

(2) not granting resource consents for activities under (1)(b) unless the Regional Council is satisfied that:

- (a) the application demonstrates how each step of the *effects management hierarchies* in (1)(b)(iv) and (1)(b)(v) will be applied to the *loss of values* or extent of the *natural wetland*, and
- (b) any consent is granted subject to conditions that apply the *effects management hierarchies* in (1)(b)(iv) and (1)(b)(v).

9.7.10.2. Submissions

995. QLDC, Waka Kotahi, and Transpower support LF-FW-P9 and seek to retain it as notified.⁶⁸² Meridian seeks to retain clause (1)(b) as notified but seeks amendments to clause (1)(a).⁶⁸³ John Highton strongly supports the intent of this policy but cautions that total exclusion of stock may in some cases be counterproductive to the outcomes sought for wetlands.⁶⁸⁴ Several submitters, including Oceana Gold, Forest and Bird and Aurora Energy recognise the policy seeks to give effect to the NPSFM and the NESF.⁶⁸⁵ However many seek amendments to support alignment.
996. DCC opposes the policy as drafted and seeks its removal from the pORPS as the submitter considers it does not align with national direction.⁶⁸⁶ DCC interprets clause 3.22 of the NPSFM to only be applicable to regional plan(s) and considers the inclusion of this policy creates the likelihood of duplication in future.
997. Forest and Bird considers the NESF provides greater detail on how to achieve policy outcomes and seeks an additional clause to cross-reference the NESF where it applies.⁶⁸⁷ Contact seeks unspecified amendments to ensure offsetting and compensation limits for wetlands are consistent with the NSPFM.⁶⁸⁸
998. Oceana Gold seeks unspecified amendments to recognise that changes to the NESF are imminent and will provide a broader scope of opportunity for activities such as mining to access the effects management hierarchy.⁶⁸⁹
999. As an alternative to their specific relief below, Network Waitaki, and PowerNet seek other relief to include electricity sub-transmission and distribution activities.⁶⁹⁰

Clause (1)(a)

1000. Clause (1)(a) lists the exceptions to the direction to avoid a reduction in the values or extent of natural wetlands. Many submitters seek amendments to clause (1)(a).
1001. Alluvium and Stoney Creek and Danny Walker and others interpret the NPSFM to allow for general consideration of the loss of extent and therefore seek deletion of the word “their” in clause (1) to reflect this.⁶⁹¹

⁶⁸² 00138.068 QLDC, 00305.022 Waka Kotahi, 00314.023 Transpower

⁶⁸³ 00306.036 Meridian

⁶⁸⁴ 00014.055 John Highton

⁶⁸⁵ For example, 00115.015 Oceana Gold, 00230.089 Forest and Bird, 00315.031 Aurora Energy

⁶⁸⁶ 00139.102 DCC

⁶⁸⁷ 00230.089 Forest and Bird

⁶⁸⁸ 00318.013 Contact

⁶⁸⁹ 00115.015 Oceana Gold

⁶⁹⁰ 00320.015 Network Waitaki, 00511.015 PowerNet

⁶⁹¹ 00016.006 Alluvium and Stoney Creek, 00017.005 Danny Walker and others,

1002. Wise Response seeks to amend clause (1)(a) so that all activities excluded are “permitted”.⁶⁹² The submitter states that all activities must be legitimate and consistent with the relevant planning provisions.

1003. Greenpeace, Yellow-eyed Penguin Trust and Toitū te Whenua raise concern that clause (1)(a) excludes certain activities.⁶⁹³ The submitters consider the impact of these activities is unlikely to be less than minor and seek the deletion of the following clauses:

- (iii) scientific research,⁶⁹⁴
- (iv) the sustainable harvest of sphagnum moss,⁶⁹⁵ and
- (vi) the maintenance or operation of specific infrastructure or other infrastructure.⁶⁹⁶

1004. Aurora Energy seeks to retain clause (1)(a)(vi).⁶⁹⁷ Blackthorn Lodge, Trojan, and Wayfare seek to include reference to construction as well as maintenance and operation of specified infrastructure in this clause.⁶⁹⁸

1005. Several submitters, including Blackthorn Lodge, Trojan, and Kāi Tahu ki Otago highlight a typographic error in clause 1(a)(vi) and seek to correct “specific” to “specified”.⁶⁹⁹ Kāi Tahu ki Otago also seek to correct “of” to “or” in clause (1)(a)(vi).⁷⁰⁰

1006. The term “natural hazard works” is used in clause (1)(a)(vii) and is defined in the *Interpretation* section of the pORPS, adopting the definition of this term from the NESF. “Other infrastructure” is used in clause (1)(a)(vi) and the pORPS again adopts the definition of this term from the NESF. Ravensdown seeks to delete both definitions on the basis that they are considerably narrower than the general public’s understanding of the terms.⁷⁰¹ In contrast, Aurora Energy and Te Waihanga seek to retain the definition of “other infrastructure” as notified.⁷⁰²

Clauses (1)(b) and (2)

1007. Following on from clause (1)(a), clause (1)(b) sets out a number of matters that ORC must be satisfied have been met in order for the exceptions in clause (1)(a) to be provided for.

⁶⁹² 00509.076 Wise Response Inc

⁶⁹³ 00407.040 Greenpeace and 1259 supporters, 00120.051 Yellow-eyed Penguin Trust, 00101.037 Toitū Te Whenua

⁶⁹⁴ 00407.040 Greenpeace and 1259 supporters

⁶⁹⁵ 00407.040 Greenpeace and 1259 supporters, 00120.051 Yellow-eyed Penguin Trust, 00101.037 Toitū Te Whenua

⁶⁹⁶ 00407.040 Greenpeace and 1259 supporters

⁶⁹⁷ 00315.031 Aurora Energy

⁶⁹⁸ 00119.010 Blackthorn Lodge, 00206.031 Trojan,

⁶⁹⁹ 00119.010 Blackthorn Lodge, 00206.031 Trojan, 00226.184 Kāi Tahu ki Otago, 00231.056 Fish and Game, 00306.035 Meridian, 00311.016 Trustpower, 00315.031 Aurora Energy

⁷⁰⁰ 00226.184 Kāi Tahu ki Otago

⁷⁰¹ 00121.007 Ravensdown

⁷⁰² 00315.009 Aurora Energy, 00321.007 Te Waihanga

1008. Alluvium and Stoney Creek, Danny Walker and Others, Oceana Gold, PowerNet, and Network Waitaki are concerned that LF-FW-P9 does not provide for activities which are locationally or functionally constrained, including mining, and electricity sub-transmission and distribution activities.⁷⁰³ Aurora Energy seeks to retain (1)(b)(i) and (iii).⁷⁰⁴ Oceana Gold, Aurora Energy, Network Waitaki and PowerNet seek deletion of clause (1)(b)(ii) as they believe the provision is more stringent than Regulation 45 of the NESF or any further or consequential relief to align the policy with the NESF.⁷⁰⁵ Network Waitaki and PowerNet seek to amend (1)(b)(i), (ii), and (iii) to include reference to “significant electricity distribution infrastructure” alongside specified infrastructure.⁷⁰⁶

1009. Regarding clause (1)(b)(iv), Fish and Game considers that the habitats of trout and salmon should also be provided for within LF-FW-P9 and seeks the following amendment:⁷⁰⁷

(vi) the effects of the activity on indigenous biodiversity and the habitat of trout and salmon are managed by applying ~~either~~ ECO – P3, ECO – P6 or ECO-P11 (whichever is applicable), and [sic]

1010. Blackthorn Lodge, Trojan, and Wayfare submit that the matters of assessment should be restricted to the effects of the activity on the loss of values or extent of the natural wetland and seek the following amendments:⁷⁰⁸

(1) avoiding a reduction in their values or extent unless:

...

(b) the Regional Council is satisfied that:

...

(v) the other effects of the activity on the loss of values or extent of the natural wetland (excluding those managed under (1)(b)(iv)) are managed by applying the effects management hierarchy, and

(2) not granting resource consents for activities under (1)(b) unless the Regional Council is satisfied that:

...

(b) any consent is granted subject to conditions that apply the effects management hierarchies in (1)(b)(iv) and (1)(b)(v) in respect of any loss of values or extent of the natural wetland.

⁷⁰³ 00016.006 Alluvium and Stoney Creek, 00017.005 Danny Walker and others, 00115.015 Oceana Gold, 00511.015 PowerNet, 00320.015 Network Waitaki

⁷⁰⁴ 00315.031 Aurora Energy

⁷⁰⁵ 00115.015 Oceana Gold, 00315.031 Aurora Energy, 00320.015 Network Waitaki, 00511.015 PowerNet

⁷⁰⁶ 00320.015 Network Waitaki, 00511.015 PowerNet

⁷⁰⁷ 00231.056 Fish and Game

⁷⁰⁸ 00119.010 Blackthorn Lodge, 00206.031 Trojan, 00411.043 Wayfare

1011. Fulton Hogan states that activities that have an adverse effect on natural wetlands should be able to occur provided measures are implemented to ensure the activity results in no net loss of natural wetland. The submitter seeks to include a new clause (1)(c) as an alternative to (1)(b):⁷⁰⁹

(c) the Regional Council is satisfied that:

(i) the activity will result in no net loss of natural wetland, and

(ii) not granting resource consents for activities under (1)(b) or (1)(c) unless the Regional Council is satisfied that:

1012. In addition to the above, there are submissions on the use of effects management hierarchies generally that are relevant to clauses (1)(b) and (2). These are set out in section 1.4.7 of *Chapter 1: Introduction and general themes*.

1013. There are a number of submissions on the definitions of “specified infrastructure” which is a term used in clauses (1)(b)(i) to (iii). Meridian and Queenstown Airport seek to retain the definition as notified.⁷¹⁰ Trustpower seeks to retain the definition as notified, and in particular clauses (a) and (b).⁷¹¹ Forest and Bird seeks to amend the definition as follows:⁷¹²

“in relation to freshwater, has the same meaning as in clause 3.21 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)”

1014. Ravensdown seeks to delete the definition and make consequential amendments arising from this submission point.⁷¹³ The submitter states that the term is only used within this policy and that “specified infrastructure” may have a broader definition than that used in the NPSFM.

1015. As an alternative to amending the definition of regionally significant infrastructure, Port Otago seeks to amend the definition of specified infrastructure to ensure it applies to both nationally and regionally significant infrastructure.⁷¹⁴

1016. Aurora Energy seeks to amend the definition as follows:⁷¹⁵

~~...has the same meaning as in clause 3.21 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below)~~

Means any of the following:

....

(b) regionally significant infrastructure ~~identified as such in a regional policy statement or regional plan,~~

⁷⁰⁹ 00322.020 Fulton Hogan

⁷¹⁰ 00306.008 Meridian, 00313.003 Queenstown Airport

⁷¹¹ 00311.004 Trustpower

⁷¹² 00230.015 Forest and Bird

⁷¹³ 00121.011 Ravensdown

⁷¹⁴ 00301.008 Port Otago

⁷¹⁵ 00315.011 Aurora

...

1017. The submitter states that relying on other definitions is circular and simply directs readers elsewhere.

1018. Te Waihanga requests that the definition of specified infrastructure is amended to include schools and corrections facilities and that the definition take account of nationally as well as regionally significant infrastructure.⁷¹⁶

9.7.10.3. [Analysis](#)

1019. John Highton does not seek specific relief, so I recommend accepting the submitter's support.

1020. I agree with DCC that clause 3.22 of the NPSFM applies to regional plans, however I do not consider that mirroring this direction in the pORPS creates misalignment with the NPSFM. In my opinion, it would create more misalignment to include policy direction in the pORPS that differs from the specific direction required to be included in the relevant regional plan. I appreciate that it is not ideal to restate national direction in lower order documents, however the approach in the NPSFM of stating very broad and (generally) unqualified policies as well as very specific and detailed provisions for direct inclusion in regional plans creates very limited opportunity for additional or varied policy direction at the regional policy statement level. In my view, the pORPS approach aligns with the NPSFM requirements but also clarifies how the specific direction fits within the broader pORPS framework for managing freshwater. I do not recommend accepting this submission point.

1021. I do not consider that it is necessary to include a cross-reference to the NESF. The pORPS does not contain rules so it does not have a direct interaction with the provisions of the NESF. I do not recommend accepting this submission point.

1022. I am aware that the Government consulted on potential amendments to the NESF in late 2021.⁷¹⁷ So far, the Government has not formally amended the NESF as a result. The pORPS must give effect to the NESF in its current form and I do not consider it would be efficient or effective to attempt to pre-empt potential amendments in the manner sought by Oceana Gold. I do not recommend accepting this submission point.

1023. It is unclear what alternative relief to their specific submission points is potentially sought by Network Waitaki and PowerNet. I do not recommend accepting these submission points, noting that I have addressed their specific relief below.

[Clause \(1\)\(a\)](#)

1024. The mandatory policy to be included in regional plans as directed by clause 3.22(1) of the NPSFM begins as follows (my emphasis added):

⁷¹⁶ 00321.008 Te Waihanga

⁷¹⁷ <https://consult.environment.govt.nz/freshwater/managing-our-wetlands/>

“The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where...”

1025. LF-FW-P9(1) uses the wording “avoiding a reduction in their values or extent unless...”. As I understand it, Alluvium and Stoney Creek and Danny Walker and Others consider that the wording in the NPSFM contemplates a general loss of the extent of all natural wetlands, where extent is interpreted as referring to the collective extent of all natural wetlands combined. I am not convinced this is the case and consider the wording in the NPSFM simply reflects normal grammatical conventions. I do not recommend accepting these submission points.
1026. The amendment sought by Wise Response would restrict the application of this policy, and the corresponding policy in the regional plan, only to the activities in (a) managed by permitted activity rules. I consider that would inappropriately capture these activities where they are resulting in less significant adverse effects, while excluding consented activities which are generally more likely to result in more significant adverse effects. I do not understand the reasoning provided by the submitter so am unsure whether this was the intended effect. I do not recommend accepting this submission point.
1027. The activities provided for by clause (1)(a) mirror those contained in the mandatory policy for regional plans included in clause 3.22(1) of the NPSFM. Given that that policy must be replicated in the regional plan, I do not consider there is any benefit to amending the list of activities in the pORPS. In my opinion, the mandatory policy to be included in the regional plan will prevent any amendments at the pORPS level from being implemented through the plan. For this reason, I do not recommend accepting the submissions by Greenpeace, Yellow-eyed Penguin Trust, Toitū te Whenua, Blackthorn Lodge, Trojan, and Wayfare.
1028. I agree that the typographical errors in clause (1)(a)(vi) should be corrected and recommend accepting that part of the submission points by Blackthorn, Trojan, Kāi Tahu ki Otago, Fish and Game, Meridian, Trustpower, Wayfare, and Aurora Energy.
1029. I understand that the terms “natural hazard works” and “other infrastructure” are used in the NESF in relation to regulations managing effects on natural wetlands. As this policy relates to the protection of natural wetlands, I consider that definitions drawn from the NESF are appropriate. I do not consider it would be efficient or effective for the pORPS to provide ‘more scope’ than the NESF definitions as these will override any plan provisions and therefore prevent the pORPS definition being implemented. I do not recommend accepting the submission point by Ravensdown seeking to delete the definition of this term.

[Clauses \(1\)\(b\) and \(2\)](#)

1030. The submission points by Alluvium and Stoney Creek, Danny Walker and Others, Oceana Gold, PowerNet, Aurora Energy, and Network Waitaki seek to amend this policy in ways that would make it inconsistent with clause 3.22(1) of the NPSFM. Given that this policy, verbatim, must be inserted into the relevant regional plan, I do not consider it is efficient or effective for the corresponding provision in the pORPS to be different. I am not

convinced that any amendments to LF-FW-P9 could realistically be implemented in the way I assume submitters envisage, as the direction in clause 3.22 of the NPSFM to insert the policy overrides the direction in the pORPS and will therefore inform the development of rules. For this reason, I do not recommend accepting the submission points by Alluvium and Stoney Creek, Danny Walker and Others, Oceana Gold, PowerNet, Aurora Energy, and Network Waitaki.

1031. Regarding the amendments sought by Network Waitaki and PowerNet to include reference to “significant electricity distribution infrastructure”, I note that the corresponding definition for this term has not been recommended for inclusion in the pORPS.⁷¹⁸ “Specified infrastructure” is defined in the NPSFM (and adopted in the pORPS) as including regionally significant infrastructure identified as such in a regional policy statement or regional plan. The pORPS includes a definition of regionally significant infrastructure which includes “electricity sub-transmission infrastructure” which is in turn defined as:

... electricity infrastructure which conveys electricity between energy generation sources, the National Grid and zone substations and between zone substations.

1032. It is not clear from the submissions of Network Waitaki or PowerNet which parts of electricity distribution infrastructure they consider are not already provided for through the definition of “specified infrastructure.” I do not recommend accepting these submission points.

1033. The NPSFM contains an effects management hierarchy for specific activities. The pORPS contains an effects management hierarchy for indigenous biodiversity that is, in my opinion, considerably more stringent than the effects management hierarchy in the NPSFM. It was a deliberate decision during the drafting of this policy to ensure that effects on indigenous biodiversity were managed using the more stringent hierarchies set out in the ECO chapter than the NPSFM hierarchy. This is the reason that (iv) and (v) vary from the policy as set out in clause 3.22 of the NPSFM. This was only intended to apply to the habitats of trout and salmon insofar as they are also areas of significant indigenous vegetation, significant habitats of indigenous fauna, or general indigenous biodiversity. For these reasons, I do not recommend accepting the submission point by Fish and Game.

1034. To clarify the differences between these effects managements hierarchies, it has been recommended in response to submissions on the ECO chapter to amend the relevant references to either “freshwater effects management hierarchy” or “biodiversity effects management hierarchy”. I have reflected that recommendation in LF-FW-P9(1)(b)(v) and made consequential amendments to (2)(a) and (b).

1035. I do not consider the amendments sought by Blackthorn Lodge, Trojan, and Wayfare to sub-clause (1)(b)(v) is necessary. The term “freshwater effects management hierarchy” in the sub-clause is defined in the pORPS as follows (my emphasis added):

⁷¹⁸ See section 8.5.3 of *Report 8: Energy, infrastructure, and transport*

has the same meaning as in clause 3.21 of the National Policy Statement for Freshwater Management 2020 (as set out in the box below) and in this RPS also applies to natural wetlands

in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that...

1036. In my opinion, this already achieves the outcome sought by the submitters.
1037. However, I agree with the submitters that the amendment sought to (2)(b) would reflect the wording used in (2)(a) and clarify the application of this clause. I recommend accepting in part the submission points by Blackthorn Lodge, Trojan, and Wayfare.
1038. I do not consider the amendment sought by Fulton Hogan achieves the outcome sought by the mandatory policy in clause 3.22 of the NPSFM. It is unclear what the submitter means by “no net loss of natural wetland”. The NPSFM (in Policy 6 and clause 3.22) is clear that management should concern both extent and values. I am concerned that the amendment sought would inappropriately limit decision-making to extent. The amendment sought has the potential to invite an “unders and overs” approach to wetland protection which is not the intent of the policy and does not give effect to Policy 6 of the NPSFM. I note that clause 3.22(1) requires regional councils to include the policy as drafted or words to the same effect. While I appreciate that this direction does not apply to regional policy statements, as I have discussed earlier, I do not see any benefit in setting policy in the pORPS that cannot be implemented in the regional plan. Although I understand the issues raised by Fulton Hogan, I do not consider that the amendments sought are “words to the same effect” and therefore do not recommend accepting this submission point.
1039. As a result of my recommendations relating to the use of effects management hierarchies in the pORPS set out in section 1.4.7 of *Chapter 1: Introduction and general themes*, I have recommended a number of changes to these clauses to clarify the use of this term and, in particular, differentiating between the hierarchies in the LF and ECO chapters.
1040. This policy is based on the mandatory policy for regional plans set out in clause 3.22 of the NPSFM and relies on terms that are defined in the NPSFM. For completeness, those definitions are included in the pORPS. I do not agree with Ravensdown that there is potential for “specified infrastructure” in the pORPS to be defined differently to the way it is defined in the NPSFM. The mandatory policy that LF-FW-P9 is based on must be included in regional plans and relies on definitions set out in the NPSFM. In my opinion, it would be both inefficient and ineffective for the pORPS to define these terms differently from the NPSFM and regional plans as there is no obvious way that the pORPS policy could be implemented. I do not recommend accepting the submission point by Ravensdown.
1041. I understand that the author of the *EIT* section 42A report has recommended an amendment to clarify that regionally significant infrastructure includes nationally significant infrastructure, which I consider addresses the point raised by Port Otago. I do not recommend accepting this submission point.

1042. I do not consider that the reasoning provided by Aurora Energy for moving away from the NPSFM definition is sufficient to warrant this type of inconsistency. In my view, it is also clearer for the definition to state where regionally significant infrastructure is identified to avoid confusion. I do not recommend accepting this submission point.

1043. As I have set out in response to the submission point by Port Otago, the point regarding the inclusion of nationally significant infrastructure raised by NZIC has been addressed elsewhere. The submitter has not provided any explanation as to the issue with the definition not including schools or correction facilities. Without further clarification, I do not recommend accepting this submission point.

1044. Regarding the amendment sought by Forest and Bird, I note that *Standard 14: Definitions* of the National Planning Standards require a similar clarification to that sought by the submitter where terms are used in more than one context. In this instance, specified infrastructure is only used in one context and therefore I do not consider that any further clarification is required. I do not recommend accepting the submission point by Forest and Bird.

9.7.10.4. Recommendation

1045. I recommend amending LF-FW-P9 to:

LF-FW-P9 – Protecting *natural wetlands*

Protect natural wetlands by:

(1) avoiding a reduction in their values or extent unless:

(a) the *loss of values* or extent arises from:

- (i) the customary harvest of food or resources undertaken in accordance with tikaka Māori,
- (ii) restoration activities,
- (iii) scientific research,
- (iv) the sustainable harvest of sphagnum moss,
- (v) the construction or maintenance of *wetland utility structures*,
- (vi) the maintenance ~~of~~ or⁷¹⁹ operation of ~~specific~~ specified⁷²⁰ infrastructure, or other infrastructure,
- (vii) natural hazard works, or

(b) the Regional Council is satisfied that:

- (i) the activity is necessary for the construction or upgrade of *specified infrastructure*,

⁷¹⁹ 00226.184 Kāi Tahu ki Otago

⁷²⁰ 00119.010 Blackthorn Lodge, 00206.031 Trojan, 00226.184 Kāi Tahu ki Otago, 00231.056 Fish and Game, 00306.035 Meridian, 00311.016 Trustpower, 00315.031 Aurora Energy

- (ii) the *specified infrastructure* will provide significant national or regional benefits,
- (iii) there is a *functional need* for the *specified infrastructure* in that location,
- (iv) the *effects* of the activity on indigenous *biodiversity* are managed by applying either ECO-P3 or the *effects management hierarchy (in relation to indigenous biodiversity)* in⁷²¹ ECO-P6 (whichever is applicable), and
- (v) the other *effects* of the activity (excluding those managed under (1)(b)(iv)) are managed by applying the *effects management hierarchy (in relation to natural wetlands and rivers)* in LF-FW-P13A,⁷²² and

(2) not granting resource consents for activities under (1)(b) unless the Regional Council is satisfied that:

- (a) the application demonstrates how each step of the *effects management hierarchies hierarchy (in relation to indigenous biodiversity)*⁷²³ in (1)(b)(iv) and the *effects management hierarchy (in relation to natural wetlands and rivers)* in⁷²⁴ (1)(b)(v) will be applied to the *loss of values* or extent of the *natural wetland*, and
- (b) any consent is granted subject to conditions that apply the *effects management hierarchies hierarchy (in relation to indigenous biodiversity)*⁷²⁵ in (1)(b)(iv) and the *effects management hierarchy (in relation to natural wetlands and rivers)* in⁷²⁶ (1)(b)(v) in respect of any loss of values or extent of the natural wetland.⁷²⁷

9.7.11. LF-FW-P10 – Restoring natural wetlands

9.7.11.1. Introduction

1046. As notified, LF-FW-P10 reads:

⁷²¹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷²² Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷²³ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷²⁴ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷²⁵ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷²⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷²⁷ 00119.010 Blackthorn, 00206.031 Trojan, 00411.043 Wayfare

LF-FW-P10 – Restoring *natural wetlands*

Improve the ecosystem health, hydrological functioning, *water* quality and extent of *natural wetlands* that have been degraded or lost by requiring, where possible:

- (1) an increase in the extent and quality of habitat for indigenous species,
- (2) the restoration of hydrological processes,
- (3) control of pest species and vegetation clearance, and
- (4) the exclusion of stock.

9.7.11.2. Submissions

1047. QLDC, DCC, CODC, and Kāi Tahu ki Otago support LF-FW-P10 as drafted and seek it be retained as notified.⁷²⁸

1048. Forest and Bird, Trustpower, Greenpeace, Wise Response, and Beef + Lamb and DINZ consider refinement of the chapeau of LF-FW-P10 is necessary to assist with interpretation.⁷²⁹ These amendments include:

- Deletion of “where possible”,⁷³⁰
- Replacing “where possible” with “where practicable”,⁷³¹
- Replacing “where possible” with “where technically possible”⁷³² and
- Deletion of “requiring” and replacing with “encouraging” or “supporting” to correlate with non-regulatory methods identified.⁷³³

1049. Beef + Lamb and DINZ also consider clauses (1) and (2) as currently drafted signal potentially unachievable and unreasonable environmental outcomes and therefore seek amendments to clarify how much restoration is required.⁷³⁴

1050. Regarding clause (1), Fish and Game considers the extent and quality of habitat for trout and salmon should also be provided for in a manner consistent with the NPSFM and seeks necessary amendments.⁷³⁵ Wise Response considers clause (2), should not only require restoration of wetlands for hydrological processes, but should also reference ecological processes, including re-establishing the original ground and surface water levels and fencing off from stock with buffers to control nutrients.⁷³⁶

⁷²⁸ 00138.069 QLDC, 00139.103 DCC, 00201.015 CODC, 00226.185 Kāi Tahu ki Otago

⁷²⁹ 00230.090 Forest and Bird, 00311.017 Trustpower, 00407.041 Greenpeace and 1259 supporters, 00509.077 Wise Response

⁷³⁰ 00230.090 Forest and Bird, 00407.041 Greenpeace and 1259 supporters

⁷³¹ 00311.017 Trustpower

⁷³² 00509.077 Wise Response

⁷³³ 00237.036 Beef + Lamb and DINZ

⁷³⁴ 00237.036 Beef + Lamb and DINZ

⁷³⁵ 00231.057 Fish and Game

⁷³⁶ 00509.077 Wise Response

1051. Clause (4) relates to the exclusion of stock and received five submissions.⁷³⁷ Toitū Te Whenua, Beef + Lamb and DINZ and Federated Farmers identify amendments to improve alignment with the Stock Exclusion Regulations and highlight that these regulations do not include sheep in the definition of stock.⁷³⁸

1052. Beef + Lamb and DINZ, Federated Farmers and John Highton consider it is not always necessary to exclude stock.⁷³⁹ Beef + Lamb and DINZ seek to exclude sheep or delete the provision. They also seek unspecified amendments to reflect that exclusion of stock is only required where necessary to enhance values, not as a blanket provision.⁷⁴⁰ Federated Farmers seeks amendments to clarify that the exclusion of stock is as per the Stock Exclusion Regulations.⁷⁴¹ John Highton does not seek specific amendments.

1053. Greenpeace supports the exclusion of stock but considers the policy as drafted does not go far enough and seeks the following relief:

- Amend clause (4) to “prohibit intensive grazing, phase out synthetic nitrogen fertiliser by 2024 and support regenerative-organic agriculture”, and
- Insert an additional clause to provide for “revegetation and the creation of planted buffers and margins”.⁷⁴²

9.7.11.3. Analysis

1054. As notified, LF-FW-P10 requires, where possible, a list of specific actions for restoring natural wetlands. Some submitters consider this is too “weak” and should be more directive (for example, by deleting “where possible”) while others consider this is too “strong” and should be qualified further (for example, by using “where practicable” or deleting requiring and using “encouraging” instead). Ultimately, the direction in Policy 6 of the NPSFM is that “their restoration is promoted”. I consider that the notified wording is stronger than this by making restoration mandatory unless it is not possible. I appreciate that “possible” is more stringent than other qualifiers often used in planning documents, such as “practicable”. In my experience, debates about practicability often focus on the cost implications of undertaking the action. Less attention is paid to the benefits of the action.

1055. Across New Zealand, an estimated 90 percent of wetlands have been drained since pre-human settlement, particularly those on flatter land. The latest data on wetland extent indicates that since 1996, Otago has lost more than 400 hectares of freshwater wetlands, the fifth highest regional total in the country, after Southland, West Coast, Northland, and Waikato.⁷⁴³ Wetlands are taoka for mana whenua and are sources of mahika kai as

⁷³⁷ 00014.056 John Highton, 00101.038 Toitū Te Whenua, 00237.036 Beef + Lamb and DINZ, 00239.086 Federated Farmers, 00407.041 Greenpeace and 1259 supporters

⁷³⁸ 00101.038 Toitū Te Whenua, 00237.036 Beef + Lamb and DINZ, 00239.086 Federated Farmers

⁷³⁹ 00237.036 Beef + Lamb and DINZ, 00014.056 John Highton, 00239.086 Federated Farmers

⁷⁴⁰ 00237.036 Beef + Lamb and DINZ,

⁷⁴¹ 00239.086 Federated Farmers

⁷⁴² 00407.041 Greenpeace and 1259 supporters

⁷⁴³ Data retrieved from <https://www.stats.govt.nz/indicators/wetland-area>

well as important plants such as harakeke and raupō for weaving and rongoā plants. I note that the submission by Kāi Tahu ki Otago states at [3.15]:

“The significant loss of wetlands in Otago has had devastating effects on mahika kai and indigenous biodiversity and has also affected water yield and flood behaviour. Kā Rūnaka support the provisions in the PORPS to protect remaining wetlands and reverse the degradation that has occurred. Kā Rūnaka consider this appropriately reflects the direction in the NPSFM 2020 and recognises the key role of wetlands in supporting catchment function and mahika kai.”

1056. With this context, I do not consider it is appropriate to ‘weaken’ the direction in LF-FW-P10 and therefore do not recommend accepting the submission points by Trustpower, Wise Response, or Beef + Lamb and DINZ. I do acknowledge that the actions listed will not always be possible and I consider that the policy should continue to provide for limited exceptions. On that basis, I do not recommend accepting the submission points by Forest and Bird and Greenpeace.

1057. Beef + Lamb and DINZ consider that clauses (1) and (2) “signal a return to pristine state.” I do not agree with that interpretation and consider that, taking into account the significant loss that has occurred, increasing the extent and quality of habitat for indigenous species and restoring hydrological processes are appropriate measures to take to restore the health of natural wetlands. The specific detail about how much increase or restoration is required is a matter for the regional plan to address and is better considered on a smaller spatial scale than the region-wide pORPS. I do not recommend accepting this submission point.

1058. I have addressed a suite of submission points by Fish and Game regarding the habitats of trout and salmon in section 1.4.9 of *Report 1: Introduction and general themes*. In summary, I do not recommend accepting the submission point by Fish and Game and I do not consider it is necessary, however I note I have recommended amendments to LF-FW-O8 and LF-FW-P7 to address the submitter’s concerns.

1059. I consider the outcome sought by Wise Response is provided by clauses (1) and (4) and so do not recommend accepting this submission point.

1060. I understand that some of the negative effects of stock access to wetlands are:

- Consumption of plants,
- Trampling of plants,
- Nutrient inputs and bacterial contamination from faeces and urine,
- Introduction and dispersal of seeds.

1061. However, grazing can also be beneficial – for example, as a pragmatic way to control introduced grass swards over large areas which can invade native plantings. The Stock Exclusion Regulations do not manage sheep access but do manage the access of beef cattle, dairy cattle, dairy support cattle, deer, and pigs to natural wetlands as follows:

- All stock must be excluded from any natural wetland that is identified in a regional or district plan or a regional policy statement that is operative on the commencement date of the Regulations (regulation 16),

- All stock must be excluded from any natural wetland that supports a population of threatened species as described in the compulsory value for threatened species in the NPSFM,
- All stock on low slope land must be excluded from any natural wetland that is 0.05 hectares or more.

1062. I understand that this was intended to prevent some of the more significant adverse effects of heavier stock types while providing for the benefits of lighter grazing and recognising the practical difficulties with fencing in hill country areas. This is arguably less stringent than the direction in LF-FW-P10(4) which does not provide any exclusions.

1063. I note that regulation 19 of the Stock Exclusion Regulations allows a more stringent rule in a regional plan to prevail over a provision in the regulations that relates to the same matter. I am reluctant to foreclose that opportunity through the pORPS on the evidence provided by submitters, but am aware of the potential implications raised by submitters of the notified wording. I am not inclined to recommend accepting the relief sought by Federated Farmers for this reason and consider the approach sought by Beef + Lamb and DINZ may be more appropriate as it would “qualify” the currently blunt requirement in (4). These submitters have not sought specific wording, which would assist further consideration of this point. At this stage, I do not recommend accepting the submission points by Federated Farmers or Beef + Lamb and DINZ. The submitters, particularly Beef + Lamb and DINZ, may wish to comment on this in their evidence.

1064. Intensive winter grazing and the use of synthetic nitrogen fertiliser are activities managed under the NESF. Restrictions of the type sought by Greenpeace would be more appropriately included in a regional plan which has rules. I do not consider that it would be effective to support regenerative-organic agriculture as a form of wetland restoration. In my view, revegetation and the creation of planted buffers and margins are already captured by clauses (1) and (2). I do not recommend accepting this submission point.

9.7.11.4. [Recommendation](#)

1065. I recommend retaining LF-FW-P10 as notified.

9.7.12. [LF-FW-P11 – Identifying outstanding water bodies and LF-FW-P12 – Protecting outstanding water bodies](#)

1066. These provisions are addressed in section 9.7.4 of this report.

9.7.13. [LF-FW-P13 – Preserving natural character](#)

9.7.13.1. [Introduction](#)

1067. As notified, LF-FW-P13 reads:

LF–FW–P13 – Preserving natural character

Preserve the natural character of *lakes* and *rivers* and their *beds* and margins by:

- (1) avoiding the *loss of values* or extent of a *river*, unless:

- (a) there is a *functional need* for the activity in that location, and
- (b) the *effects* of the activity are managed by applying:
 - (i) for *effects* on indigenous *biodiversity*, either ECO-P3 or ECO-P6 (whichever is applicable), and
 - (ii) for other effects, the effects management hierarchy,
- (2) not granting resource consent for activities in (1) unless Otago Regional Council is satisfied that:
 - (a) the application demonstrates how each step of the *effects management hierarchies* in (1)(b) will be applied to the *loss of values* or extent of the *river*, and
 - (b) any consent is granted subject to conditions that apply the *effects management hierarchies* in (1)(b),
- (3) establishing environmental flow and level regimes and *water* quality standards that support the health and well-being of the *water body*,
- (4) wherever possible, sustaining the form and function of a *water body* that reflects its natural behaviours,
- (5) recognising and implementing the restrictions in Water Conservation Orders,
- (6) preventing the impounding or control of the level of Lake Wanaka,
- (7) preventing modification that would reduce the braided character of a *river*, and
- (8) controlling the use of *water* and *land* that would adversely affect the natural character of the *water body*.

9.7.13.2. Submissions

1068. There are over 40 submission points on this provision, with four seeking to retain it as notified.⁷⁴⁴ Fish and Game seeks to amend the title of the policy to “Preserving natural character and instream values” to recognise the values of a river do not always fall neatly into natural character.⁷⁴⁵

1069. Forest and Bird submits that the policy as notified lacks provision for the instream values of wetlands and seeks to include reference to the instream values of wetlands, or wetlands and lakes, in the chapeau and clauses (1) and (2).⁷⁴⁶

⁷⁴⁴ 00017.006 Danny Walker and others, 00138.072 QLDC, 00139.106 DCC, 00016.008 Alluvium and Stoney Creek

⁷⁴⁵ 00231.058 Fish and Game

⁷⁴⁶ 00230.092 Forest and Bird

1070. A number of submitters are concerned about the provision for activities with a functional need to locate in rivers. COES and Lynne Stewart seek the following amendments but do not provide reasoning:⁷⁴⁷

Preserve and where possible enhance the natural character of lakes and rivers and their beds and margins by:

- (1) avoiding the loss of values or extent of a river, unless:
 - (a) there is a functional need for the activity in that location that justifies the adverse effect being created, and ...

1071. Wise Response considers that functional need is a relative term and requires judgement depending on a range of factors and seeks the following amendments:⁷⁴⁸

- (1) avoiding the loss of values or extent of a river, unless:
 - (a) ~~there is~~ a functional need has been demonstrated to the satisfaction of the ORC for the ~~that~~ activity in that location, and ...

1072. Toitū Te Whenua similarly considers the “functional need” of an activity does not adequately provide for the preservation of Otago’s waterways and seeks that functional need is only applied at a level of regional or national significance and importance.⁷⁴⁹ This is supported by Transpower and Waka Kotahi who, while generally supportive of this clause, highlight the operational needs of infrastructure, as well as functional needs, must be recognised and provided for.⁷⁵⁰ OWRUG considers it appropriate cross-reference EIT-INF-P13, as it provides direction for locating and managing effects of infrastructure in areas of high or outstanding natural character.⁷⁵¹

1073. Contact and Oceana Gold raise concern about clause (1)(b), in particular with regards to the effects management hierarchy.⁷⁵² The submitters consider the cross-reference to ECO-P3 and ECO-P6 are likely to prove unmanageable for several development proposals and ultimately avoidance of effects will be the only option available. The submitters seek the following amendments to reference the effects management hierarchy in line with the NPSFM:⁷⁵³

- (1) avoiding the loss of values or extent of a river, unless:
 - ...
 - (b) the effects of the activity are managed by applying:
 - (i) for effects on indigenous biodiversity, either ECO-P3 or ECO-P6 (whichever is applicable), and

⁷⁴⁷ 00202.027 COES, 00030.022 Lynne Stewart

⁷⁴⁸ 00509.079 Wise Response

⁷⁴⁹ 00101.039 Toitū Te Whenua

⁷⁵⁰ 00314.025 Transpower, 00305.024 Waka Kotahi

⁷⁵¹ 00235.096 OWRUG

⁷⁵² 00318.015 Contact, 00115.014 Oceana Gold

⁷⁵³ 00318.015 Contact, 00115.014 Oceana Gold, 00313.011 Queenstown Airport

(ii) ~~for other effects,~~ the effects management hierarchy, ...

1074. Similarly, Queenstown Airport seeks unspecified amendments to ensure that regionally significant infrastructure is appropriately provided for.⁷⁵⁴
1075. Trojan, Wayfare, and Blackthorn Lodge acknowledge that the effects management hierarchy does not apply to lakes and consider the hierarchy is not appropriate to apply to all effects, for example general landscape character and amenity values. They seek to include specific reference to rivers in clause (1)(b)(ii) to clarify that the effects management hierarchy only applies to rivers and make a consequential amendment to clause (2)(b).⁷⁵⁵
1076. Fish and Game seeks to amend clause (1) (b)(i) so that the effects on the habitats of trout and salmon are managed in accordance with a new ECO-P11 sought by the submitter.⁷⁵⁶
1077. In relation to clause (2), DOC states that the natural character of waterbody margins could be affected by land use consents issued by district councils and submits that as currently drafted, this clause is limited to resource consents sought from ORC only.⁷⁵⁷ DOC therefore seeks amendments to clause (2) to remedy this.
1078. Amendments to clause (3) have been sought by six submitters.⁷⁵⁸ Fonterra seeks clarification regarding the term “water quality standards” and submits that this might include defining the term as including target attribute states set under the NPSFM or other numerical or narrative standards that describe the outcome set by a regional plan or national regulation.⁷⁵⁹
1079. Federated Farmers considers the policy conflates the setting of environmental flows and levels with natural character and considers this matter deserves its own objectives and policies. This is echoed by OWRUG. Both submitters seek to delete clause (3) and Federated Farmers seeks to replace it with the following policy:⁷⁶⁰
- Set environmental flow regimes within Otago lakes and rivers in accordance with the FMU objectives and the NOF limit setting process in Appendix 1 of the National Policy Statement for Freshwater Management 2020.
1080. OWRUG submits that some activities, such as those related to infrastructure, may be functionally and locationally constrained and considers avoidance of adverse effects may be inappropriate. The submitter seeks to include a new clause (3) cross-referencing EIT-INF-P13 in order to apply that policy to managing the effects of infrastructure.⁷⁶¹

⁷⁵⁴ 00313.011, 00313.012 Queenstown Airport

⁷⁵⁵ 00206.034 Trojan, 00411.046 Wayfare, 00119.012 Blackthorn

⁷⁵⁶ 00231.058 Fish and Game

⁷⁵⁷ 00137.074 DOC

⁷⁵⁸ 00206.034 Trojan, 00235.096 OWRUG, 00239.089 Federated Farmers, 00411.046 Wayfare, 00213.038 Fonterra, 00231.058 Fish and Game

⁷⁵⁹ 00213.038 Fonterra

⁷⁶⁰ 00239.089 Federated Farmers, 00235.096 OWRUG

⁷⁶¹ 00235.096 OWRUG

1081. Trojan and Wayfare suggest that flow within rivers is the key variable for most other processes that occur within a river and seek the following amendment:
- (3) establishing environmental flow and level regimes and water quality standards that support the health and well-being of the water body, acknowledging that environmental flow and level regimes may change over time due to climate change.⁷⁶²
1082. Fish and Game seeks relief that considers the resilience of water bodies in addition to their well-being and requests amendments to clause (3) accordingly.⁷⁶³
1083. In relation to clause (4), Contact Energy submits that the policy seeks to sustain (or restore) the form and function of a water body “wherever possible” which the submitter considers is self-defeating as it will always be possible to achieve this by avoiding the activity.⁷⁶⁴ The submitter seeks to delete clause (4). Conversely, Fish and Game considers “where possible” is too uncertain and seeks to delete the phrase.⁷⁶⁵
1084. Moutere Station opposes clause (4) on the basis that it poses a risk to the indigenous Central Otago Roundhead Galaxias population in the area but does not seek specific relief.⁷⁶⁶
1085. There are no submissions on clause (5) and only one on clause (6). WAI Wanaka seeks to amend clause (6) by including “complying with the requirements of the Lake Wānaka Preservation Act (1973)”.⁷⁶⁷
1086. Blackthorn Lodge, Trojan, and Wayfare consider some modification of braided river character may be appropriate, particularly if that modification is associated with activities which avoid or mitigate risk to people’s health and safety or is associated with significant infrastructure. They seek the following amendments:⁷⁶⁸
- (7) preventing modification that would permanently reduce the active braided character of a river, unless the modification is necessary to avoid or mitigate risk to people’s health and safety, and
1087. This is echoed by several other individual submitters who highlight that existing communities may need protection from natural hazard risks that requires modification of braided river.⁷⁶⁹ Those submitters seek to either delete clause (7) or amend it to allow

⁷⁶² 00206.034 Trojan, 00411.046 Wayfare

⁷⁶³ 00231.058 Fish and Game

⁷⁶⁴ 00318.015 Contact

⁷⁶⁵ 00231.058 Fish and Game

⁷⁶⁶ 00026.010 Moutere Station

⁷⁶⁷ 00222.018 WAI Wanaka

⁷⁶⁸ 00206.034 Trojan, 00411.046 Wayfare, 00119.012 Blackthorn Lodge

⁷⁶⁹ 00011.001 David van der Zwet, 00012.001 Stuart Liddicoat, 00103.002 Alistair Angus *et al.*, 00028.001 Kelly Ann Sharpe, 00029.001 Toby William Montague Sharpe, 00214.001 Dawn Thompson, 00215.002 Chris Thompson, 00216.001 Dwayne Terry, 00217.001 Pete Reid, 00308.002 Sonya Porteous, 00418.001 Danelle Jones, 00012.001 Andrew Richard Howson, 00011.001 Emese Erica Todi

for the modification of braided river character if it is required to protect existing communities from natural hazard risk.

1088. Beef + Lamb and DINZ consider not all activities need to be controlled and seek that clause (8) is amended as follows:⁷⁷⁰

(8) ~~controlling the use of water and land and water that would adversely affect the~~ have a significant effect on natural character or a more than minor effect on high natural character of the water body.

1089. Moutere Station submits that the adoption of a rules-based approach to restrict activities in clause (8) may lead to outcomes opposite to those intended but does not seek specific relief.⁷⁷¹

1090. Kāi Tahu ki Otago considers there is limited direction for the management of river and lake margins, which they consider are important contributors to natural character. The submitter seeks the following new clause:⁷⁷²

(9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity, reduce sedimentation of water bodies and support improved functioning of catchment processes,

1091. Aurora Energy generally supports the policy, but highlights that river and lake beds, and their riparian margins, often provide the location for new electricity distribution assets, many of which may not be able to locate elsewhere, therefore seeks the following:⁷⁷³

(9) despite (1) – (8), in the case of infrastructure the effects of the activity are managed by the effect's management hierarchy (other matters) in accordance with EIT – INF – P13.

1092. Rayonier seeks clarity about the activities controlled in the margins of waterbodies and considers the provision should be subject to the NESPF controls.⁷⁷⁴

1093. John Highton seeks general amendments which allow for the maintenance of the Waitaki riverbed that includes maintenance of natural character and braiding.⁷⁷⁵

1094. In addition to the above, there are submissions on the use of effects management hierarchies generally that are relevant to clauses (1)(b) and (2). These are set out in section 1.4.7 of *Chapter 1: Introduction and general themes*.

9.7.13.3. Analysis

1095. I agree with Fish and Game that the direction in LF-FW-P13 is wider than only natural character and that including “instream-values” in the title appropriately reflects the

⁷⁷⁰ 00237.039 Beef + Lamb and DINZ

⁷⁷¹ 00026.011 Moutere Station

⁷⁷² 00226.187 Kāi Tahu ki Otago

⁷⁷³ 00315.033 Aurora Energy

⁷⁷⁴ 00020.011 Rayonier

⁷⁷⁵ 00014.057 John Highton

scope of the policy. However, I do not consider that beds and margins have “in-stream values”. I recommend accepting this submission point in part and making consequential amendments so that the chapeau refers to the natural character and instream values of lakes and rivers but only the natural character of their beds and margins.

1096. In my opinion, the natural character of wetlands is managed under LF-FW-P9. That policy requires protecting natural wetlands and focuses primarily on avoiding reductions in their values or extent, both of which contribute to natural character. For this reason, I do not consider reference to wetlands in LF-FW-P13 is necessary and do not recommend accepting the submission point by Forest and Bird.
1097. I do not consider that the amendments sought by COES, Lynne Stewart, or Wise Response improve the clarity of the provision. “Functional need” is a defined term and councils will need to assess, in each case, whether the clause applies to an activity. I do not recommend accepting these submission points.
1098. The wording of clause (1) is taken from the mandatory policy set out in clause 3.24(1) of the NPSFM. Given that policy must be included into regional plans, I do not consider there is any benefit in widening the scope or seeking to apply the policy differently in the pORPS as it is unlikely this could be implemented in the regional plan. For this reason, I do not recommend accepting the submission points of Toitū te Whenua, Transpower, Waka Kotahi, or OWRUG.
1099. As I have explained previously, the NPSFM contains an effects management hierarchy for specific activities and the pORPS contains an effects management hierarchy for indigenous biodiversity that is, in my opinion, considerably more stringent than the effects management hierarchy in the NPSFM. It was a deliberate decision during the drafting of this policy to ensure that effects on indigenous biodiversity were managed using the more stringent hierarchies set out in the *ECO* chapter than the NPSFM hierarchy. The relief sought by Contact and Oceana Gold would, in my opinion, broaden the scope of the exception set out in sub-clause (1)(a) in a way that I am not convinced could be carried through to the regional plan. For that reason, I do not recommend accepting these submission points.
1100. To clarify the differences between these effects management hierarchies, it has been recommended in response to submissions on the *ECO* chapter to amend the relevant references to either “freshwater effects management hierarchy” or “biodiversity effects management hierarchy”. I have reflected that recommendation in LF-FW-P13(1)(b)(ii) and made consequential amendments to (2)(a) and (b).
1101. I acknowledge the issue raised by Queenstown Airport, however in the absence of specific relief sought I am unsure what amendments would satisfy the submitter’s concern. At this stage, I do not recommend accepting this submission point.
1102. I do not consider the amendments sought by Blackthorn Lodge, Trojan, and Wayfare are necessary. Clause (1) is clear that it only applies to rivers and the definition of “effects management hierarchy” also reiterates that it applies only to natural wetlands and rivers. I do not recommend accepting these submission points.

1103. I understand that the new policy ECO-P11 sought by Fish and Game is not recommended for inclusion by the author of that part of this report. Accordingly, I do not recommend its inclusion in LF-FW-P13(1) and therefore do not recommend accepting this part of the submission point.
1104. I agree with DOC that clause (2) as notified is limited to recourse consent applications made under regional plans. This reflects the wording of clause 3.24(3) of the NPSFM which explicitly applies only to regional plans and decision-making by regional councils. Section 75(4)(b) of the RMA states that a district plan must not be inconsistent with a regional plan for any matter specified in section 30(1), which includes the control of the use of land for the purpose of maintaining and enhancing the quality of water in water bodies and coastal water, and the ecosystems in those waters. In my opinion, it is appropriate for district and regional council decision-making on resource consent applications to be consistent in this context given the overlap of functions and therefore recommend accepting the submission point by DOC.
1105. As a result of my recommendations relating to the use of effects management hierarchies in the pORPS set out in section 1.4.7 of *Chapter 1: Introduction and general themes*, I have recommended a number of changes to clauses (1)(b) and (2) to clarify the use of this term and, in particular, differentiating between the hierarchies in the LF and ECO chapters.
1106. LF-FW-P13(1)(b)(i) and (ii) generally mirrors LF-FW-P9(1)(b)(iv) and (v) however I note that LF-FW-P9(1)(b)(v) specifically states that it excludes effects managed under (iv) whereas that clarification is not included in LF-FW-P13(1)(b)(ii). In my view, it would avoid any potential confusion to include that clarification which I consider is implicit in the provision as worded anyway. In my opinion, this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.
1107. In relation to LF-FW-P9(2)(b), Blackthorn Lodge, Trojan, and Wayfare have sought to clarify the application of the effects management hierarchy. I have recommended accepted in part those submissions and including clarification in (2)(b). Given that LF-FW-P13(2)(b) mirrors LF-FW-P9(2)(b), I consider that as a consequential amendment the same change should be made in this policy for consistency.
1108. In my experience, the term “water quality standards” is a commonly used term that is generally well-understood. The NPSFM sets out in detail the requirements of the NOF process and I do not consider it is necessary to repeat that in this policy or in a supporting definition. I do not recommend accepting the submission point by Fonterra.
1109. I agree with Federated Farmers that the setting of environmental flows and levels needs to consider more than just natural character and consider that the amendment I have recommended to LF-FW-P7 reflects this by clarifying that the policy applies to the setting of environmental flows and levels in the same way as target attribute states. I do not consider that deleting clause (3) is appropriate. Flows and levels are a critical part of the natural character of a water body and should be recognised as such. The new policy sought by Federated Farmers and OWRUG is inaccurate as the process for setting environmental flow regimes is not contained in Appendix 1 of the NPSFM. I am unsure

why the submitters have excluded levels from this policy, given that the NPSFM refers to both. I do not recommend accepting these submission points.

1110. While I understand the point made by OWRUG, I am not convinced there is scope in the mandatory policy set out in clause 3.24(1) of the NPSFM to apply an alternative management approach to infrastructure under the regional plan. In my view, the direction set out in EIT-INF-P13 is less stringent than LF-FW-P13. Given the relevant part of LF-FW-P13 is adopted from the mandatory policy in clause 3.24(1) which must be included in regional plans, in my view including the clause sought by OWRUG may not be able to be carried through to the regional plan, rendering it ineffective. For this reason, I do not recommend accepting this submission point.
1111. I agree with Trojan and Wayfare that environmental flows and levels can be variable for a range of reasons, including climate change. I do not consider that the amendment sought is necessary, however, as flow and level regimes may change for a number of reasons, for example if it is determined that different flows and levels are necessary to achieve the environmental outcomes sought. I do not recommend accepting these submission points.
1112. As I have set out elsewhere in this report, I consider that resilience is a part of the health and well-being of water bodies and therefore do not recommend accepting this part of the submission point by Fish and Game.
1113. I understand the concern raised by Contact, but do not consider that deleting the clause is appropriate. The form and function of water bodies is a key contributor to their natural character, and I consider that sustaining form and function is therefore necessary for preserving natural character. I do not recommend accepting this part of the submission point.
1114. I consider the amendment sought by Fish and Game would increase the stringency beyond the intent of the provision as notified. It will not be possible to sustain the form and function of a water body that reflects its natural behaviours in many of Otago's water bodies due to historical and permanent modification, such as channel straightening and damming. I do not recommend accepting this submission point.
1115. It is not clear to me how clause (4) would pose a risk to the Central Otago roundhead galaxias population or what relief is sought by Moutere Station. I do not recommend accepting this submission point.
1116. I consider that the first part of the amendment sought by Trojan and Wayfare helpfully recognises the differences between permanent and temporary modification, and I recommend accepting this part of the submission point. It is not clear to me what the submitters mean by the "active braided character" and I am concerned that use of the term "active" may limit the application of this clause only to the 'wet bits' of a braided river. In my opinion, that would be inappropriate as braided rivers move and channels disappear and reform along the reach of the river. Additionally, the 'dry' parts of braided riverbeds are often significant habitats for indigenous species and are therefore an important component of their natural character. I do not recommend including "active" as sought by the submitters.

1117. Blackthorn Lodge, Trojan, Wayfare, and many individual submitters seek amendments to clause (7) to provide for protection from natural hazard risk. In their submissions, Blackthorn Lodge, Trojan, and Wayfare also mention the needs of significant infrastructure. It is not clear to me whether the submitters consider that their proposed amendments reflect the needs of significant infrastructure or whether this is additional relief sought. Broadly, I acknowledge that there may be instances where some level of modification could be necessary to provide for important activities, for example avoiding or mitigating risk to people’s health and safety or maintaining regionally significant infrastructure.
1118. I am not opposed to the amendments sought by Blackthorn Lodge, Trojan, and Wayfare but I note that they would generally only provide for a limited number of activities, primarily the likes of flood protection. Rather than focusing on particular activities, another way to introduce this type of flexibility into provisions is to constrain the degree to which character can be adversely affected. In my view, this type of approach could provide for the types of activities highlighted by submitters, but also other activities not captured by the wording proposed by Blackthorn Lodge, Trojan, and Wayfare. I recommend including “permanent” in front of “modification” in the clause. In my opinion, given the internationally rare nature of braided rivers, it is appropriate to prevent permanent modification of their braided character. However, I acknowledge that temporary modification can occur without permanently altering the character of a river – for example, temporarily diverting a braid to provide for the removal of gravel build up. While I am aware that the mobile nature of braided rivers can pose risks to the safety of people and property, I am not convinced that the only way to protect people and property is to permanently modify a braided river. For these reasons, I recommend accepting in part the submission points by Blackthorn Lodge, Trojan, and Wayfare, and those of the many individual submitters.⁷⁷⁶
1119. I do not consider that the amendments sought by Beef + Lamb and DINZ improve the clause as they introduce a number of subjective terms that require determination. I agree that not all activities require controlling and consider this is reflected in the clause, which only requires controlling activities (not necessarily restricting them) that would adversely affect natural character. I do not recommend accepting this submission point.
1120. I do not agree with Moutere Station that clause (8) necessarily results in restricting activities, only controlling them which may occur through permitted activity rules. I do not recommend accepting this submission point.
1121. The chapeau of LF-FW-P13 includes reference to margins however I agree with Kāi Tahu ki Otago that there is little direction in the clauses themselves regarding the management of margins. I am unsure what the submitter means by “improved functioning of catchment processes” and therefore recommend including the clause sought but

⁷⁷⁶ 00011.001 David van der Zwet, 00012.001 Stuart Liddicoat, 00103.002 Alistair Angus *et al.*, 00028.001 Kelly Ann Sharpe, 00029.001 Toby William Montague Sharpe, 00214.001 Dawn Thompson, 00215.002 Chris Thompson, 00216.001 Dwayne Terry, 00217.001 Pete Reid, 00308.002 Sonya Porteous, 00418.001 Danelle Jones, 00012.001 Andrew Richard Howson, 00011.001 Emese Erica Todi

stopping after “sedimentation of water bodies”. Accordingly, I recommend accepting this submission in part.

1122. The submission by Aurora Energy states that the submitter considers there should be scope within the policy to allow for the remediation or mitigation of adverse effects associated with infrastructure and seeks to refer to the effects management hierarchy in EIT-INF-P13 as a new clause. It is not clear to me how EIT-INF-P13 would apply in this context as the natural character of rivers and lakes is not included in EIT-INF-P13(1). It is also unclear which part of LF-FW-P13 the submitter considers would not provide for the remediation or mitigation of adverse effects associated with infrastructure. I do not recommend accepting this submission point.
1123. I do not consider that LF-FW-P13 is inconsistent with the NESPF and consider that the detail about the activities to be provided for (or not) within the margins of waterbodies is a matter for the regional plan to address. I do not recommend accepting the submission point by Rayonier.
1124. The content of LF-FW-P13 applies to all rivers and includes specific direction for the management of braided rivers. I do not consider the amendments sought by John Highton are necessary and do not recommend accepting this submission.

9.7.13.4. Recommendation

1125. I recommend amending LF-FW-P13 to:

LF-FW-P13 – Preserving natural character and instream values⁷⁷⁷

Preserve the natural character and instream values⁷⁷⁸ of *lakes* and *rivers* and the natural character of⁷⁷⁹ their *beds* and margins by:

- (1) avoiding the *loss of values* or extent of a *river*, unless:
 - (a) there is a *functional need* for the activity in that location, and
 - (b) the *effects* of the activity are managed by applying:
 - (i) for *effects* on indigenous *biodiversity*, either ECO-P3 or the effects management hierarchy (in relation to indigenous biodiversity) in⁷⁸⁰ ECO-P6 (whichever is applicable), and

⁷⁷⁷ 00231.058 Fish and Game

⁷⁷⁸ 00231.058 Fish and Game

⁷⁷⁹ Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00231.058 Fish and Game

⁷⁸⁰ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

- (ii) for other *effects* (excluding those managed under (1)(b)(i)),⁷⁸¹ the *effects management hierarchy (in relation to natural wetlands and rivers)* in LF-FW-P13A,⁷⁸²
- (2) not granting resource consent for activities in (1) unless ~~Otago Regional Council~~ the consent authority⁷⁸³ is satisfied that:
 - (a) the application demonstrates how each step of the *effects management hierarchies hierarchy (in relation to indigenous biodiversity)*⁷⁸⁴ in (1)(b)(i) and the *effects management hierarchy (in relation to natural wetlands and rivers)* in (1)(b)(ii)⁷⁸⁵ will be applied to the *loss of values* or extent of the *river*, and
 - (b) any consent is granted subject to conditions that apply the *effects management hierarchies hierarchy (in relation to indigenous biodiversity)*⁷⁸⁶ in (1)(b)(i) and the *effects management hierarchy (in relation to natural wetlands and rivers)* in (1)(b)(ii)⁷⁸⁷ in respect of any *loss of values* or extent of the *river*.⁷⁸⁸
 - (3) establishing environmental flow and level regimes and *water* quality standards that support the health and well-being of the *water body*,
 - (4) wherever possible, sustaining the form and function of a *water body* that reflects its natural behaviours,
 - (5) recognising and implementing the restrictions in Water Conservation Orders,
 - (6) preventing the impounding or control of the level of Lake Wanaka,
 - (7) preventing permanent⁷⁸⁹ modification that would reduce the braided character of a *river*, ~~and~~
 - (8) controlling the use of *water* and *land* that would adversely affect the natural character of the *water body*, and

⁷⁸¹ Clause 16(2), Schedule 1, RMA

⁷⁸² Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷⁸³ 00137.074 DOC

⁷⁸⁴ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷⁸⁵ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷⁸⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷⁸⁷ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

⁷⁸⁸ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00119.010 Blackthorn, 00206.031 Trojan, 00411.043 Wayfare

⁷⁸⁹ 00206.034 Trojan, 00411.046 Wayfare, 00119.012 Blackthorn Lodge

- (9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity and reduce sedimentation of water bodies.⁷⁹⁰

1126. I recommend inserting LF-FW-P13A as follows:

LF-FW-P13A – Effects management hierarchy (in relation to natural wetlands and rivers)⁷⁹¹

The effects management hierarchy (in relation to natural wetlands and rivers) referred to in LF-FW-P9 and LF-FW-P13 is the approach to managing adverse effects of activities that requires that:

- (1) adverse effects are avoided where practicable,
- (2) where adverse effects cannot be avoided, they are minimised where practicable,
- (3) where adverse effects cannot be minimised, they are remedied where practicable,
- (4) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible,
- (5) if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided, and
- (6) if aquatic compensation is not appropriate, the activity itself is avoided.

9.7.14. LF-FW-P14 – Restoring natural character

9.7.14.1. Introduction

1127. As notified, LF-FW-P14 reads:

LF-FW-P14 – Restoring natural character

Where the natural character of *lakes* and *rivers* and their margins has been reduced or lost, promote actions that:

- (1) restore a form and function that reflect the natural behaviours of the *water body*,
- (2) improve *water* quality or quantity where it is *degraded*,
- (3) increase the presence, *resilience* and abundance of indigenous flora and fauna, including by providing for fish passage within *river* systems,
- (4) improve *water body* margins by naturalising bank contours and establishing indigenous vegetation and habitat, and
- (5) restore *water* pathways and natural connectivity between *water* systems.

⁷⁹⁰ 00226.187 Kāi Tahu ki Otago

⁷⁹¹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

1128. LF-FW-P14 sets out the actions to be promoted to restore natural character of lakes and rivers and their margins where it has been reduced or lost.

9.7.14.2. Submissions

1129. QLDC, DCC and Kāi Tahu ki Otago seek to retain LF-FW-P14 as notified.⁷⁹²

1130. Wise Response considers the policy should be expanded to enhance the capacity and natural variability of lakes and rivers and their margins where it has been lost.⁷⁹³ The submitter seeks amendments to the heading and to clause (1) by inserting reference to capacity.

1131. Wise Response, Fish and Game, and Forest and Bird consider the policy needs to provide stronger direction and seeks to replace the word “promote” with “require” in the chapeau.⁷⁹⁴ Forest and Bird and Fish and Game seek to include reference to instream values throughout the provision to expand its application beyond only natural character.⁷⁹⁵ Forest and Bird also seeks to include reference to wetlands.⁷⁹⁶

1132. Beef + Lamb and DINZ consider “promoting” to be too directive and regulatory which they believe is inappropriate. They seek to replace it with “support” or “encourage”.⁷⁹⁷ Similarly, Moutere Station seeks to include reference to “where practical” as the submitter considers that many waterways in Otago have been significantly modified over time and restoration may be impractical or have little benefit to the environment.⁷⁹⁸

1133. Contact and OWRUG submit that it is not always feasible to restore water bodies to their natural or original state and consider that attempting to do so will result in significant adverse effects.⁷⁹⁹ Contact Energy seeks the deletion of clause (1) in its entirety,⁸⁰⁰ while OWRUG seeks the following amendment:⁸⁰¹

(1) restore a form and function that reflect the natural behaviours of the water body, recognising where applicable the effect that infrastructure may have had on the form and function of the water body, ...

1134. Wise Response seeks a specific wording amendment to clause (2):⁸⁰²

⁷⁹² 00138.073 QLDC, 00139.107 DCC, 00226.188 Kāi Tahu ki Otago

⁷⁹³ 00509.080 Wise Response

⁷⁹⁴ 00509.080 Wise Response, 00230.093 Forest and Bird, 00231.059 Fish and Game

⁷⁹⁵ 00230.093 Forest and Bird, 00231.059 Fish and Game

⁷⁹⁶ 00230.093 Forest and Bird

⁷⁹⁷ 00237.0400 Beef + Lamb and DINZ

⁷⁹⁸ 0026.012 Moutere Station

⁷⁹⁹ 00318.016 Contact, 00235.098 OWRUG

⁸⁰⁰ 00318.016 Contact

⁸⁰¹ 00235.098 OWRUG

⁸⁰² 00509.080 Wise Response

- (2) improve water quality or quantity where it is degraded or excessively allocated until it is safe and attractive for recreation and suitable for sourcing Mahinga Kai,
1135. Regarding clause (3), Ngāi Tahu ki Murihiku considers fish barriers which prevent exotic predator species from harming threatened species are required and seeks the following amendments:⁸⁰³
- (3) increase the presence, resilience and abundance of indigenous flora and fauna, including by providing for fish passage within river systems and creating fish barriers to prevent predation where necessary,
1136. Fish and Game seeks specific provision for the restoration of the habitat of trout and salmon by inserting the following new clause:⁸⁰⁴
- (3a) restore the habitat of trout and salmon, insofar as it is consistent with ECO-P11,
1137. Trustpower submits that clause 3.26 of the NPSFM acknowledges there may be circumstances where the provision of fish passage may not be required and seeks the insertion of “where appropriate” at the end of clause (3).⁸⁰⁵ In a similar vein, Contact Energy submits that in respect to the large-scale hydroelectric dams it may not always be feasible or a necessary to provide fish passage and that doing so may result in significant and unforeseen adverse effects on a local, regional and national scale.⁸⁰⁶
1138. With reference to clause (4), Fish and Game seeks refinement of the clause to make it explicit that references to ‘habitat’ do not refer to ‘indigenous habitat’.⁸⁰⁷ Trojan and Wayfare seek the insertion of a qualifier such as “where practicable” to recognise that it is not always practical to improve water body margins, particularly in developed areas prone to flooding.⁸⁰⁸
1139. John Highton generally supports this clause but seeks amendments to clause (4) to include provision for access to and along water margins when carrying out planting.⁸⁰⁹
1140. OWRUG considers that clause (5) duplicates clause (1) and seeks its deletion.⁸¹⁰ Contact seeks to delete “natural” in reference to connectivity,⁸¹¹ while Wise Response considers “natural connectivity” should include reference to “within” as well as between water

⁸⁰³ 00223.088 Ngāi Tahu ki Murihiku

⁸⁰⁴ 00231.059 Fish and Game

⁸⁰⁵ 00311.018 Trustpower

⁸⁰⁶ 00318.016 Contact (not in SODR)

⁸⁰⁷ 00231.059 Fish and Game

⁸⁰⁸ 00206.035 Trojan, 00411.047 Wayfare

⁸⁰⁹ 00014.058 John Highton

⁸¹⁰ 00235.098 OWRUG

⁸¹¹ 00318.016 Contact

systems.⁸¹² While no explanation has been provided, Harbour Fish seeks amendments to clauses (1) and (5) which replace the word “restore” with “improve”.⁸¹³

9.7.14.3. Analysis

1141. I do not consider that the amendments sought by Wise Response are necessary. In my opinion, it is generally well understood that natural character incorporates natural elements, processes and patterns as well as biophysical, ecological, geological, and geomorphological aspects which I consider encompass “biophysical capacity” as sought by the submitter. I do not recommend accepting this part of the submission point.
1142. Requiring restoration is difficult in practice. I consider that the direction in the chapeau appropriately recognises these difficulties and therefore do not recommend this part of the submission points by Wise Response, Fish and Game, and Forest and Bird.
1143. For the same reasons as my recommendations in relation to LF-FW-P13, I agree with Fish and Game that the title and chapeau should include reference to instream values but that this should not apply to margins as they do not have “instream values”. I recommend accepting this submission point in part.
1144. As I have set out previously, I consider that the natural character of wetlands is managed under LF-FW-P9 which requires protecting natural wetlands and focuses primarily on avoiding reductions in their values or extent, both of which contribute to natural character. For this reason, I do not consider reference to wetlands in LF-FW-P14 is necessary and do not recommend accepting the submission point by Forest and Bird.
1145. I do not agree with Beef + Lamb and DINZ that “promoting” is too directive. I consider that this is an appropriate management approach that recognises it will not always be possible, or practical, to restore natural character. However, restoration of natural character is likely to be required in order to achieve environmental outcomes set in the LWRP and the freshwater visions in LF-VM. I do not recommend accepting this submission point.
1146. I do not consider the amendment sought by Moutere Station is necessary. LF-FW-P14 does not require the actions in the clauses to be implemented, it requires promoting those actions. This provides discretion to determine where, and how, restoration may be practical. I do not recommend accepting this submission point.
1147. I do not consider that LF-FW-P14 requires restoring water bodies to their natural state as suggested by Contact and OWRUG. As the policy only requires promoting actions, not implementing them in every case, I do not consider that deleting clause (1) is appropriate as sought by Contact. I am unsure of the intent of the amendment sought by OWRUG but, regardless, do not consider the amendment necessary as existing modification would be considered when deciding whether to promote action or not. I do not recommend accepting the submission points by Contact or OWRUG.

⁸¹² 00509.080 Wise Response

⁸¹³ 00126.037 Harbour Fish

1148. The term “degraded” is defined in the NPSFM and includes circumstances where an FMU, or part of an FMU, is not achieving or it not likely to achieve an environmental flow or level set for it. On this basis, I do not consider the amendment sought by Wise Response is necessary.
1149. I agree with Ngāi Tahu ki Murihiku that predation is a threat to some indigenous species⁸¹⁴ and recommend accepting this submission point.
1150. I have addressed a suite of submission points by Fish and Game regarding the habitats of trout and salmon in section 1.4.9 of *Report 1: Introduction and general themes*. In summary, I do not recommend accepting the submission point by Fish and Game and I do not consider it is necessary, however I note I have recommended amendments to LF-FW-O8 and LF-FW-P7 to address the submitter’s concerns.
1151. As LF-FW-P14(3) does not require fish passage to be implemented, I do not consider the amendments sought by Trustpower or Contact are necessary and do not recommend accepting these submission points.
1152. I have previously addressed the relief sought by Fish and Game to ensure that “habitats” are not restricted to being “indigenous habitats” in paragraph 909 of this report. In summary, for the same reasons I have set out in that paragraph, I do not recommend accepting the submission point by Fish and Game.
1153. The relief sought by Fish and Game would appear to result in the establishment of exotic (in part or whole) habitat as a way to restore the natural character of a river or lake. I am not convinced this is appropriate as these water bodies would not naturally have exotic habitat. Without further evidence, I do not recommend accepting this submission point.
1154. LF-FW-P14(4) requires promoting actions that improve margins but does not require improvement in and of itself. For this reason I do not consider the amendment sought by Trojan and Wayfare is necessary and therefore do not recommend accepting this submission point. For similar reasons, I also do not recommend accepting the submission point by John Highton.
1155. I do not agree with OWRUG that clause (5) duplicates clause (1). The form and function of a water body does not necessarily incorporate the linkages that water body has with other types of water bodies. I do not recommend accepting this submission point.
1156. I consider it is important that clause (5) retains the term “natural connectivity.” Water bodies can be connected through artificial means which is unlikely to contribute to restoring degraded or lost natural character. I do not recommend accepting the submission point by Contact.
1157. I agree with Wise Response that connectivity within a system is important, in addition to between systems. I recommend accepting this submission point.

⁸¹⁴ “Key threats for native fish can be split into several general processes: (a) Predation by and competition with introduced species ... For migratory fish in Otago, factors a, b, and e are, in my opinion the most important factors to address.” Statement of Evidence of Richard Mark Allibone on behalf of the Otago Regional Council dated 7 December 2020, prepared for Plan Change 7 to the Regional Plan: Water (paragraphs 43-44).

1158. Without further explanation or justification, I do not recommend accepting the submission point by Harbour Fish. While I understand the sensitivity around the term “restore” and whether that requires a return to natural state, I am aware that it is an aspiration of Kāi Tahu ki Otago to see water bodies restored to the way they were when tūpuna knew them.⁸¹⁵ In that context, I consider the wording as notified is appropriate.

9.7.14.4. Recommendation

1159. I recommend amending LF-FW-P14 to:

LF-FW-P14 – Restoring natural character and instream values⁸¹⁶

Where the natural character or instream values⁸¹⁷ of *lakes* and *ivers* or the natural character of⁸¹⁸ their margins has been reduced or lost, promote actions that:

- (1) restore a form and function that reflect the natural behaviours of the *water body*,
- (2) improve *water* quality or quantity where it is *degraded*,
- (3) increase the presence, *resilience* and abundance of indigenous flora and fauna, including by providing for fish passage within *river* systems and creating fish barriers to prevent predation where necessary,⁸¹⁹
- (4) improve *water body* margins by naturalising bank contours and establishing indigenous vegetation and habitat, and
- (5) restore *water* pathways and natural connectivity between and within⁸²⁰ *water* systems.

9.7.15. LF-FW-P15 – Stormwater and wastewater discharges

9.7.15.1. Introduction

1160. As notified, LF-FW-P15 reads:

LF-FW-P15 – Stormwater and wastewater discharges

Minimise the adverse *effects* of direct and indirect *discharges of stormwater and wastewater to fresh water* by:

- (1) except as required by LF-VM-O2 and LF-VM-O4, preferring *discharges of wastewater to land over discharges to water*, unless adverse *effects*

⁸¹⁵ Appendix 5, Section 32 Evaluation Report.

⁸¹⁶ 00230.093 Forest and Bird, 00231.059 Fish and Game

⁸¹⁷ 00230.093 Forest and Bird, 00231.059 Fish and Game

⁸¹⁸ Clause 19(1)(b)(i), Schedule 1, RMA - consequential amendment arising from 00230.093 Forest and Bird, 00231.059 Fish and Game

⁸¹⁹ 00223.088 Ngāi Tahu ki Murihiku

⁸²⁰ 00509.080 Wise Response

associated with a *discharge to land* are greater than a *discharge to water*, and

(2) requiring:

- (a) all sewage, industrial or trade waste to be *discharged* into a reticulated *wastewater* system, where one is available,
- (b) all *stormwater* to be *discharged* into a reticulated system, where one is available,
- (c) implementation of methods to progressively reduce the frequency and volume of wet weather overflows and minimise the likelihood of dry weather overflows occurring for reticulated *stormwater* and *wastewater* systems,
- (d) on-site *wastewater* systems to be designed and operated in accordance with best practice standards,
- (e) *stormwater* and *wastewater discharges* to meet any applicable water quality standards set for *FMUs* and/or *rohe*, and
- (f) the use of water sensitive urban design techniques to avoid or mitigate the potential adverse *effects of contaminants* on receiving *water bodies* from the *subdivision*, use or development of *land*, wherever practicable, and

(3) promoting the reticulation of *stormwater* and *wastewater* in urban areas.

9.7.15.2. Submissions

1161. QLDC supports the policy as drafted and seeks to retain it as notified.⁸²¹ CODC supports the policy in principle and states that it wishes to see a move towards discharge of wastewater to land rather than water, the use of water sensitive urban design techniques, and reticulation of stormwater in urban areas.⁸²²

1162. In the chapeau, Wise Response seeks to restrict the application of the policy to urban stormwater and wastewater discharges but the reasoning for this is unclear.⁸²³ Forest and Bird and Kai Tahu ki Otago seek to change “minimise” to “avoid” adverse effects in the chapeau, strengthening the policy direction.⁸²⁴ Kāi Tahu ki Otago submits that discharges of wastewater, and other human wastes such as cremated ashes, are culturally offensive and seeks the following amendments:⁸²⁵

⁸²¹ 00138.074 QLDC

⁸²² 00201.016 CODC

⁸²³ 00509.081 Wise Response

⁸²⁴ 00226.189 Kāi Tahu ki Otago, 00230.094 Forest and Bird

⁸²⁵ 00226.189 Kāi Tahu ki Otago

~~Minimise~~ Avoid the adverse effects of direct and indirect discharges of stormwater, ~~and wastewater and human wastes (including cremated ashes)~~ to fresh water by:
...

1163. To support strengthened policy direction, Kāi Tahu ki Otago and Forest and Bird seek that clause (1) require discharging to land rather than expressing that direction as a preference.⁸²⁶ Kāi Tahu ki Otago also seeks to include reference to other human wastes:⁸²⁷

(1) ~~except as required by LF-VM-O2 and LF-VM-O4, preferring~~ requiring new discharges of wastewater or other human wastes to be to land over discharges to water, unless adverse effects associated with a discharge to land are demonstrably greater than a discharge to water, and ...

1164. DCC considers there are inconsistencies between the wording in the chapeau, which refers to “discharges to *fresh water*”, and that in clause (1) which refers to “discharges to *water*”. They consider this risks confusion and uncertainty about the application of this policy and seeks amendments to explicitly reference “fresh water”.⁸²⁸

1165. Fonterra seeks clarification about whether it is intended that the discharge of industrial or trade waste, when not combined with sewage or greywater, is captured by clause (1).⁸²⁹

1166. In relation to clause (2), DCC highlights instances where connections to reticulated water systems may not always be straightforward. The submitter seeks refinement of both clauses to clarify that waste is discharged to a reticulated system “where one is made available by the [wastewater / stormwater] system operator”.⁸³⁰ The submitter considers this would enable territorial authorities to determine when and where connections to reticulated systems are practicable and beneficial. Should this amendment be accepted, DCC considers that definitions of “reticulated system”, “wastewater system operator” and “stormwater system operator” would be required for clarification but does not suggest definitions for these terms.⁸³¹

1167. UCAC considers that clauses (2)(a) and (2)(b) should require all urban areas to have stormwater and sewage reticulation systems that are well engineered and monitored and seeks the deletion of “where one is available”.⁸³²

1168. Fonterra seeks the following amendments to clause 2(a) and clause (2)(b) to recognise that it is not always practicable to discharge into a reticulated system, due to the types of contaminants in wastewater.⁸³³

⁸²⁶ 00226.189 Kāi Tahu ki Otago, 00230.094 Forest and Bird

⁸²⁷ 00226.189 Kāi Tahu ki Otago

⁸²⁸ 00139.108 DCC

⁸²⁹ 00213.037 Fonterra

⁸³⁰ 00139.108 DCC

⁸³¹ 00139.108 DCC (not in SODR)

⁸³² 00220.002 UCAC

⁸³³ 00213.036 Fonterra

- (a) all sewage, industrial or trade waste to be discharged into a reticulated wastewater system, where one is available, is practicable to use and provides for a better outcome for freshwater
- (b) all stormwater to be discharged into a reticulated system, where one is available, is practicable to use and provides for a better outcome for freshwater.

1169. Trojan and Wayfare seek amendments to clause (2)(a) to recognise that alternative treatment and disposal methods may provide environmental benefit in situations where a reticulated system is unavailable.⁸³⁴
1170. Regarding clause (2)(b), Silver Fern Farms seeks amendments to enable consideration of stormwater management such as on-site attenuation and treatment of stormwater flows.⁸³⁵ Wise Response seeks specific amendments to clause (2)(b) to enable the reintegration of stormwater back into the natural water cycle, storing stormwater for reuse, or releasing it more slowly into the reticulated system.⁸³⁶ The submitter also considers the focus of clause (2)(c) should be on preparing for the extremes of weather brought on by climate change and seeks provision for “buffering systems” and “private rainwater collection” for non-potable and emergency use.⁸³⁷
1171. Kāi Tahu ki Otago supports clause (2)(d) as it relates to on-site wastewater systems but seeks amendments to extend the clause to also apply to stormwater management.⁸³⁸ The submitter considers this would reduce the risk of sediment and other contaminants from stormwater entering water bodies.
1172. In clause (2)(e), DCC seeks to amend “applicable water quality standards” to “water quality standards applicable to those discharges”.⁸³⁹ Ravensdown considers the clause as drafted is inconsistent with RMA requirements and seeks to require that discharges of stormwater and wastewater meet relevant water quality standards “after reasonable mixing”.⁸⁴⁰ Similarly, Fonterra questions what is meant by the term “water quality standards” and seeks to ensure that, if the term is defined, any definition is consistent with the NPSFM.⁸⁴¹
1173. Regarding clause 2(f), DCC supports provisions which encourage the use of water sensitive urban design techniques but seeks the following amendments to support clarification and interpretation:⁸⁴²

⁸³⁴ 00206.036 Trojan, 00411.048 Wayfare

⁸³⁵ 00221.008 Silver Fern Farms

⁸³⁶ 00509.081 Wise Response

⁸³⁷ 00509.081 Wise Response

⁸³⁸ 00226.189 Kāi Tahu ki Otago

⁸³⁹ 00139.108 DCC

⁸⁴⁰ 00121.058 Ravensdown

⁸⁴¹ 00213.039 Fonterra

⁸⁴² 00139.108 DCC

- Providing a standalone clause to provide for use of sensitive urban design techniques,
- Replacing “requiring” with “promoting”,
- Recognising the use of such design techniques may not always be beneficial.

1174. DCC also seeks to include a definition of “water sensitive urban design” to improve clarity but does not suggest wording.⁸⁴³ Wayfare also seeks clarification of the term “water sensitive design” but does not provide specific wording.⁸⁴⁴

1175. UCAC seeks to delete the term “wherever practicable” at the end of clause (2)(f), as the submitter considers engineering measures are available to manage water discharge and such wording allows interpretation which may result in adverse outcomes.⁸⁴⁵

1176. Forest and Bird seeks to improve the policy direction in clause (3) by “providing for” the reticulation of stormwater and wastewater in urban areas.⁸⁴⁶ Wise Response seeks amendments to clause (3) to ensure urban centres which might benefit from improved stormwater and wastewater facility are identified.⁸⁴⁷

1177. Four submitters seek additional clauses to address issues they consider are not provided for.⁸⁴⁸ Waka Kotahi and Transpower seek new clauses to allow for infrastructure as follows:⁸⁴⁹

- Waka Kotahi:

(4) while recognising the functional and operational needs of nationally and regionally significant infrastructure.

- Transpower:

(4) except that (2) does not apply to nationally significant infrastructure where the adverse effects of direct and indirect discharges of stormwater and wastewater are minimised.

1178. The Fuel Companies submit that the role of industry good practice should be recognised, such as the Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand. The submitter states that controlling contaminants at source is an effective and efficient means of minimising the potential for contaminants to arrive in the first instance and considers this approach should be promoted by the pORPS. The submitter seeks the following additional clauses:⁸⁵⁰

(4) promoting awareness and actions to reduce contaminant discharges through source control, and

⁸⁴³ 00139.111 DCC

⁸⁴⁴ 00411.089 Wayfare

⁸⁴⁵ 00220.003 UCAC

⁸⁴⁶ 00230.094 Forest and Bird

⁸⁴⁷ 00509.081 Wise Response

⁸⁴⁸ 00509.081 Wise Response, 00510.023 The Fuel Companies, 00314.026 Transpower, 00305.025 Waka Kotahi

⁸⁴⁹ 00305.025 Waka Kotahi, 00314.026 Transpower

⁸⁵⁰ 00510.023 The Fuel Companies

(5) recognising the role of relevant industry guidelines.

1179. Wise Response considers ORC has a role in promoting alternatives to hazardous substances to reduce stress on the environment and states that there is evidence that bee die back is due to chemical poisoning from herbicides which it considers is a good example of where integrated management has failed. The submitter seeks to include the following new clause:⁸⁵¹

(4) where the use of environmentally hazardous substances cannot be entirely avoided, ensure use is essential and actively promote a shift to more benign and biodegradable alternatives.

1180. Susan and Donald Broad seek that the Outram Groundwater Protection Zone is extended to include all septic tanks in the town and settlement non-reticulated residential area.⁸⁵² The submitters also seek to discourage the addition of septic-dependent development in rural townships.

9.7.15.3. Analysis

1181. Without clarification about the justification for restricting this policy only to urban stormwater and wastewater discharges (and noting that differentiating between rural and urban areas is not always straight forward), I do not recommend accepting this part of the submission point by Wise Response.

1182. As notified, this policy applies to stormwater and wastewater discharges. Wastewater is defined in the National Planning Standards and in the pORPS as:

means any combination of two or more the following wastes: sewage, greywater or industrial and trade waste.

1183. This means that LF-FW-P15 applies to discharges of stormwater, sewage, greywater, and industrial or trade waste. Previously in section 9.6.2.3 of this report, I have set out the difficulties with the definition of “wastewater” contained in the National Planning Standards and its, therefore, mandatory use in the pORPS.⁸⁵³ For the reasons I have set out in that section, I consider that this policy should use the term “sewage” rather than “wastewater”.

1184. I acknowledge that discharges of sewage and other human wastes are culturally offensive to Kāi Tahu. However, I do not consider replacing “minimise” with “avoid” is appropriate as the policy applies also to discharges of stormwater and industrial and trade waste, which I do not understand to be as culturally offensive (insofar as they do not contain offensive human wastes). I consider that a more effective approach would be to split LF-FW-P15 into two policies: one focused on sewage and other human wastes and one focused on stormwater and industrial and trade wastes. This would allow different policy direction to be set for the different types of discharges. I note that many of the clauses

⁸⁵¹ 00509.081 Wise Response

⁸⁵² 00218.004, 00218.005, 00218.005 Susan and Donald Broad

⁸⁵³ In summary, some wastewater may not contain sewage and therefore not be as culturally offensive.

and sub-clauses in LF-FW-P15 as notified are either applicable to one or other type of discharge, with only (2)(e) and (3) applying to both.

1185. I recommend accepting in part the submission points by Forest and Bird and Kāi Tahu ki Otago and splitting the policy into two as follows:

- LF-FW-P15 – Stormwater and industrial and trade waste discharges

- Retaining the direction as notified to minimise adverse effects of these discharges,
- Retaining clauses (2)(b) and (f) as notified, and
- Retaining clauses (2)(c), (2)(e) and (3) with amendments to exclude wastewater-focused matters.

- LF-FW-P15A – Discharges of sewage and other human wastes

- Adopting the relief sought by submitters to avoid adverse effects of these discharges,
- Retaining clauses (2)(a) and (d) as notified, and
- Retaining clauses (2)(c) and (e) and (3) with amendments to exclude stormwater-focused matters.

1186. In my opinion, it is discharges of sewage and other human wastes that require a more stringent management framework in comparison to the other discharges originally managed under LF-FW-P15: stormwater, industrial and trade waste, and grey water. In my experience, greywater is rarely separated from sewage as most urban properties connect all sanitary fixtures (those conveying sewage as well as those conveying greywater only) to the reticulated wastewater system. I do not consider there is merit in including specific policy directly only for greywater for this reason. In my view, industrial or trade waste discharges are more comparable to stormwater than sewage and other human wastes in terms of the contaminants they contain and their offensiveness to Kāi Tahu.

1187. The term “industrial and trade waste” is defined in the National Planning Standards. In accordance with mandatory direction (1) of *14: Definitions Standard*, where terms defined in the Standard are used in a policy statement and the term is used in the same context as the definition, local authorities must use the definition as defined in the Standard. I consider that the term “industrial and trade waste” is used in the same context and therefore as a consequential amendment the definition of that term should also be incorporated in the pORPS.

1188. In the remainder of this section, I will refer to the clauses as notified as well as the new clauses as I recommend, where that is relevant.

1189. In relation to discharges containing sewage and other human wastes, I agree with the amendments sought by Kāi Tahu ki Otago to clause (1). I consider this appropriately reflects the level of cultural offense posed by these discharges and the need for treatment via land prior to being discharged (indirectly) to water. I recommend accepting this submission point.

1190. I understand that DCC's concern about the use of the term "water" is due to the definition of that term in the RMA (and accordingly in the pORPS) which includes coastal water. I am aware that a large amount of wastewater is discharged from DCC's wastewater treatment plants into the coastal environment. I do not consider there is any difference in the level of cultural offense to Kāi Tahu between discharging sewage to fresh water or to coastal water. That said, I agree that this policy applies to fresh water and that discharges to coastal water are addressed in the *CE – Coastal environment* chapter and therefore recommend accepting this part of the submission point by DCC.
1191. I understand the concern raised by Fonterra and have discussed the issues with the definition of "wastewater" previously in this report (see section 9.6.2.3). For those reasons, I have used the phrase "discharges containing sewage or other human wastes" in new LF-FW-P15A instead of "wastewater." I therefore recommend accepting in part this submission point.
1192. I agree with DCC that it is ultimately the decision of the system operator to allow for or prevent connections to those systems and I am aware that is the process followed in most land subdivision and development projects. I am not convinced that definitions of the terms "reticulated system", "wastewater system operator" or "stormwater system operator" are necessary. The detail of these provisions and their application will be considered through the LWRP, where it is generally more appropriate to include detailed and technical definitions of the kind suggested by the submitter. I recommend accepting the submission point by DCC. The provision of reticulated stormwater and wastewater systems to urban areas is generally a matter for the relevant territorial authority as they are responsible for the funding and management of those systems. This means that some urban areas do not have reticulated systems and there is therefore no system available for stormwater and wastewater to be discharged into. Specific requirements for the design, construction, and operation of systems is a matter best addressed through the regional plan. I note that this is currently proposed for inclusion in the Water Plan through Plan Change 8. For these reasons, I do not recommend accepting the submission point by UCAC.
1193. I agree with Fonterra that some industrial and trade premises have their own stormwater and wastewater systems and that use of those systems may provide a better outcome for freshwater than discharging into a larger community system when that option is available. I note that a similar point is made by Trojan and Wayfare and I prefer the wording sought by those submitters. I therefore recommend accepting the submission point by Fonterra in part and the submission points by Trojan and Wayfare in full.
1194. Without specific relief sought, I am unsure what outcome is sought by Silver Fern Farms. The submitter may wish to confirm whether my recommended amendment above in response to the submission points by Fonterra, Trojan, and Wayfare resolves its concern or, if not, what specific relief would. At this stage, I do not recommend accepting this submission point.
1195. I do not consider that it is practically possible for the majority of stormwater to be reintegrated with natural hydrological processes and consider that the amendment I have recommended above to provide for alternative treatment and disposal methods goes

- some way in addressing the matters raised by Wise Response in relation to clause (2)(b). I do not recommend accepting this part of the submission point.
1196. I consider that Wise Response has misunderstood the purpose of clause (2)(c), which is designed to address a significant existing problem with the presence of constructed overflows in wastewater systems, whereby during wet weather events that overload the system, sewage can be rerouted to the stormwater system. I do not consider that the amendments sought provide for the same outcome (i.e. a reduction in overflows) and therefore do not recommend accepting this submission point.
1197. I understand and agree with the point raised by Kāi Tahu ki Otago that on-site stormwater systems, as well as on-site wastewater systems, should be designed and operated appropriately. In relation to on-site wastewater systems, I understand that AS/NZS 1547:2012 is widely accepted as representing best practice and this is commonly adopted in regional plan provisions. I am not aware that there is an equivalent for stormwater systems. Stormwater itself, as well as the associated methods for its management, tend to be location specific as they are affected by the climatic and physical environmental conditions of the relevant area (such as rainfall, soil types, and topography). For this reason, it is my understanding that what is considered “best practice” for stormwater systems is not necessarily as clearly set out as it is for on-site wastewater systems. I am aware that territorial authorities generally have their own engineering standards or codes of practice which incorporate stormwater management. Without further evidence from the submitter about what standards it considers to be best practice for stormwater, I do not recommend accepting this submission point.
1198. I consider that the minor amendment sought by DCC to clause (2)(e) does not change the intent and may assist with clarifying its application. I recommend accepting this part of the submission point.
1199. In my experience, when water quality standards are set in regional plans there is generally specificity about where and when they apply, including in relation to reasonable mixing zones. I note that many of the current discharge rules in the Water Plan specifically do not allow for reasonable mixing and I am not minded to curtail the potential for that approach to be adopted in the new LWRP. For these reasons, I do not recommend accepting the submission point by Ravensdown.
1200. As I have outlined previously in this report, I consider that “water quality standards” is a term generally well-understood and do not recommend accepting the submission point by Fonterra.
1201. In relation to clause (2)(f), while I understand the concerns raised by DCC in relation to the suitability of using water sensitive design techniques for managing stormwater, in my opinion it is appropriate for those techniques to be the starting point, with other techniques coming into play in situations where it is not practicable to implement water sensitive design techniques. For this reason, I do not recommend accepting the submission point by DCC.
1202. In the same vein, I do not recommend accepting the submission by UCAC to delete “wherever practicable” from this clause. Water sensitive design techniques may not

always be appropriate, and I consider the policy should retain some discretion in their application. I note that LF-FW-P15 uses the term “water sensitive urban design” whereas UFD-M2(3)(d) refers to “water sensitive design”. I understand these are often used interchangeably, however to avoid any confusion about where they are applicable to use, I recommend amending the reference in LF-FW-P15 to “water sensitive design” for consistency with UFD-M2. I consider this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.

1203. I do not consider that the term “water sensitive design” requires definition. I understand this is a commonly used and well-understood term and consider there are benefits in allowing flexibility for territorial authorities to determine what this looks like in their districts. I do not recommend accepting the submission points by DCC and Wayfare on this matter.
1204. Decisions about servicing areas with infrastructure are generally made by territorial authorities and have significant funding implications that must be considered through the long-term and annual plan processes set out in the LGA. I do not consider that replacing “promoting” with “providing for” accurately reflects this decision-making process and therefore do not recommend accepting the submission point by Forest and Bird.
1205. The highly detailed additional clauses sought by Wise Response under clause (3) introduce considerable uncertainty into the provision. In my view, the provision of infrastructure is only partly managed by the RMA and therefore it would be ineffective to attempt to curtail that decision-making through this policy. I do not recommend accepting this part of the submission point.
1206. It is not clear to me from the submission by Waka Kotahi which provisions in LF-FW-P15 would not recognise the functional and operational needs of infrastructure. I note that infrastructure is specifically provided for through the provisions of the EIT-INF section which applies alongside the LF-FW section. I do not recommend accepting this submission point.
1207. The submission by Transpower states that it seeks a limited amendment to provide for particular situations or land uses where stormwater is disposed of on-site and that these types of situations may be managed in a site-specific manner rather than by applying clause (2). I consider that the amendment sought by the submitter is far greater than described in its submission as it seeks to exclude nationally significant infrastructure. I consider that my amendment to clause (2)(b) to provide for alternative treatment and disposal methods addresses the concern expressed in the submission by Transpower in a more appropriate way than a full exclusion from clause (2). I do not recommend accepting this submission point.
1208. I agree with The Fuel Companies that source control can be an effective way to reduce the contaminants in discharges and I note that the inclusion of the additional clause sought is supported in the further submission of Kāi Tahu ki Otago.⁸⁵⁴ I consider that the intent of the clause can be expressed more simply than as sought by the submitter and therefore recommend accepting this submission in part. I assume that as the submitter

⁸⁵⁴ RS00236 Kāi Tahu ki Otago

sought to include this new clause in LF-FW-P15 as notified, which applied to both stormwater and wastewater discharges, that it is therefore appropriate to include this new clause in both LF-FW-P15 and new LF-FW-P15A. The submitter may wish to clarify if this is not the case.

1209. I agree with The Fuel Companies that industry guidelines can be useful resources for determining how particular types of discharges should be managed. However, the clause sought by the submitter is not clear. In particular, I am unsure how or through what process the submitter anticipates the role of guidelines being recognised. The submitter may wish to clarify this in their evidence. At this stage, I do not recommend accepting this submission point.

1210. The management of hazardous substances primarily occurs under the HSNO Act and there are limited circumstances where it is appropriate for plans developed under the RMA to also manage these substances. In my opinion, the submitter has not provided sufficient evidence to justify managing hazardous substances in this way and therefore I do not recommend accepting this part of the submission point.

1211. In response to the submission points by Susan and Donald Broad, I note that the Outram Groundwater Protection Zone is mapped and referenced in the Water Plan, not the pORPS 2021, so any amendments to the extent of that zone are outside the scope of this process. Similarly, resource consent processes for septic tanks are set out in the Water Plan and also out of scope of this process. I do not recommend accepting these submission points.

9.7.15.4. Recommendation

1212. I recommend splitting LF-FW-P15 into two policies which largely retain the notified wording of the clauses, with a range of consequential amendments to reflect the split.

1213. I recommend amending LF-FW-P15 to:

LF-FW-P15 – Stormwater and ~~wastewater~~ industrial and trade waste discharges⁸⁵⁵

Minimise the adverse effects of direct and indirect discharges of stormwater and industrial and trade waste ~~wastewater~~ to fresh water by:

(1) except as required by LF-VM-O2 and LF-VM-O4, preferring *discharges of wastewater to land* over *discharges to water*, unless adverse *effects* associated with a *discharge to land* are greater than a *discharge to water*, and

(2) requiring:

~~(a) all sewage, industrial or trade waste to be discharged into a reticulated wastewater system, where one is available,~~

⁸⁵⁵ All amendments relating to the separation of this policy as notified into two distinct policies (LF-FW-P15 and LF-FW-P16), including consequential amendments throughout both policies, are attributable to 00226.189 Kāi Tahu ki Otago and 00230.094 Forest and Bird

- (b) all stormwater and industrial and trade waste to be discharged into a reticulated system, where one is made available by the operator of the reticulated system,⁸⁵⁶ unless alternative treatment and disposal methods will result in improved environmental outcomes,⁸⁵⁷
- (c) implementation of methods to progressively reduce the frequency and volume of wet weather overflows and minimise the likelihood of dry weather overflows occurring ~~for~~ into reticulated stormwater and wastewater systems,
- ~~(d) on-site wastewater systems to be designed and operated in accordance with best practice standards,~~
- (e) ~~stormwater and wastewater~~ that discharges to⁸⁵⁸ meet any applicable water quality standards set for FMUs and/or rohe, and
- (f) the use of water sensitive urban⁸⁵⁹ design techniques to avoid or mitigate the potential adverse effects of contaminants on receiving water bodies from the subdivision, use or development of land, wherever practicable, and

- (3) promoting the reticulation of ~~stormwater and wastewater~~ in urban areas,^z and
- (4) promoting source control as a method for reducing contaminants in discharges of stormwater and industrial and trade waste.⁸⁶⁰

1214. I recommend inserting LF-FW-P15A:

LF-FW-P15A – Discharges containing sewage and other human wastes

Avoid the adverse effects of direct and indirect discharges containing sewage and other human wastes (including cremated ashes) to fresh water by:⁸⁶¹

- (1) requiring new discharges containing sewage or other human wastes⁸⁶² to be to land, unless adverse effects associated with a discharge to land are demonstrably greater than a discharge to fresh⁸⁶³ water, and⁸⁶⁴
- (2) requiring:

- (a) that all discharges containing sewage or other human wastes are discharged into a reticulated wastewater system, where one is made

⁸⁵⁶ 00139.108 DCC

⁸⁵⁷ 00206.036 Trojan, 00411.048 Wayfare, 00213.037 Fonterra

⁸⁵⁸ 00139.108 DCC

⁸⁵⁹ Clause 16(2), Schedule 1, RMA

⁸⁶⁰ 00510.023 The Fuel Companies

⁸⁶¹ 00226.189 Kāi Tahu ki Otago

⁸⁶² 00226.189 Kāi Tahu ki Otago, 00213.037 Fonterra

⁸⁶³ 00139.108 DCC

⁸⁶⁴ 00226.189 Kāi Tahu ki Otago

available by the operator of the reticulated system,⁸⁶⁵ unless alternative treatment and disposal methods will result in improved environmental outcomes,⁸⁶⁶

(b) implementation of methods to progressively reduce the frequency and volume of wet weather overflows and minimise the likelihood of dry weather overflows occurring into reticulated wastewater systems,

(c) on-site wastewater systems to be designed and operated in accordance with best practice standards,

(d) that discharges meet any applicable water quality standards set for FMUs and/or rohe, and

(3) promoting the reticulation of wastewater in urban areas, and

(4) promoting source control as a method for reducing contaminants in discharges containing sewage and other human wastes.⁸⁶⁷

9.7.16. New policies

1215. Some submitters have sought to include new policies in the LF-FW section on a range of matters. I have also recommended including a new policy in this section as a result of submissions addressed in section 1.4.7 of *Report 1: Introduction and general themes* regarding effects management hierarchies.

9.7.16.1. Submissions

1216. Trojan and Wayfare seek an additional policy on wetlands to provide policy support for activities which result in particular benefits. The submitters seek the following wording:⁸⁶⁸

LF-FW-NEW POLICY – Promoting awareness of and access to natural wetlands

Support activities which result in either of 1 – 4 of LF-FW-P10 above, or improve people’s awareness of, and access to, natural wetlands for customary, or scientific, or education, or recreational uses.

1217. Federated Farmers and OWRUG consider that environmental flows and levels have been inappropriately conflated with natural character and seek to remove flows and levels from LF-FW-P13 and instead include the following new policy:⁸⁶⁹

NEW: Policy LF-FW – FS1

Set environmental flow regimes within Otago lakes and rivers in accordance with the FMU objectives and the NOF limit setting process in Appendix 1 of the National Policy Statement for Freshwater Management 2020.

⁸⁶⁵ 00139.108 DCC

⁸⁶⁶ 00206.036 Trojan, 00411.048 Wayfare, 00213.037 Fonterra

⁸⁶⁷ 00510.023 The Fuel Companies

⁸⁶⁸ 00206.032 Trojan, 00411.044 Wayfare

⁸⁶⁹ 00239.089 Federated Farmers, 00235.097 OWRUG

9.7.16.2. Analysis

1218. I do not consider the new policy sought by Trojan and Wayfare is necessary. It is unclear what is meant by “support” and how that would be interpreted and applied in lower order plans. I am aware that the NESF manages activities in wetlands and provides for some of these activities, which the pORPS and lower order plans cannot override. I do not recommend accepting this submission point.

1219. I have addressed the new policy sought by Federated Farmers and OWRUG in section 9.7.13 of this report. In summary, I consider that the amendments I have recommended to LF-FW-P7 address this matter and do not recommend accepting these submission points.

9.7.16.3. Recommendation

1220. I do not recommend including the new policies sought by submitters but do recommend including a new Policy LF-FW-P13A as set out in *Report 1: Introduction and general themes*.

9.7.17. LF-FW-M5 – Outstanding water bodies.

1221. This provision is addressed in section 9.7.4 of this report.

9.7.18. LF-FW-M6 – Regional plans

9.7.18.1. Introduction

1222. As notified, LF-FW-M6 reads:

LF-FW-M6 – Regional plans

Otago Regional Council must publicly notify a Land and Water *Regional Plan* no later than 31 December 2023 and, after it is made operative, maintain that *regional plan* to:

- (1) identify the compulsory and, if relevant, other values for each *Freshwater Management Unit*,
- (2) state *environmental outcomes* as objectives in accordance with clause 3.9 of the NPSFM,
- (3) identify *water bodies* that are *over-allocated* in terms of either their *water* quality or quantity,
- (4) include environmental flow and level regimes for *water bodies* (including *groundwater*) that give effect to *Te Mana o te Wai* and provide for:
 - (a) the behaviours of the *water body* including a base flow or level that provides for variability,
 - (b) healthy and resilient mahika kai,

- (c) the needs of indigenous fauna, including taoka species, and aquatic species associated with the *water body*,
- (d) the hydrological connection with other *water bodies*, estuaries and coastal margins,
- (e) the traditional and contemporary relationship of Kāi Tahu to the *water body*, and
- (f) community *drinking water* supplies, and

(5) include limits on resource use that:

- (a) differentiate between types of uses, including *drinking water*, and social, cultural and economic uses, in order to provide long-term certainty in relation to those uses of available *water*,
- (b) for *water bodies* that have been identified as *over-allocated*, provide methods and timeframes for phasing out that *over-allocation*,
- (c) control the *effects* of existing and potential future development on the ability of the *water body* to meet, or continue to meet, *environmental outcomes*,
- (d) manage the adverse *effects* on *water bodies* that can arise from the use and development of *land*, and

(6) provide for the off-stream storage of surface *water* where storage will:

- (a) support Te Mana o te Wai,
- (b) give effect to the objectives and policies of the LF chapter of this RPS, and
- (c) not prevent a surface *water body* from achieving identified *environmental outcomes* and remaining within any limits on resource use, and

(7) identify and manage *natural wetlands* in accordance with LF–FW–P7, LF–FW–P8 and LF–FW–P9 while recognising that some activities in and around *natural wetlands* are managed under the NESF, and

(8) manage the adverse *effects* of *stormwater* and *wastewater* in accordance with LF–FW–P15.

9.7.18.2. Submissions

1223. Greenpeace and Ministry of Education support LF-FW-M6 and seek to retain it as notified.⁸⁷⁰

1224. Beef + Lamb and DINZ consider the method is not consistent with the requirements of the NPSFM, and that it “excludes some things which are necessary and makes connections between different aspects that are not consistent with the wording of the

⁸⁷⁰ 00407.042 Greenpeace, 00421.002 Ministry of Education

NPS-FM.”⁸⁷¹ They seek that it is deleted and replaced with a policy which links back to achieving Te Mana o te Wai, and the long-term visions for each FMU but have not provided specific wording for this policy. They state that the policy should include a reference to “maintaining resilience and flexibility of land use to provide for ongoing social and economic wellbeing within the identified limits.” In regard to the notified wording of LF-FW-M6, the submitters state that clause (2) should link environmental outcomes to values, and that in clause (3), after environmental outcomes have been identified, attributes, baseline states and target attribute states must be identified.⁸⁷²

1225. Meridian seeks to elevate LF-FW-M6 to a new policy or adopt, as a new policy, words of the same effect. The submitter notes that clause (6) requires provision for off-stream storage of surface water in the regional plan, and states that if the matter is sufficiently important to require this provision, there should be a policy addressing the same, as needed.⁸⁷³

1226. PWCG and Lloyd McCall seek a general amendment to change the wording of the provision from “ORC must publicly notify” to “ORC is targeting to notify...” They state that a fixed time frame is dangerous and that it would be better to have full consultation rather than sticking to a time frame which could result in a ‘top-down’ plan.⁸⁷⁴ They also state that this is required throughout the document, referring to the notification of the regional plan.

1227. Minster for the Environment states that the separation between clause (4), which requires flows and level regimes, and clause (5), which requires limits to be set, places the phasing out of over-allocation in the limits section. Therefore, the submitter seeks to amend LF-FW-M6 to clarify that environmental flows and levels can be used to phase out over-allocation together and as part of limits.⁸⁷⁵

1228. DCC and Kāi Tahu ki Otago seek amendments to clause (3) for clarity. Kāi Tahu ki Otago seeks to delete the word ‘either’ which precedes “their water quality or quantity.”⁸⁷⁶ DCC states that explicit reference to over-allocation in terms of water quality or quantity, is confusing as ‘over-allocation’ is defined in the pORPS and already includes both freshwater quality and quantity. The submitter seeks the following amendment:⁸⁷⁷

(3) identify water bodies that are over-allocated ~~in terms of either their water quality or quantity.~~

1229. Kāi Tahu ki Otago states that the method is generally appropriate to achieve the objectives of the pORPS, give effect to the NPSFM 2020 and Te Mana o Te Wai. However, the submitter seeks several amendments throughout the provision to link environmental flow and level regimes to freshwater visions and recognise the hydrological connections

⁸⁷¹ 00237.042 Beef + Lamb and DINZ

⁸⁷² 00237 Beef + Lamb and DINZ (uncoded submission point)

⁸⁷³ 00306.039 Meridian

⁸⁷⁴ 00207.005 PWCG, 00319.005 McCall, Lloyd

⁸⁷⁵ 00136.007 Minster for the Environment

⁸⁷⁶ 00226.191 Kāi Tahu ki Otago

⁸⁷⁷ 00139.112 DCC

between water bodies and wetlands. Additionally, Kāi Tahu ki Otago requests a new clause to ensure Kāi Tahu cultural and spiritual concerns regarding the mixing of water between different catchments are considered and addressed in the development of the regional plan. The amendments the submitter seeks are as follows:⁸⁷⁸

(4) include environmental flow and level regimes for water bodies (including groundwater) that give effect to Te Mana o te Wai, support achievement of the vision for the Freshwater Management Unit set out in the LF-VM objectives and provide for:

(a) the natural behaviours of the water body including a base flow or level that provides for variability,

...

(d) the hydrological connection with other water bodies, wetlands, estuaries and coastal margins,

...

(5) include limits on resource use that support achievement of the vision for the Freshwater Management Unit set out in the LF-VM objectives:

(a) differentiate between types of uses, including drinking water, and social, cultural and economic uses, in order to provide long-term certainty in relation to about the availability of water for those uses of available water,

(b) for water bodies that have been identified as over – allocated, provide methods and timeframes for phasing out that over-allocation within the timeframes required to achieve the vision for the Freshwater Management Unit set out in the LF-VM objectives,

...

(7a) recognise and respond to Kāi Tahu cultural and spiritual concerns about mixing of water between different catchments, and ...

1230. DCC seeks to retain sub-clause (4)(f) as notified and to include a definition of “community drinking water supply” but does not provide a definition.⁸⁷⁹

1231. Trustpower supports the recognition of the role of water in providing for essential needs but considers this should extend to the provision of water for lifeline utilities. Trustpower seeks to incorporate a new sub-clause (4)(g) for the generation of hydro-electricity.⁸⁸⁰

1232. As a result of other amendments sought elsewhere in the LF-FW section, Fish and Game seeks to include the following two additional sub-clauses to clause (4).⁸⁸¹

⁸⁷⁸ 00226.191 Kāi Tahu ki Otago

⁸⁷⁹ 00139.112 DCC

⁸⁸⁰ 00311.019 Trustpower

⁸⁸¹ 00231.06 Fish and Game

(4)(ca) the protection, including the potential for restoration, of trout and salmon habitat, insofar as it is consistent with ECO-P11,

...

(4)(g) human amenity and well-being through protecting and enhancing access to, and recreational use, of water bodies, and

1233. Horticulture NZ considers that this method should provide for water for food production and food security and seeks to include the following new sub-clause to clause (4):⁸⁸²

(4)(g) rootstock survival and frost protection water required for domestic food security,

1234. Trojan and Wayfare consider that environmental flow and level regimes should include provision for human-wellbeing and seek to include the following new sub-clause to clause (4):⁸⁸³

(4)(x) human wellbeing through protecting and enhancing people's ability to access waterbodies and use water to support outdoor recreation activities and water based transport activities,

1235. Wise Response states that more emphasis is required on shifting land use practice to low carbon practice and more resilient enterprise aimed at promoting fastest possible reduction in emissions. The submitter seeks the following amendments to clauses (4) and (5):⁸⁸⁴

(4) include environmental flow and level regimes for water bodies (including groundwater) that give effect to Te Mana o te Wai by the specified timeframes and provide for:

(a) a variable presumptive flow regime above a minimum flow or level for each water body the behaviours of the water body, including a base flow or level that provides for variability,

...

(c) the needs of all indigenous fauna, including taoka species, and aquatic species associated with the water body,

(d) the importance of hydrological connection with other water bodies, estuaries and coastal margins in resource management,

(5)(d) avoid or minimise manage the adverse effects on water bodies that can arise from the use and development of land, and ...

1236. AWA seeks amendments to sub-clause (5)(a) to recognise that not all water is the same, and different activities may need to differentiate between water bodies of different water quality. The submitter states that the best quality groundwater requires the least

⁸⁸² 00236.065 Horticulture NZ

⁸⁸³ 00206.038 Trojan, 00411.050 Wayfare

⁸⁸⁴ 00509.082 Wise Response

treatment and should be secured for drinking water if that is practicable. Therefore, the process for setting resource limits for activity groups should be more nuanced than allocating volumes across catchments. AWA seeks the following amendments to clause (5)(a):⁸⁸⁵

(5) include limits on resource use that:

(a) differentiate between water bodies (based on water quality and quantity) and different types of uses, including drinking water, and social, cultural and economic uses, in order to meet the needs of communities and provide long-term certainty in relation to those uses of available water,

1237. DCC seeks to amend sub-clause (5)(a) for clarity and to reflect the fact that setting limits on resource use solely for drinking water (as defined in the RPS) separate from social and economic uses will be difficult to achieve considering reticulated drinking water supplies are typically used for a wide range of purposes aside from human consumption. Therefore, they seek to replace 'drinking water' with 'community drinking water supply.' In doing so, they also seek amendments to clause (7) and (8) for consistency with their other amendments.⁸⁸⁶

1238. Trustpower seeks amendments to clause (5) to recognise water utilised for the provision of lifeline utilities. They also seek amendments to ensure consistency with earlier submissions they have made. These amendments are as follows:⁸⁸⁷

(5)(a) differentiate between types of uses, including drinking water, water utilised for the provision of lifeline utilities, and social, cultural and economic uses,

...

(5)(c) ~~control the effects of~~ enable existing and potential future development where the effects of this on the ability of the water body to meet or continue to meet environmental outcomes are managed in accordance with the effects management hierarchy

1239. Rayonier Matariki Forests states that there is no alignment between the provision and the NESPF and there have been no assessments undertaken regarding the effectiveness of the regulations of the NESPF. Therefore, the submitter seeks amendments to sub-clause (5)(d) to make the provisions of the NESPF prevail.⁸⁸⁸ Specific wording has not been provided.

1240. QLDC seeks to amend sub-clause (5)(d) by replacing 'manage' with 'control' or 'restrict.' They state that the 'manage' approach may not provide for the inclusion of limits, as is intended.⁸⁸⁹

⁸⁸⁵ 00502.007 AWA

⁸⁸⁶ 00139.112 DCC

⁸⁸⁷ 00311.019 Trustpower

⁸⁸⁸ 00020.012 Rayonier

⁸⁸⁹ 00138.076 QLDC

1241. Horticulture NZ seeks amendment to clause (5) to reference broader human health needs. They state that this would improve the method, particularly in identifying health and wellbeing needs of people (priority 2) as per LF-WAI-P1. They seek amendment as follows:⁸⁹⁰

(5) include limits on resource use that:

(a) differentiate between types of uses, including human health needs (such as drinking water), and social, cultural and economic uses, in order to provide long-term certainty in relation to those uses of available water,

1242. Consistent with their submission on clause (4) Fish and Game seeks to amend clause (5) to include a new sub-clause (5)(e) as follows:⁸⁹¹

(5)(e) enable all activities operating within limits to support the health, well-being and resilience of water bodies, and

1243. McArthur Ridge Vineyard and Strath Clyde Water *et al.* propose changes which are considered to resolve the issue of over-allocation and seek amendments to clause (5)(b) which intend to provide for an integrated approach to considering the likely effects arising from the use of allocated water with long term sustainability outcome, recognising water scarcity, optimising the economic and social benefits to the community from using a scarce resource, and recognising crops with lower water needs can be provided water with less impact on critical low flow periods. The following amendments are sought:⁸⁹²

(b) for water bodies that have been identified as over-allocated, provide methods and timeframes for phasing out that over-allocation, that optimise reliability of primary allocation, with priority given to water uses that generally:

(i) have a small environmental footprint in terms of greenhouse gas emissions, nutrient loss, sediment loss and microbial contaminant loss;

(ii) use less water per hectare than other uses;

(iii) provide greater economic return and associated employment per volume of water used;

(iv) are able to use less water at times that coincide with seasonal low flows

1244. John Highton seeks to amend clause (6) to include a provision that requires planning to be undertaken on forms of water storage and how this will interact with Te Mana o Te Wai but has not provided specific wording for this amendment.⁸⁹³

⁸⁹⁰ 00236.065 Horticulture NZ

⁸⁹¹ 00231.06 Fish and Game

⁸⁹² 00403.006 McArthur Ridge Vineyard, 00404.006 Strath Clyde Water *et al.*,

⁸⁹³ 00014.059 John Highton

1245. Waitaki Irrigators seeks to amend the wording of clause (6) to remove ‘off-stream storage’, so as to provide for circumstances where in-stream storage may be required, pointing out that sub-clauses (a) to (c) allow for in-stream values and considerations to be addressed even in relation to in-stream storage. The submitter submits that this may be an issue in some cases, such as where such storage already exists but increased storage capacity may be required, or where geography/topography prevents off-stream storage. Waitaki Irrigators seeks the following amendment:⁸⁹⁴

(6) provide for the ~~off-stream~~ storage of surface water where storage will...

1246. Federated Farmers, OWRUG and Horticulture NZ seek to retain clause (6) and, similar to Waitaki Irrigators, seek to include reference to on-stream storage.⁸⁹⁵ DCC seeks to include a definition of the term “off-stream storage of surface water” but does not suggest specific wording.⁸⁹⁶

1247. Meridian considers that if the matter of off-stream storage of surface water is important, amendments are required to elevate LF-FW-M6 to a stand-alone policy within the RPS.⁸⁹⁷

1248. For the same reasons as the amendments sought to clauses (4) and (5), Wise Response seeks the following amendments to clause (7):⁸⁹⁸

(7) identify and manage natural wetlands in accordance with LF-FW-P7, LF-FW-P8, and LF-FW-P9, and LF-FW-P10 while recognising that some activities in and around natural wetlands are managed under the NESF, and actively promote low impact regenerative landuse practice that maximises carbon sequestration, maximises water harvest in soils, aquifers and hence baseflow to rivers, minimises the need for supplementary nutrient and promotes catchment level planning to maximise community resilience.

1249. AWA submits that ORC should prohibit certain activities (for example, water export) and incentivise others (for example, regenerative farming methods or sheep farming) in order to achieve better outcomes for the environment and communities. The submitter seeks to insert a new clause (9) as follows:⁸⁹⁹

(9) include rules to allocate water within the limits amongst competing activities to ensure the most efficient use of water

1250. The Fuel Companies seeks to include provision for the control of contaminants at source which the submitters consider is an effective and efficient means of minimising the potential for generation of contaminants. The submitters seek to include the following wording but it is not clear where in the method:⁹⁰⁰

⁸⁹⁴ 00213.021 Waitaki Irrigators

⁸⁹⁵ 00239.091 Federated Farmers, 00235.099 OWRUG, 00236.065 Horticulture NZ

⁸⁹⁶ 00139.114 DCC

⁸⁹⁷ 00306.039 Meridian

⁸⁹⁸ 00509.082 Wise Response

⁸⁹⁹ 00502.007 AWA

⁹⁰⁰ 00510.024 The Fuel Companies

Promote awareness and actions to reduce contaminant discharges through source control

9.7.18.3. Analysis

1251. I agree with Beef + Lamb and DINZ that there are some discrepancies between the requirements of the NPSFM and LF-FW-M6. I recommend accepting this submission point in part and making the following amendments based on the summary of the NOF process set out in clause 3.7(2) of the NPSFM:

- Clarifying that environmental outcomes must be stated for each identified value in (2),
- Including a new clause (2a) requiring attributes to be identified for each value and baseline states set for those attributes,
- Including a new clause (2b) requiring setting target attribute states and other criteria to support the achievement of environmental outcomes,
- Moving clause (3) to after clause (5), becoming new (5a), and
- Including reference to environmental flow and level regimes supporting the achievement of environmental outcomes in (4).

1252. The matters set out in LF-FW-M6 are methods for implementing the LF-FW policies in ORC's regional plan. I do not consider it would be appropriate to make this a policy and am unsure what Meridian would envisage being contained in a method. Providing for off-stream water storage is a matter that has been raised by the community, including through submissions on the pORPS, many times. I consider it is appropriate for this direction to be contained in LF-FW-M6 as it must occur in a way that implements the policies in LF-FW. I do not recommend accepting the submission point by Meridian.

1253. I understand that ORC has made a commitment to the Minister for the Environment to notify the new land and water regional plan in December 2023 and I am not aware that the Council has renegotiated this timeframe. I therefore do not recommend accepting the submissions of PWCG and Lloyd McCall.

1254. I agree with the Minister for the Environment that flow and level regimes and limits on resource use may be methods used to address over-allocation. I consider that moving clause (3) to become (5a) addresses the chronological element of the submitter's concern and recommend also including reference to methods and timeframes for addressing over-allocation in new clause (5a). As a consequential amendment, I recommend deleting sub-clause (5)(b) as this is now incorporated in new clause (5a). I recommend accepting this submission point in part.

1255. I agree with DCC that the definition of over-allocation clearly applies to both water quality and quantity and therefore the latter part of clause (3) is unnecessary. I recommend accepting this part of the submission point by DCC. Correspondingly, I also recommend rejecting the submission point by Kāi Tahu ki Otago as the recommended deletion removes the phrase in question that the submitter seeks to amend.

1256. I consider that the amendments sought by Kāi Tahu ki Otago clarify the implementation of the method and improve alignment with the NPSFM. In some cases, I recommend incorporating the wording sought, or similar wording, in different places to that sought by the submitter however I consider overall the effect and intent is the same. I recommend accepting this submission point in part.
1257. DCC seeks to include a definition of community drinking water supply but has not provided a definition. Without further clarity about what is sought, I do not recommend accepting this part of the submission point.
1258. The matters in clause (4) are focused on outcomes related to the health and well-being of water bodies and people, in line with priorities (1) and (2) in the objective of the NPSFM. Elsewhere in this report, I have recommended rejecting submissions seeking to recognise hydro-electricity generation as priority (2). For the same reasons, I do not consider it is appropriate to include reference to hydro-electricity generation in this clause and do not recommend accepting the submission point by Trustpower. Given the context of the priorities, I also do not recommend including the new sub-clause relating to recreation sought by Fish and Game, the new sub-clause relating to human well-being sought by Trojan and Wayfare, or the new sub-clause relating to water for domestic food security as sought by Horticulture NZ. In the case of the latter particularly, I consider these to be activities better addressed through the LWRP.
1259. I have addressed a suite of submission points by Fish and Game regarding the habitats of trout and salmon in section 1.4.9 of *Report 1: Introduction and general themes*. In summary, I do not recommend accepting the submission point by Fish and Game and I do not consider it is necessary, however I note I have recommended amendments to LF-FW-O8 and LF-FW-P7 to address the submitter's concerns.
1260. Elsewhere I have recommended amending clause (4) to refer to achievement of the freshwater visions in LF-VM. Given these visions contain timeframes, I do not consider the amendment sought by Wise Response to include "by the specified timeframes" is necessary. It is not clear to me what a "variable presumptive flow regime" is and I do not consider this is commonly understood terminology. The amendments sought to sub-clauses (c) and (d) do not, in my opinion, result in any practical difference to the method. I do not recommend accepting this submission point.
1261. In my experience, limits on resource use will practically differ between different types of water bodies so I do not consider the first amendment sought by AWA to clause (5)(a) is necessary. Whether groundwater abstractions should be prioritised for drinking water supplies is a matter for the LWRP to determine. The other amendment sought by the submitter expands the intent of the clause beyond what was intended. I do not recommend accepting this submission point.
1262. I acknowledge the point made by DCC regarding the fact that many drinking water supplies are not used solely for drinking water, however I do not consider any amendments are required. While most drinking water is sourced from community drinking water sources, this is not the case for all as many rural properties in particular rely on their own water abstractions to provide drinking water. I consider that "drinking

- water” is sufficiently broad to include all of these sources. It is not clear what consequential amendments DCC considers should be made to clauses (7) and (8). I do not recommend accepting this submission point.
1263. I have previously addressed the amendments sought by Trustpower and the intent behind the method to align with the priorities set out in LF-WAI-P1. For the same reasons, I do not recommend accepting the amendments sought by Trustpower to sub-clause (5)(a). I do not consider that “enabling” is an appropriate management response in advance of knowing whether the use in question affects the achievement of an environmental outcome. For example, it would not be appropriate to enable existing uses that contribute to the over-allocation of a water body in every circumstance. I do not recommend accepting the submission point by Trustpower.
1264. I do not consider the amendment sought by Rayonier Matariki to clause (5)(d) is necessary. Interactions between regional plan rules and the regulations contained in NESs is a matter best addressed at the regional plan level. I do not recommend accepting this submission point.
1265. I consider that management of a resource can include the setting of limits on its use and therefore do not recommend accepting the submission point by QLDC.
1266. It is not clear from the submission of Horticulture NZ what the submitter considers would be a “human health need” other than drinking water. I note the submitter has sought to define “essential human health” and that this term, as defined by the submitter, extends to sanitation, nutritious food, adequate shelter, and warmth. In my opinion, there is a risk that including “human health need” in clause (5)(a) could unintentionally broaden the clause beyond what was intended, and beyond the matters set out in LF-WAI-P1(2). I do not recommend accepting the submission point by Horticulture NZ.
1267. I consider that the NOF process set out in the NPSFM sets out a framework whereby, once the NOF is fully implemented, activities will be managed in a way that gives effect to Te Mana o te Wai and largely achieves (or will, over time, achieve) the outcome sought by Fish and Game. I do not recommend accepting this submission point.
1268. I do not consider it is appropriate to incorporate the level of detail sought by McArthur Ridge Vineyard and Strath Clyde Water and others into a regional policy statement. Decisions about resolving over-allocation, including any priorities to be afforded to different uses of water, should be made within the context of the NOF and, importantly, once values have been identified and environmental outcomes for those values have been developed. I do not recommend accepting these submission points.
1269. I am unsure what specific relief is sought by John Highton. I consider it is clear that any water storage must assist with giving effect to Te Mana o te Wai. Without further clarification, I do not recommend accepting this submission point.
1270. I understand that “on-stream” water storage generally refers to the damming of water bodies. As is evident from RMIA-WAI-I1, damming in Otago’s water bodies has had significant negative adverse effects on Kāi Tahu, degraded the mauri of the water and associated habitats and species, and led to material and cultural deprivation for Kāi Tahu ki Otago. There is a significant tension within Otago’s communities between a desire to

provide for water storage in order to address potential over-allocation in some catchments and as a way to mitigate the effects of climate change, and a desire to recognise the negative impacts of historical proposals like this and prevent any further negative impacts in the future. In my opinion, this clause appropriately recognises that off-stream water storage is generally less contentious due to the reduced need to modify water bodies and their flow.

1271. However, I note that Te Rūnanga o Ngāi Tahu supports the amendment sought by Waitaki Irrigators to remove reference to “off-stream” water storage, on the basis that water storage is an important tool for climate change resilience, water use efficiency, and restoring the mauri of awa affected by over-allocated run of river takes. Kāi Tahu ki Otago did not make a further submission on this provision. I consider it would be helpful to hear evidence from Kāi Tahu ki Otago on the amendments sought by Waitaki Irrigators, Federated Farmers, OWRUG, and Horticulture NZ prior to making a recommendation on this provision. At this stage, therefore, I do not recommend accepting the submission points by Waitaki Irrigators, Federated Farmers, OWRUG, and Horticulture NZ.
1272. I do not consider that a definition of “off-stream storage of surface water” is necessary as this is generally a well-understood concept. If a definition is needed, it would be more appropriate to include this in the LWRP. I do not recommend accepting the submission point by DCC.
1273. For reasons I have previously set out in response to the submission point by Meridian, I do not consider it is appropriate to elevate LF-FW-M6 to a policy and do not recommend accepting this submission point.
1274. Wise Response seeks to include reference to LF-FW-P10 in clause (7). I agree that policy is relevant and should be included and recommend accepting this part of the submission point. I note that the clause incorrectly refers to LF-FW-P8 and I recommend deleting this reference in order to correct a minor error in accordance with clause 16(2) of Schedule 1 of the RMA.
1275. Wise Response and AWA seek to include additional direction for the management of particular activities in this method. I do not consider that the level of detail sought by these submitters is appropriate for the pORPS. Decisions about incentivising particular activities (or not) should be made within the context of the LWRP, once values have been identified and environmental outcomes developed. I do not recommend accepting these submission points.
1276. I have previously recommended including the promotion of source control as a method for reducing contaminants in discharges in policies LF-FW-P15 and new LF-FW-P16 as sought by The Fuel Companies and consider it is appropriate to reflect that amended policy direction in LF-FW-M6. It is not clear from the submission where in the method the submitters seek to incorporate this new provision, however in my opinion it would be best incorporated as a new clause (9). I recommend accepting this submission point in part and aligning the wording with the wording of the additional clauses I have recommended for inclusion in LF-FW-P15 and new LF-FW-P16.

1277. I note that clause (8) as notified reflected the original title and content of LF-FW-P15. I have recommended splitting that policy into two separate policies and clarifying the types of discharges to which each policy applies. I therefore recommend consequential amendments to clause (8) to reflect these changes.

9.7.18.4. Recommendation

1278. I recommend amending LF-FW-M6 to:

LF-FW-M6 – Regional plans

Otago Regional Council must publicly notify a Land and Water Regional Plan no later than 31 December 2023 and, after it is made operative, maintain that *regional plan* to:

- (1) identify the compulsory and, if relevant, other values for each *Freshwater Management Unit*,
- (2) state *environmental outcomes* for each identified value⁹⁰¹ as objectives in accordance with clause 3.9 of the NPSFM,
 - (2a) identify *attributes* for each value and set baseline states for those *attributes*,⁹⁰²
 - (2b) set target *attribute* states and other criteria to support the achievement of *environmental outcomes*.⁹⁰³
- ~~(3) identify *water bodies* that are *over-allocated* in terms of either their *water quality* or *quantity*,⁹⁰⁴~~
- (4) include environmental flow and level regimes for *water bodies* (including *groundwater*) that support the achievement of *environmental outcomes* and the freshwater visions in LF-VM,⁹⁰⁵ give effect to *Te Mana o te Wai* and provide for:
 - (a) the behaviours of the *water body* including a base flow or level that provides for variability,
 - (b) healthy and resilient ~~ma hika kai~~ *ma hika kai*,⁹⁰⁶
 - (c) the needs of indigenous fauna, including taoka species, and aquatic species associated with the *water body*,
 - (d) the hydrological connection with other *water bodies*, estuaries and coastal margins,

⁹⁰¹ 00237 Beef + Lamb and DINZ (uncoded submission point)

⁹⁰² 00237 Beef + Lamb and DINZ (uncoded submission point)

⁹⁰³ 00237 Beef + Lamb and DINZ (uncoded submission point)

⁹⁰⁴ 00237 Beef + Lamb and DINZ (uncoded submission point)

⁹⁰⁵ 00237 Beef + Lamb and DINZ (uncoded submission point), 00226.191 Kāi Tahu ki Otago

⁹⁰⁶ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

- (e) the traditional and contemporary relationship of Kāi Tahu to the *water body*, and
 - (f) community *drinking water* supplies, and
- (5) include *limits on resource use* that support the achievement of environmental outcomes and the freshwater visions in LF-VM, give effect to Te Mana o te Wai and:⁹⁰⁷
- (a) differentiate between types of uses, including *drinking water*, and social, cultural and economic uses, in order to provide long-term certainty ~~in relation to~~ about the availability of water for those uses of available water,⁹⁰⁸
 - ~~(b) for *water bodies* that have been identified as *over-allocated*, provide methods and timeframes for phasing out that *over-allocation*,~~⁹⁰⁹
 - (c) control the *effects* of existing and potential future development on the ability of the water body to meet, or continue to meet, *environmental outcomes*,
 - (d) manage the adverse *effects* on *water bodies* that can arise from the use and development of *land*, and
- (5A) identify *water bodies* that are *over-allocated* and the methods and timeframes for phasing out that *over-allocation* (including through environmental flow and level regimes and *limits on resource use*) within the timeframes required to achieve the relevant freshwater vision set out in LF-VM,⁹¹⁰
- (6) provide for the off-stream storage of surface *water* where storage will:
- (a) support Te Mana o te Wai,
 - (b) give effect to the objectives and policies of the LF chapter of this RPS, and
 - (c) not prevent a surface *water body* from achieving identified *environmental outcomes* and remaining within any *limits on resource use*, and
- (7) identify and manage *natural wetlands* in accordance with ~~LF-FW-P7, LF-FW-P8, and LF-FW-P9~~ and LF-FW-P10⁹¹¹ while recognising that some activities in and around *natural wetlands* are managed under the NESF, ~~and~~

⁹⁰⁷ 00226.191 Kāi Tahu ki Otago

⁹⁰⁸ 00226.191 Kāi Tahu ki Otago

⁹⁰⁹ 00136.007 Minster for the Environment

⁹¹⁰ 00237 Beef + Lamb and DINZ (uncoded submission point), 00136.007 Minster for the Environment, 00139.112 DCC

⁹¹¹ 00509.082 Wise Response; Clause 16(2), Schedule 1, RMA

- (7a) recognise and respond to Kāi Tahu cultural and spiritual concerns about mixing of water between different catchments,⁹¹²
- (8) manage the adverse *effects* of discharges of stormwater and industrial and trade waste ~~and wastewater~~ in accordance with LF-FW-P15 and discharges containing sewage and other human wastes in accordance with LF-FW-P15A, and⁹¹³
- (9) promote source control as a method for reducing contaminants in discharges of stormwater or industrial and trade waste and discharges containing sewage or other human wastes.⁹¹⁴

9.7.19. LF-FW-M7 – District plans

9.7.19.1. Introduction

1279. As notified, LF-FW-M7 reads:

LF-FW-M7 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* no later than 31 December 2026 to:

- (1) map *outstanding water bodies* and identify their outstanding and significant values using the information gathered by Otago Regional Council in LF-FW-M5, and
- (2) include provisions to avoid the adverse *effects* of activities on the significant and outstanding values of *outstanding water bodies*,
- (3) require, wherever practicable, the adoption of water sensitive urban design techniques when managing the *subdivision*, use or development of *land*, and
- (4) reduce the adverse *effects* of *stormwater discharges* by managing the *subdivision*, use and development of *land* to:
 - (a) minimise the peak volume of *stormwater* needing off-site disposal and the load of *contaminants* carried by it,
 - (b) minimise adverse *effects* on *fresh water* and *coastal water* as the ultimate receiving environments, and the capacity of the *stormwater* network,
 - (c) encourage on-site storage of rainfall to detain peak *stormwater* flows, and
 - (d) promote the use of permeable surfaces.

⁹¹² 00226.191 Kāi Tahu ki Otago

⁹¹³ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.189 Kāi Tahu ki Otago, 00230.094 Forest and Bird

⁹¹⁴ 00510.023 The Fuel Companies

1280. Clauses (1) and (2) of this method relate to outstanding water bodies and have been addressed in section 9.7.4.6 of this report.

9.7.19.2. Submissions

1281. Ravensdown and Greenpeace support LF-FW-M7 and seek to retain it as notified.⁹¹⁵

1282. CODC supports the provision in principle but submits that the timeframes may not be achievable.⁹¹⁶ DCC seeks to amend the timeframe to provide flexibility for issues outside territorial authority's control but does not seek specific amendments.⁹¹⁷

1283. Kāi Tahu ki Otago generally supports the method, particularly the clear direction for district plans to include provisions to reduce the adverse effects of stormwater discharges from subdivision and land development. The submitter seeks to include the following new clause to recognise that preserving natural character is a shared responsibility across regional and territorial jurisdictions:⁹¹⁸

(x) include provisions to preserve the natural character of lakes and rivers and their margins from the adverse effects of land use and development and activities on the surface of water, ...

1284. Trojan and Wayfare seek to amend clause (3) to clarify that it applies to "urban" land, stating that it is inappropriate and unnecessary to adopt water sensitive urban design techniques to all land development outside the urban environment. Blackthorn Lodge seeks a similar amendment, to replace "land" with "urban development." These amendments are as follows:⁹¹⁹

(3) require, wherever practicable, the adoption of water sensitive urban design techniques when managing the subdivision, use or development of urban development land, and

1285. The Fuel Companies submit that they have experienced instances of network operators "insisting stormwater discharges permitted under the regional plan be discharges to wastewater." The submitters consider this is not effects based, does not promote sustainable management, and is contrary to the intention to reduce wet weather overflows from the wastewater system. The Fuel Companies seek amendments to direct network operators to accept discharges to networks, where they are permitted under the regional plan or compliant with a relevant discharge consent.⁹²⁰

⁹¹⁵ 00121.059 Ravensdown, 00407.043 Greenpeace

⁹¹⁶ 00201.017 CODC

⁹¹⁷ 00139.115 DCC

⁹¹⁸ 00226.192 Kāi Tahu ki Otago

⁹¹⁹ 00119.014 Blackthorn Lodge, 00206.039 Trojan, 00411.051 Wayfare

⁹²⁰ 00510.025 The Fuel Companies

1286. Wise Response considers the method requires more emphasis to recognise and provide for climate change and regenerative land use practices. A range of amendments are sought to provide for this:⁹²¹

(3) require, wherever practicable, the adoption of ~~water~~ hydrologically and ecologically sensitive urban design techniques when managing the subdivision, use or development of land, and

(4) reduce the adverse effects of stormwater discharges by managing the subdivision, use and development of land to:

...

(c) ~~promote~~ encourage on-site storage of rainfall to detain peak stormwater flows, and

...

(5) actively promote low impact regenerative landuse practice that maximises carbon sequestration, maximises water harvest in soils, aquifers and hence baseflow to rivers, minimises the need for supplementary nutrient and promotes catchment level planning to maximise community resilience.

(6) give practical effect to all the relevant freshwater policies

1287. FENZ seeks an amendment to clause (3) so that “water sensitive urban design techniques” consider firefighting water supplies when managing subdivision, use or development of land.⁹²²

1288. DCC submits that the use of water sensitive design techniques will not always be appropriate and seeks the following amendments to clause (3):

(3) ~~require~~ promote, wherever practicable and beneficial, the adoption of water sensitive urban design techniques when managing the subdivision, use or development of land, and

1289. The submitter also seeks to include a definition of “water sensitive water design” to assist with clarity but does not suggest one.

1290. DCC also raises concern about the adverse effects of requiring on-site storage of rainwater and seeks the following amendments to clause (4):⁹²³

(a) minimise the ~~peak volume of stormwater~~ load of contaminants carried by stormwater needing off-site disposal ~~and the load of contaminants carried by it,~~

...

(c) encourage on-site storage of rainfall to detain peak stormwater flows where appropriate, and

⁹²¹ 00509.083 Wise Response

⁹²² 00219.016 FENZ

⁹²³ 00139.115 DCC

1291. Beef + Lamb and DINZ seek to include provisions that address all adverse effects of urban development, including providing for drinking water, wastewater treatment, and effects of earthworks on waterbodies. The submitters also seek that clause (3) is amended to ensure stormwater can be managed in a way that is consistent with achieving the long-term vision in all cases.⁹²⁴ The submitters have not provided specific wording for these amendments.
1292. Fish and Game submits that resolving legacy issues associated with existing stormwater systems will require time and significant staged investment and proposes the following amendment to clause (3) and insertion of an additional clause:⁹²⁵

- (3) require, wherever practicable, the adoption of water sensitive urban design techniques when managing ~~the~~ existing subdivision, use or development of land in urban areas,
- (3a) require the adoption of water sensitive urban design techniques when managing new subdivision, use or development or land in urban areas, and

9.7.19.3. Analysis

1293. I understand the concern raised by CODC and DCC regarding the timeframe for amending district plans, however neither submitter seeks specific relief. Without further clarify about the outcome sought by submitters, I do not recommend accepting these submission points.
1294. I agree with Kāi Tahu ki Otago that the preserving the natural character of rivers and lakes and their margins is a responsibility shared between regional councils and territorial authorities and recommend accepting this submission point. It is not clear from the submission where the submitter considers this clause should be included, however I recommend incorporating it as a new clause (2a) to reflect the order of the policies in the LF-FW section.
1295. I note that LF-FW-M7 uses the term “water sensitive urban design” whereas UFD-M2(3)(d) refers to “water sensitive design”. I understand these are often used interchangeably, however to avoid any confusion about where they are applicable to use, I recommend amending the reference in LF-FW-M7 to “water sensitive design” for consistency with UFD-M2. I consider this is an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA.
1296. I agree with Blackthorn Lodge, Trojan, and Wayfare that water sensitive design is primarily focused on urban areas. However, I do not consider it is always limited to urban areas. For example, the definition of water sensitive design in the Auckland Unitary Plan is:

“An approach to freshwater management, it is applied to land use planning and development at complementary scales including region, catchment, development, and site. Water Sensitive Design seeks to protect and enhance natural freshwater

⁹²⁴00237.043 Beef + Lamb and DINZ

⁹²⁵ 00231.061 Fish and Game

systems, sustainably manage water resources, and mimic natural processes to achieve enhanced outcomes for ecosystems and our communities.”

1297. In my opinion, while the majority of land use planning and development occurs within urban areas, rural areas are not devoid of this type of activity and water sensitive design can also be implemented in those areas to manage, for example, stormwater run-off. I do not recommend accepting the submission points by Blackthorn Lodge, Trojan, and Wayfare.
1298. The operation of infrastructure networks is not managed under district plans. I do not consider it is efficient or effective to mandate operational requirements through district plans in the manner sought by The Fuel Companies and therefore do not recommend accepting this submission point.
1299. In my opinion, water sensitive design is a commonly understood term and it would not be helpful for clarity or certainty to amend the term as sought by Wise Response. It is not clear what distinction the submitter anticipates by amending “encouraging” to “promoting” in clause (4)(c). I consider that on-site storage is likely to require site-specific assessment before it can be ascertained whether storage is appropriate or not and therefore prefer to retain the wording as notified.
1300. Wise Response seeks to include additional direction for the management of particular activities in this method. I do not consider that the level of detail sought by this submitter is appropriate for the pORPS. Decisions about incentivising particular activities (or not) should be made within the context of each district plan. Finally, the submitter seeks to “give practical effect” to all the relevant freshwater policies. I do not consider that assists with interpretation as the legal requirement is for district plans to “give effect to” regional policy statements. I do not recommend accepting the submission point by Wise Response.
1301. I understand that water sensitive design is primarily adopted to manage stormwater run-off from land development and am not sure that the concept generally incorporates the management of firefighting water supplies. FENZ may wish to clarify what it seeks in its evidence, however at this stage I do not recommend accepting this submission point.
1302. While I understand the concerns raised by DCC in relation to the suitability of using water sensitive design techniques, in my opinion it is appropriate for those techniques to be the starting point, with other techniques coming into play in situations where it is not practicable to implement water sensitive design techniques. I understand the term “water sensitive design” is generally well-understood and am not convinced a definition is necessary, particularly as the submitter has not suggested a definition. For these reasons, I do not recommend accepting the submission point by DCC on clause (3).
1303. The amendments sought by DCC to clause (4)(a) are unclear. I am unsure whether it is the contaminants or the stormwater needing off-site disposal in the amendments sought. I note that no other territorial authorities have opposed this clause and do not recommend accepting this part of the submission point.
1304. I agree with DCC that there may be circumstances where on-site storage is not appropriate and therefore recommend accepting this part of the submission point.

1305. It is not clear what relief Beef + Lamb and DINZ seek in relation to this method. Without further clarification, and preferably specific amendments, I do not recommend accepting this submission point.

1306. As I have stated previously, I do not consider that water sensitive design techniques will be suitable in all situations. I prefer to retain the notified wording to retain flexibility for these techniques to be applied in a site-specific way and therefore do not recommend accepting the submission point by Fish and Game,

9.7.19.4. Recommendation

1307. I recommend the following amendments to LF-FW-M7:

LF-FW-M7 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* no later than 31 December 2026 to:

- (1) map *outstanding water bodies* and identify their outstanding and significant values using the information gathered ~~by Otago Regional Council in~~ through implementation of⁹²⁶ LF-FW-M5, and
- (2) include provisions to avoid the adverse *effects* of activities on the significant and outstanding values of *outstanding water bodies*,
- (2A) include provisions to preserve the natural character of lakes and rivers and their margins from the adverse effects of activities on the surface of water and land use and development on their margins,⁹²⁷
- (3) require, wherever practicable, the adoption of water sensitive ~~urban~~⁹²⁸ design techniques when managing the *subdivision*, use or development of *land*, and
- (4) reduce the adverse effects of *stormwater discharges* by managing the *subdivision*, use and development of *land* to:
 - (a) minimise the peak volume of *stormwater* needing off-site disposal and the load of *contaminants* carried by it,
 - (b) minimise adverse effects on *fresh water* and *coastal water* as the ultimate receiving environments, and the capacity of the *stormwater* network,
 - (c) encourage on-site storage of rainfall to detain peak *stormwater* flows where appropriate⁹²⁹ and
 - (d) promote the use of permeable surfaces.

⁹²⁶ 00138.077 QLDC

⁹²⁷ 00226.192 Kāi Tahu ki Otago

⁹²⁸ Clause 16(2), Schedule 1, RMA

⁹²⁹ 00139.115 DCC

9.7.20. LF-FW-M8 – Action plans

9.7.20.1. Introduction

1308. As notified LF-FW-M8 reads:

LF–FW–M8 – Action plans

Otago Regional Council:

- (1) must prepare an action plan for achieving any target *attribute* states for *attributes* described in Appendix 2B of the NPSFM,
- (2) may prepare an action plan for achieving any target *attribute* states for *attributes* described in Appendix 2A of the NPSFM, and
- (3) must prepare any action plan in accordance with clause 3.15 of the NPSFM.

9.7.20.2. Submissions

1309. QLDC and Kāi Tahu ki Otago support the provision as drafted and seek it be retained as notified.⁹³⁰ Beef + Lamb and DINZ seek unspecified amendments to provide more certainty about the process and how ORC will consult with community, for example about options and costs.⁹³¹

9.7.20.3. Analysis

1310. As set out in LF-FW-M10, all of the methods in the LF-WAI, LF-VM, and LF-LS sections also assist with implementing the policies in the LF-FW section. Relevantly, this includes LF-VM-M3 which sets out how ORC will work with communities. On that basis, and as the submitters have not specified what amendments they seek to LF-FW-M8, I do not recommend accepting the submission point by Beef + Lamb and DINZ.

9.7.20.4. Recommendation

1311. I recommend retaining LF-FW-M8 as notified.

9.7.21. LF-FW-M9 – Monitoring

9.7.21.1. Introduction

1312. As notified, LF-FW-M9 reads:

LF–FW–M9 – Monitoring

Otago Regional Council, for every *FMU*, must:

- (1) establish a long-term monitoring programme that incorporates cultural health monitoring,

⁹³⁰ 00138.078 QLDC, 00226.193 Kāi Tahu ki Otago

⁹³¹ 00237.044 Beef + Lamb and DINZ

- (2) record information (including monitoring data) about the state of *water bodies* and *freshwater* ecosystems and the challenges to their health and well-being, and
- (3) regularly prepare reports on the matters in (1) and (2) and publish those reports.

9.7.21.2. Submissions

1313. QLDC seeks to retain LF-FW-M9 as notified.⁹³² DCC seeks unspecified amendments to quantify what “regularly prepare reports” means in clause (3).⁹³³

1314. Kāi Tahu ki Otago supports the monitoring requirements in this method but considers it is essential that the method also includes a commitment to taking action if problems are identified. The submitter seeks to include a new clause (4):⁹³⁴

(4) take action where the results of monitoring show that this is necessary to achieve the objectives of this policy statement

9.7.21.3. Analysis

1315. Policy 14 of the NPSFM requires 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. Clause 3.30 of the NPSFM sets out assessment and reporting requirements in more detail, including specifying that some types of reports must be published annually and others five yearly. I do not consider it is necessary to repeat the content of the NPSFM in this method, however referencing this part of the NPSFM may assist readers to understand the various reporting requirements. I recommend accepting the submission point by DCC in part and amending clause (3) to refer to clause 3.30 of the NPSFM.

1316. Clause 3.20 of the NPSFM states that if a regional council detects that an FMU or part of an FMU is degraded or degrading, it must take action as soon as practicable to halt or reverse the degradation. I consider the amendment sought by Kāi Tahu ki Otago is consistent with this requirement, however I consider that the wording of the clause could be improved so that it is clearer what action is to be taken. I therefore recommend accepting the submission point by Kāi Tahu ki Otago in part and including the following new clause:

(4) where the results of monitoring show the objectives of this regional policy statement are not being met, take the necessary action to achieve the objectives.

⁹³² 00138.079 QLDC

⁹³³ 00139.116 DCC

⁹³⁴ 00226.194 Kāi Tahu ki Otago

9.7.21.4. Recommendation

1317. I recommend the following amendments to LF-FW-M9:

LF-FW-M9 – Monitoring

Otago Regional Council, for every *FMU*, must:

- (1) establish a long-term monitoring programme that incorporates cultural health monitoring,
- (2) record information (including monitoring data) about the state of *water bodies* and *freshwater* ecosystems and the challenges to their health and well-being, ~~and~~⁹³⁵
- (3) regularly prepare reports on the matters in (1) and (2) and publish those reports in accordance with clause 3.30 of the NPSFM,⁹³⁶ and⁹³⁷
- (4) where the results of monitoring show the objectives of this regional policy statement are not being met, take the necessary action to achieve the objectives.⁹³⁸

9.7.22. LF-FW-M10 – Other methods

9.7.22.1. Introduction

1318. As notified, LF-FW-M10 reads:

LF-FW-M10 – Other methods

In addition to methods LF-FW-M5 to LF-FW-M9, the methods in the LF-WAI, LF-VM and LF-LS sections are also applicable.

9.7.22.2. Submissions

1319. QLDC and Kāi Tahu ki Otago support LF-FW-M10 as drafted and seek it be retained as notified.⁹³⁹ DOC submits that the provision as drafted fails to recognise that methods in the ECO chapter also apply and seeks amendments which address this issue.⁹⁴⁰

9.7.22.3. Analysis

1320. The purpose of this method is to highlight that all four sections in the *LF – Land and freshwater* chapter are relevant for implementing the policies in the *LF-FW – Freshwater* section as they form an integrated package. There will be many other methods in the pORPS that assist with implementing these policies, including *ECO – Ecosystems and*

⁹³⁵ Clause 16(2) Schedule 1, RMA

⁹³⁶ 00139.116 DCC

⁹³⁷ Clause 16(2) Schedule 1, RMA

⁹³⁸ 00226.194 Kāi Tahu ki Otago

⁹³⁹ 00138.080 QLDC, 00226.195 Kāi Tahu ki Otago

⁹⁴⁰ 00137.075 DOC

indigenous biodiversity, and I do not consider it is necessary to cross-reference them all. It is standard practice to read and apply all of the provisions of a regional policy statement. This is reiterated by IM-P1 which requires that all provisions relevant to an issue or decision are applied to ensure an integrated approach.

9.7.22.4. Recommendation

1321. I recommend retaining LF-FW-M10 as notified.

9.7.23. LF-FW-E3 – Explanation

9.7.23.1. Introduction

1322. As required by section 62(1)(d), LF-FW-E3 provides an explanation for the policies in this chapter. As notified, LF-FW-E3 reads:

LF–FW–E3 – Explanation

This section of the LF chapter outlines how the Council will manage *fresh water* within the region. To give effect to *Te Mana o te Wai*, the *freshwater* visions, and the policies set out the actions required in the development of *regional plan* provisions to implement the NPSFM.

The outcomes sought for *natural wetlands* are implemented by requiring identification, protection and restoration. The first two policies reflect the requirements of the NPSFM for identification and protection but apply that direction to all *natural wetlands*, rather than only inland natural wetlands (those outside the *coastal marine area*) as the NPSFM directs. This reflects the views of *takata whenua* and the community that *fresh* and *coastal water*, including *wetlands*, should be managed holistically and in a consistent way. While the NPSFM requires promotion of the restoration of natural inland wetlands, the policies in this section take a stronger stance, requiring improvement where *natural wetlands* have been *degraded* or lost. This is because of the importance of restoration to Kāi Tahu and in recognition of the historic loss of *wetlands* in Otago.

The policies respond to the NPSFM by identifying a number of *outstanding water bodies* in Otago that have previously been identified for their significance through other processes. Additional *water bodies* can be identified if they are wholly or partly within an outstanding natural feature or landscape or if they meet the criteria in APP1 which lists the types of values which may be considered outstanding: cultural and spiritual, ecology, landscape, natural character, recreation and physical. The significant values of *outstanding water bodies* are to be identified and protected from adverse *effects*.

Preserving the natural character of *lakes* and *rivers*, and their *beds* and margins, is a matter of national importance under section 6 of the RMA 1991. The policies in this section set out how this is to occur in Otago, reflecting the relevant direction from the NPSFM but also a range of additional matters that are important in Otago, such as recognising existing Water Conservation Orders, the Lake Wanaka Act 1973

and the particular character of braided *rivers*. Natural character has been reduced or lost in some *lakes* or *rivers*, so the policies require promoting actions that will restore or otherwise improve natural character.

The impact of *discharges* of *stormwater* and *wastewater* on *freshwater bodies* is a significant issue for *mana whenua* and has contributed to *water* quality issues in some *water bodies*. The policies set out a range of actions to be implemented in order to improve the quality of these *discharges* and reduce their adverse *effects* on receiving environments.

9.7.23.2. Submissions

1323. Kāi Tahu ki Otago seeks to replace references to “takata whenua” with “mana whenua” consistent with practice across the plan. The submitter also seeks the following specific amendments:⁹⁴¹

... This is because of the importance of restoration to Kāi Tahu and in recognition of the historic loss of wetlands in Otago, and the indigenous biodiversity values and hydrological values of wetland systems.

... Additional water bodies can be identified if they are wholly or partly within an outstanding natural feature or landscape or if they meet the criteria in APP1 which lists the types of values which may be considered outstanding: ~~cultural and spiritual~~, ecology, landscape, natural character, recreation and physical ...

1324. Ngāi Tahu ki Murihiku seeks unspecified consequential amendments to LF-FW-E3 as a result of relief sought in relation to LF-FW-M5.⁹⁴²

9.7.23.3. Analysis

1325. I acknowledge the preference of Kāi Tahu ki Otago to refer to mana whenua instead of takata whenua and consider that amendment to include reference to indigenous biodiversity and hydrological values of wetland systems reflects the policy direction in this section. I recommend accepting this submission point in part and recommend making these amendments as well as a consequential amendment to the sentence regarding wetlands in order to improve the grammar and readability.

1326. I do not recommend making the amendments sought by Kāi Tahu ki Otago or Ngāi Tahu ki Murihiku in relation to the values of outstanding water bodies as I have not recommended any amendments to those provisions at this stage.

9.7.23.4. Recommendation

1327. I recommend amending LF-FW-E3 to:

LF-FW-E3 – Explanation

⁹⁴¹ 00226.196 Kāi Tahu ki Otago

⁹⁴² 00223.092 Ngāi Tahu ki Murihiku

This section of the LF chapter outlines how the Council will manage *fresh water* within the region. To give effect to *Te Mana o te Wai*, the *freshwater* visions, and the policies set out the actions required in the development of *regional plan* provisions to implement the NPSFM.

The outcomes sought for *natural wetlands* are implemented by requiring identification, protection and restoration. The first two policies reflect the requirements of the NPSFM for identification and protection but apply that direction to all *natural wetlands*, rather than only inland natural wetlands (those outside the *coastal marine area*) as the NPSFM directs. This reflects the views of ~~takata whenua~~ mana whenua⁹⁴³ and the community that *fresh* and *coastal water*, including *wetlands*, should be managed holistically and in a consistent way. While the NPSFM requires promotion of the restoration of natural inland wetlands, the policies in this section take a stronger stance, requiring improvement where *natural wetlands* have been *degraded* or lost. This is because of the importance of restoration to Kāi Tahu, to recognise and in recognition of⁹⁴⁴ the historic loss of *wetlands* in Otago, and the indigenous biodiversity values and hydrological values of wetland systems.⁹⁴⁵

The policies respond to the NPSFM by identifying a number of *outstanding water bodies* in Otago that have previously been identified for their significance through other processes. Additional *water bodies* can be identified if they are wholly or partly within an outstanding natural feature or landscape or if they meet the criteria in APP1 which lists the types of values which may be considered outstanding: cultural and spiritual, ecology, landscape, natural character, recreation and physical. The significant values of *outstanding water bodies* are to be identified and protected from adverse *effects*.

Preserving the natural character of *lakes* and *rivers*, and their *beds* and margins, is a matter of national importance under section 6 of the RMA 1991.⁹⁴⁶ The policies in this section set out how this is to occur in Otago, reflecting the relevant direction from the NPSFM but also a range of additional matters that are important in Otago, such as recognising existing Water Conservation Orders, the Lake Wanaka Act 1973 and the particular character of braided *rivers*. Natural character has been reduced or lost in some *lakes* or *rivers*, so the policies require promoting actions that will restore or otherwise improve natural character.

The impact of *discharges* of *stormwater* and *wastewater* on *freshwater bodies* is a significant issue for *mana whenua* and has contributed to *water* quality issues in some *water bodies*. The policies set out a range of actions to be implemented in order to improve the quality of these *discharges* and reduce their adverse *effects* on receiving environments.

⁹⁴³ 00226.196 Kāi Tahu ki Otago

⁹⁴⁴ Clause 16(2), Schedule 1, RMA

⁹⁴⁵ 00226.196 Kāi Tahu ki Otago

⁹⁴⁶ Clause 16(2), Schedule 1, RMA

9.7.24. LF-FW-PR3 – Principal reasons

9.7.24.1. Introduction

1328. As required by section 62(1)(f), FW – PR13 provides the principal reasons for adopting the objectives, policies, and methods of implementation set out in this chapter. As notified, LF-FW-PR3 reads:

LF–FW–PR3 – Principal reasons

Otago’s *water bodies* are significant features of the region and play an important role in Kāi Tahu beliefs and traditions. A growing population combined with increased *land* use intensification has heightened demand for *water*, and increasing nutrient and sediment contamination impacts *water* quality. The legacy of Otago’s historical mining privileges, coupled with contemporary *land* uses, contribute to ongoing *water* quality and quantity issues in some *water bodies*, with significant cultural effects.

This section of the LF chapter contains more specific direction on managing *fresh water* to give effect to *Te Mana o te Wai* and contributes to achieving the long-term *freshwater* visions for each *FMU* and *rohe*. It also reflects key direction in the NPSFM for managing the health and well-being of *fresh water*, including *wetlands* and *rivers* in particular, and matters of national importance under section 6 of the RMA 1991. The provisions in this section will underpin the development of the Council’s *regional plans* and provide a foundation for implementing the requirements of the NPSFM, including the development of *environmental outcomes*, *attribute states*, *target attribute states* and *limits*.

9.7.24.2. Submissions

1329. Kāi tahu ki Otago submits that the reference to giving effect to *Te Mana o te Wai* and achieving *freshwater* visions is confusing without further explanation. The submitter seeks the following amendments to address this and to recognise that both urban and rural land uses contribute to the degradation of *water bodies*:⁹⁴⁷

... The legacy of Otago’s historical mining privileges, coupled with contemporary urban and rural land uses, contribute to ongoing *water* quality and quantity issues in some *water bodies*, with significant cultural effects.

This section of the LF chapter contains more specific direction on managing *fresh water* to give effect to *Te Mana o te Wai* and contributes to achieving the long-term *freshwater* visions for each *FMU* and *rohe*. It also reflects key direction in the NPSFM for managing the health and well-being of *fresh water* ...

⁹⁴⁷ 00226.196 Kāi Tahu ki Otago

9.7.24.3. Analysis

1330. I consider the amendments sought by Kāi Tahu ki Otago improve the clarity and accuracy of LF-FW-PR3 and recommend accepting this submission point.

9.7.24.4. Recommendation

1331. I recommend amending LF-FW-PR3 to:

LF-FW-PR3 – Principal reasons

Otago’s *water bodies* are significant features of the region and play an important role in Kāi Tahu beliefs and traditions. A growing population combined with increased *land* use intensification has heightened demand for *water*, and increasing nutrient and sediment contamination impacts *water* quality. The legacy of Otago’s historical mining privileges, coupled with contemporary urban and rural⁹⁴⁸ *land* uses, contribute to ongoing *water* quality and quantity issues in some *water bodies*, with significant cultural effects.

This section of the LF chapter contains more specific direction on managing *fresh water* to give effect to *Te Mana o te Wai* and contributes to achieving the long-term *freshwater* visions for each *FMU* and *rohe*. It also⁹⁴⁹ reflects key direction in the NPSFM for managing the health and well-being of *fresh water*, including *wetlands* and *rivers* in particular, and matters of national importance under section 6 of the RMA 1991.⁹⁵⁰ The provisions in this section will underpin the development of the Council’s *regional plans* and provide a foundation for implementing the requirements of the NPSFM, including the development of *environmental outcomes*, *attribute states*, *target attribute states* and *limits*.

9.7.25. LF-FW-AER4 to LF-FW-AER11

9.7.25.1. Introduction

1332. As notified, LF-FW-AER4 to LF-FW-AER11 read:

LF-FW-AER4 *Fresh water* is allocated within limits that contribute to achieving specified *environmental outcomes* for *water bodies* within timeframes set out in *regional plans* that are no less stringent than the timeframes in the LF-VM section of this chapter.

LF-FW-AER5 *Specified rivers* and *lakes* are suitable for primary contact within the timeframes set out in LF-FW-P7.

LF-FW-AER6 *Degraded water* quality is improved so that it meets specified *environmental outcomes* within timeframes set out in *regional*

⁹⁴⁸ 00226.196 Kāi Tahu ki Otago

⁹⁴⁹ 00226.196 Kāi Tahu ki Otago

⁹⁵⁰ Clause 16(2), Schedule 1, RMA

plans that are no less stringent than the timeframes in the LF–VM section of this chapter.

LF–FW–AER7 *Water* in Otago’s aquifers is suitable for human consumption, unless that *water* is naturally unsuitable for consumption.

LF–FW–AER8 Where *water* is not *degraded*, there is no reduction in *water* quality.

LF–FW–AER9 The frequency of *wastewater* overflows is reduced.

LF–FW–AER10 The quality of *stormwater discharges* from existing *urban areas* is improved.

LF–FW–AER11 There is no reduction in the extent or quality of Otago’s *natural wetlands*.

1333. There were few submissions received therefore the AERs have been evaluated together in this section of the report.

9.7.25.2. Submissions

1334. QLDC and Greenpeace seek to retain LF-FW-AER4 as notified.⁹⁵¹ Wise Response considers it is important to ensure water allocation limits are consistent with all RPS and national directives and seeks to amend the provision as follows:⁹⁵²

Fresh water is allocated within limits that contribute to achieving specified environmental outcomes for water bodies within timeframes set out in regional plans that are no less stringent than the timeframes in the LF–VM section of this chapter and meet all RPS and National policies and standards.

1335. QLDC and Greenpeace seek to retain LF-FW-AER5 and AER6 as notified.⁹⁵³ There are no other submission points on these provisions.

1336. QLDC, Greenpeace, and Ministry of Education seek to retain LF-FW-AER7 as notified.⁹⁵⁴ Horticulture NZ and Federated Farmers seek to delete the provision.⁹⁵⁵ Horticulture NZ considers it is unachievable and unnecessary for all water in aquifers to be suitable for human consumption and Federated Farmers consider it is not always appropriate or cost-feasible. NZ Pork seeks to delete the provision or make unspecified amendments.⁹⁵⁶ The submitter considers this outcome is only relevant to those water sources used for human consumption.

⁹⁵¹ 00138.082 QLDC, 00407.044 Greenpeace

⁹⁵² 00509.084 Wise Response

⁹⁵³ 00138.083 QLDC, 00138.084 QLDC, 00407.044 Greenpeace, 00407.044 Greenpeace

⁹⁵⁴ 00138.085 QLDC, 00407.044 Greenpeace, 00421.003 Ministry of Education

⁹⁵⁵ 00236.066 Horticulture NZ, 00239.092 Federated Farmers

⁹⁵⁶ 00240.024 NZ Pork

1337. QLDC and Greenpeace seek to retain LF-FW-AER8 as notified.⁹⁵⁷ There are no other submission points on this provision.

1338. QLDC and Greenpeace seek to retain LF-FW-AER9 as notified.⁹⁵⁸ Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku both seek amendments to reflect earlier submission points on requiring direct discharges of wastewater to be phased out. Kāi Tahu ki Otago seeks the following amendments:⁹⁵⁹

~~The~~ Direct discharges of wastewater to water are phased out and frequency of wastewater overflows is reduced. (Kāi Tahu ki Otago)

1339. Ngāi Tahu ki Murihiku seeks the following amendments:⁹⁶⁰

~~The frequency of~~ Direct discharges of wastewater to water bodies ~~is~~ are reduced across the region and no longer occurring in some places to support visions for water bodies. (Ngāi Tahu ki Murihiku),

1340. QLDC and Greenpeace seek to retain LF-FW-AER10 as notified.⁹⁶¹ In line with relief sought elsewhere, Ngāi Tahu ki Murihiku seeks the following amendments:

Direct discharges of stormwater to water bodies are reduced across the region and ~~the~~ the quality of stormwater discharges from ~~existing~~ urban areas is improved.”

1341. QLDC and Greenpeace seek to retain LF-FW-AER11 as notified.⁹⁶²

9.7.25.3. Analysis

1342. I do not consider that the amendment sought by Wise Response to LF-FW-AER4 is necessary. I consider that the provisions of the LF chapter give effect to national direction and note that regional plans are required by the RMA to give effect to regional policy statements. I do not recommend accepting this submission point.

1343. I agree with Horticulture NZ and Federated Farmers that LF-FW-AER7 does not reflect the policy direction contained in the LF-FW section and therefore recommending accepting these submission points and deleting the provision.

1344. I consider that the amendments sought by Ngāi Tahu ki Murihiku to LF-FW-AER9 more accurately reflect the policy direction in the LF chapter and therefore recommending accepting in part this submission point and rejecting the submission point by Kāi Tahu ki Otago. In line with my amendments to LF-FW-P16 in regard to the term “wastewater”, I recommend aligning the wording of this AER with the wording in that policy.

⁹⁵⁷ 00138.086 QLDC, 00407.044 Greenpeace

⁹⁵⁸ 00138.087 QLDC, 00407.044 Greenpeace

⁹⁵⁹ 00226.198 Kāi Tahu ki Otago

⁹⁶⁰ 00223.090 Ngāi Tahu ki Murihiku

⁹⁶¹ 00138.088 QLDC, 00407.044 Greenpeace

⁹⁶² 00138.089 QLDC, 00407.044 Greenpeace

1345. I do not agree with Ngāi Tahu ki Murihiku that the provisions in the LF-FW section require a reduction in stormwater discharges and therefore do not recommend accepting this submission point.

9.7.25.4. Recommendation

1346. I recommend amending LF-FW-AER4 to LF-FW-AER11 to:

LF-FW-AER4 *Fresh water* is allocated within limits that contribute to achieving specified *environmental outcomes* for *water bodies* within timeframes set out in *regional plans* that are no less stringent than the timeframes in the LF-VM section of this chapter.

LF-FW-AER5 *Specified rivers and lakes* are suitable for primary contact within the timeframes set out in LF-FW-P7.

LF-FW-AER6 *Degraded water* quality is improved so that it meets specified *environmental outcomes* within timeframes set out in *regional plans* that are no less stringent than the timeframes in the LF-VM section of this chapter.

~~**LF-FW-AER7** *Water in Otago's aquifers* is suitable for human consumption, unless that *water* is naturally unsuitable for consumption.⁹⁶³~~

LF-FW-AER8 Where *water* is not *degraded*, there is no reduction in *water* quality.

~~**LF-FW-AER9** *The frequency of wastewater overflows* is reduced. *Discharges containing sewage and human waste directly to water bodies are reduced across the region and no longer occurring in some places to support freshwater visions for water bodies.*⁹⁶⁴~~

LF-FW-AER10 The quality of *stormwater discharges* from existing *urban areas* is improved.

LF-FW-AER11 There is no reduction in the extent or quality of Otago's *natural wetlands*

9.7.26. New AERs

1347. Some submitters seek to include additional AERs.

9.7.26.1. Submissions

1348. QLDC submits that over-allocation and competition for water is a significant and unresolved issue for the region, but notes that there is no associated AER that the

⁹⁶³ 00236.066 Horticulture NZ, 00239.092 Federated Farmers, 00240.024 NZ Pork

⁹⁶⁴ 00223.090 Ngāi Tahu ki Murihiku

allocation of water will deliver good social and environmental outcomes for Otago's communities. The submitter seeks to include the following new AER:⁹⁶⁵

LF-FW-AER12 Fresh water is allocated in a way that will deliver a balance of good social, cultural and environmental outcomes that ensure the wellbeing of local communities.

1349. Greenpeace seeks to include the following two additional AERs but does not provide any reasoning.⁹⁶⁶

LF-FW-AER12 Wetlands and freshwater systems are restored to protect and enhance their ecology and ecological functions, first, and to protect human health.

LF-FW-AER13 Improve the extent and quality of Otago's wetlands.

1350. AWA seeks to include the following additional AER but does not provide any reasoning:

LF-FW-AER12 Fresh water is allocated within the limits in a way that will give effect to te Mana o te Wai, and that will deliver a balance of good social, cultural and environmental outcomes, including reduced GHG emissions.

9.7.26.2. Analysis

1351. I do not consider the new AER sought by QLDC is necessary as LF-FW-AER4 already describes the anticipated environmental result from freshwater allocation. I note that environmental outcomes are required to be developed for all identified values in an FMU or part of a FMU and that these values may include matters such a drinking water supply, hydro-electric power generation, and commercial and industrial use. I do not recommend accepting this submission point.

1352. I do not consider that the new AERs sought by Greenpeace and AWA accurately reflect the likely outcomes of implementing the provisions in this section and therefore do not recommend accepting these submission points.

9.7.26.3. Recommendation

1353. I do not recommend including any new AERs in the LF-FW section.

9.7.27. APP1 – Criteria for identifying outstanding water bodies

1354. This provision is addressed in section 9.7.4 of this report.

⁹⁶⁵ 00138.081 QLDC

⁹⁶⁶ 00407.045 Greenpeace, 00407.046 Greenpeace

9.8. LF-LS – Land and soils

9.8.1. Introduction

1355. This section of the *LF – Land and freshwater* chapter is focused on the management of land and soils, including for soil quality and conservation purposes as well as in relation to the management of fresh water. The Otago region contains a land area of 31,186 square kilometres (Stats NZ, 2022). The region has a diverse and varied range of land types and landscapes, from mountains and drylands in the western and central parts of the region to coastline and rainforests in the east. Otago is a whenua tūpuna (a cultural landscape) treasured for its natural features, physical formations, cultural features, ara tawhito (traditional trails), mahika kai, mātauraka, wāhi tapu, taoka, and cultural and spiritual values.
1356. Land has supported the economic prosperity of many Otago communities for over a hundred years. As set out in the introduction to the *LF – Land and freshwater chapter*, agriculture, forestry and fishing is the second largest industry in Otago at 6.6% of GDP.⁹⁶⁷ Otago’s primary sector⁹⁶⁸ is relatively big compared to New Zealand average. In 2020, 11.2% of the region’s GDP was attributable to the primary industry; in comparison the figure was 6.2% for New Zealand. When measured by employment, 7.9% of total employment in Otago was attributable to the primary industries; in comparison the figure was 5.7% for New Zealand.
1357. Maintaining the productive capacity of land and soil is essential for the economic well-being of many of Otago’s communities. Productive capacity can be limited by environmental factors such as the location of productive soil, climate, water availability, and fragmentation of land parcels, as well as increasing pressure from other land uses. As in many places in New Zealand, in Otago one of the key pressures is from the expansion of urban areas. Land and soil resources are affected by incremental, cumulative losses that collectively can have significant impacts on the productive capacity. Climate change will affect these resources and their uses, particularly due to changes in rainfall.
1358. Land uses can contribute to degraded water quality. Excess sediment, pollutants, and unnatural water flows cause poor ecological health in many rivers and lakes in catchments where the dominant land cover is urban, farming, or forestry. Applying nitrogen fertiliser and animal effluent to soil increases the risk of nitrogen being transported to surface water and leaching into groundwater. The type of land use, nutrient levels in soil, inputs, climate, and vegetation all influence how nitrogen applied to the land affects the amount of nitrogen in fresh water. Phosphorous can accumulate in soil when phosphorous-based fertilisers are applied, and together with nitrogen can cause algal blooms in rivers and lakes, reducing the amount of oxygen in the water for plants and fish to breathe. As required by the NPSFM, freshwater management requires taking an integrated approach that considers and manages the uses of land that contribute to degraded water quality.

⁹⁶⁷ Sourced from infometrics data portal as at March 2021

⁹⁶⁸ Primary industries include agriculture, forestry, fishing, and mining.

1359. As well as the provisions in this section, the objectives will be implemented by all of the provisions of the *LF – Land and freshwater* chapter. The relevant provisions for this section are:

- LF-LS-O11 – Land and soil
- LF-LS-O12 – Use of land
- LF-LS-P16 – Integrated management
- LF-LS-P17 – Soil values
- LF-LS-P18 – Soil erosion
- LF-LS-P19 – Highly productive land
- LF-LS-P20 – Land use change
- LF-LS-P21 – Land use and freshwater
- LF-LS-P22 – Public access
- LF-LS-M11 – Regional plans
- LF-LS-M12 – District plans
- LF-LS-M13 – Management of beds and riparian margins
- LF-LS-M14 – Other methods
- LF-LS-E4 – Explanation
- LF-LS-PR4 – Principal reasons
- LF-LS-AER12
- LF-LS-AER13
- LF-LS-AER14

9.8.2. General themes

1360. In addition to specific submission points on provisions, collectively there are a number of submissions on the overall focus of this chapter and whether the current focus is appropriate. Additionally, some submitters made general submissions on the LF-LS section. These submissions are addressed in this part of the report.

9.8.2.1. Focus of the chapter

1361. Fives submitters on the objectives and policies in this section consider that the protection and management of soils should be limited to those that are regionally significant or highly productive. Mt Cardrona Station, Maryhill Limited, LAC, Lane Hocking, and Universal Developments consider that other soils are marginal for primary production and therefore the provisions should not prevent other activities occurring on these soils.

Submissions

1362. The relief sought by Mt Cardona Station, Maryhill Limited, LAC, Lane Hocking, and Universal Developments on this topic is general in nature, rather than specific amendments to provisions. The submitters seek that the LF-LS chapter:⁹⁶⁹

⁹⁶⁹ 00114.025-031 Mt Cardrona Station, 00118.025-031 Maryhill Limited, 00209.012-015 Universal Developments, 00210.011-013 & 015 Lane Hocking, 00211.011-013 & 015 LAC

- ensure that protective policies for soil are appropriately aimed only at highly productive or regionally significant soils,
- allow for productive capacity assessments to take into account a range of factors beyond LUC classification, including such as alternative efficient uses, prices of land, proximity to infrastructure and urbanisation, past profitability records, and other resource availability,
- include reference to competing resource uses in the policies, recognising that there may be a need to weigh and balance protection of significant soils against other growth and development objectives (such as housing and infrastructure) and that this is consistent with the Government Urban Growth Agenda as well as the NPSUD which anticipates greenfield development, and
- amendments to the policies to remove the preference for traditional rural production activities over other uses of significant soils which are appropriate and efficient.

1363. Similar to the final point above, LAC and Lane Hocking seek to include new provisions recognising appropriate diversification of the rural land resource beyond primary production.⁹⁷⁰

1364. LAC, Lane Hocking, and Universal Developments also seek to amend LF-LS-P19 and other provisions if necessary to provide for a management approach that can anticipate either interim or temporary uses of significant soils, of offsetting of uses on soils, or otherwise removing and using a significant soil resource elsewhere in light of other potential economic and social benefits of development.⁹⁷¹

Analysis

1365. As notified, the current policy direction in the LF-LS chapter applies to all soils, with specific additional direction for highly productive land. I agree with the submitters that soils in some areas may be better suited to other uses than primary production and that there are a range of factors that contribute to the overall productivity of land and soils. However, I consider that restricting the application of these policies to only highly productive land may result in the loss of other areas of soil that are not necessarily highly productive but do provide for ecosystem services. Regionally significant soils are mentioned by the submitter, but are not accompanied by a definition, or any specific method for how those soils might be identified. Without being able to define which soils should be subject to protection, targeted protection is difficult to provide for. I do not recommend accepting the submission point, given the uncertainty around how the targeted soil protection policies might apply, and the implications for those soils that are then not protected.

1366. The submitters seek that the policies allow for productive capacity assessments to take into account a range of factors beyond LUC classification. I consider that this is already

⁹⁷⁰ 00210.054 Lane Hocking, 00211.054 LAC

⁹⁷¹ 00210.014 Lane Hocking, 00211.014 LAC, 00209.014 Universal Developments

the case. LF-LS-P19 requires identifying highly productive land based on three criteria, being:

- the capability and versatility of the land to support primary production, based on the LUC classification system,
- the suitability of the climate, particularly for crop production, and
- the size and cohesiveness of the area of land.

1367. In my opinion, this is broader than only LUC classes. However, I acknowledge that the first criterion limits consideration of the capability and versatility of land to the LUC classification system. In response to the concerns raised by the submitters, I consider that a minor amendment could be made so that the LUC classification system is one way of informing this assessment but providing flexibility for other types of assessments. I recommend accepting this part of the submission point in part.

1368. The submitters seek to balance the use of highly productive land for primary production with other objectives, such as those relating to housing or infrastructure. There has been significant urban development in Otago over the past ten years, particularly in the Queenstown-Lakes and Central Otago districts. Highly productive land is considered to be a scarce resource and productive capacity is generally lost once soil is used for activities other than primary production. In some parts of Otago, this loss and fragmentation has already occurred, resulting in a reduction in the area of highly productive land available. Statistics New Zealand identifies⁹⁷² that in 2019, there was 366,301 ha of highly productive land (identified as Land Use Capability classes 1-3) available for use as farmland, and 5,751 ha of highly productive land restricted or unavailable for use as farmland, due to fragmentation. While the fragmented land is only a small proportion of the total highly productive land area, the data shows an increasing trend in fragmentation since 2002. In my opinion, the regulatory framework historically has allowed for 'balancing' competing land uses and this has not adequately protected Otago's productive soils. I consider that the 'balance' sought by the submitters is likely to result in the continued loss of highly productive land, which is not the outcome sought to be achieved through this chapter. For these reasons, I recommend rejecting this submission point.

1369. Mt Cardrona Station, Maryhill, LAC, Lane Hocking, and Universal Development seek to remove from the policies the preference for traditional rural production and include other uses of significant soils which are appropriate and efficient. It is not clear what other uses of significant soils are envisaged by the submitter outside the pastoral, agricultural and horticultural activities that are captured by the primary production definition. Without an understanding of what these uses may be, I recommend rejecting this submission point.

1370. I am unsure what is meant by LAC and Lane Hocking when they refer to "appropriate diversification of the rural land resource". I presume this relates to the pathways provided for activities other than primary production and, for the reasons I have set out

⁹⁷² <https://www.stats.govt.nz/indicators/land-fragmentation>

above in response to other similar submission points, I do not recommend accepting these submission points.

1371. LF-LS-P19 requires prioritising the use of highly productive land for primary production ahead of other uses. LAC, Lane Hocking, and Universal Developments seek to include more flexibility in the policies by providing for interim or temporary uses. It is not clear from the submissions what these activities may entail or how they would affect productive capacity of land. In my opinion, the policy does not prevent these types of land uses, provided the availability and productive capacity of highly productive land is maintained. The submitters also raise the potential for offsetting or removing and utilising soil elsewhere. I do not consider this is practicable. Highly productive land is unlikely to be able to be created in a new area, and soil is only one component of what makes land productive. For these reasons, I recommend rejecting this submission point.

Recommendation

1372. I recommend including the term “including” in LF-LS-P19(1)(a).

9.8.2.2. General submissions

1373. Calder Stewart supports the LF-LS chapter in its entirety.⁹⁷³ Fish and Game supports the provisions within the chapter, subject to the comments on specified provisions.⁹⁷⁴
1374. Ngāi Tahu ki Murihiku seeks to amend the provisions to better recognise the relationship of forestry with land and water management, including water quantity and water yield within a catchment, erosion, and competition with other land uses. Specific amendments are not proposed.⁹⁷⁵ The submitter also seeks to improve connections within the provisions, where they seek to manage activities governed by different sections of the RMA.⁹⁷⁶
1375. Lloyd McCall considers that all policies in the chapter need strengthening.⁹⁷⁷ The submitter states that land intensification, with the addition of non-natural soluble growth stimulants giving productivity beyond the lands’ capability, eventually leads to discharges affecting water quality. The submitter has not sought any specific changes.
1376. Andy Barratt considers that the chapter needs more emphasis on soil conservation and building reserves of productive topsoils.⁹⁷⁸ The submitter goes on to state that increasing soil organic matter is a fundamental part of biological land management, and that policies LF-LS-P17 and LS-LS-P18 both presuppose a biological focus.⁹⁷⁹ The submitter also

⁹⁷³ 00027.001 Calder Stewart

⁹⁷⁴ 00231.062 Fish and Game

⁹⁷⁵ 00223.094 Ngāi Tahu ki Murihiku

⁹⁷⁶ 00223.095 Ngāi Tahu ki Murihiku

⁹⁷⁷ 00319.006 Lloyd McCall

⁹⁷⁸ 00309.001 Andy Barratt

⁹⁷⁹ 00309.003 Andy Barratt

states that the RPS does not detail the implications of the current reliance on artificial inputs.⁹⁸⁰

1377. Horticulture NZ make several points in relation to highly productive land,⁹⁸¹ as summarised below:

- Urban development and productive land should be considered together, to ensure new urban areas are designed in a manner that maintains the overall productive capacity of highly productive land.
- Protection of highly productive land should take into account economic and environmental sustainability.
- Definition of highly productive land should include key natural and physical resources that contribute to productivity. They acknowledge that some of these factors can be modified with policy and investment.
- The outcome related to the protection of highly productive land should be focused on protecting the productive capacity of highly productive land from inappropriate subdivision, use and development.

1378. Beef + Lamb and DINZ oppose the LF-LS chapter and consider that it should be redrafted in line with the National Policy Statement for Highly Productive Land once it is released.⁹⁸² They consider that the LF-LS chapter should focus on soil as a valuable resource in its own right, rather than including anthropocentric issues pertaining to soils, or effects of soil on freshwater.

1379. Toitū te Whenua seeks that priority should be given to limiting the extent of future land use change which would adversely impact inherent values of the land, specifically the soil.⁹⁸³

9.8.2.3. Analysis

1380. I acknowledge the support of Calder Stewart and Fish and Game, and will respond to Fish and Game's provision specific comments later in the report.

1381. Ngāi Tahu ki Murihiku seeks greater recognition of the relationship of plantation forestry with land and water management. LF-LS-P21 sets an outcome related to the achievement of environmental outcomes, and direction around how this will be achieved, including by managing land uses to reduce discharges of contaminants to water and land uses that have adverse effects on water flows and recharge. Given the matters captured by LF-LS-P21 are of particular relevance to plantation forestry, I consider the relationship highlighted by Ngāi Tahu ki Murihiku is provided for in the provision. I recommend accepting the submission point, but do not recommend any changes to provisions.

1382. In relation to Ngāi Tahu ki Murihiku's submission to improve connections where provisions manage various activities under the RMA, I consider the LF-LS chapter is an

⁹⁸⁰ 00309.004 Andy Barratt

⁹⁸¹ 00236.004 Horticulture NZ

⁹⁸² 00237.045 Beef + Lamb and DINZ

⁹⁸³ 00101.022 Toitū te Whenua

example where various activities are clearly identified and managed within single provisions. An example of the is LF-LS-P21, which seeks to achieve environmental outcomes by reducing discharge for the use of land, and managing land uses that may have adverse effects on flows of water. I recommend accepting the submission point, but do not recommend any changes to provisions.

1383. I agree with Lloyd McCall that specific land use activities can affect water quality. However, without more specific information from the submitter regarding the strengthening sought, I recommend accepting the submission, but without additional information do not recommend any changes to the chapter provisions.
1384. Andy Barratt considers that the chapter needs more emphasis on soil conservation and recognition of organic matter, and that the chapter as written does not detail the implication of the current reliance on artificial inputs. I consider that LF-LS-P19 and LF-LS-P20 provide useful direction on maintaining highly productive land, of which soil is a key component, and improving the health and quality of soil, in order to implement the LF-LS objectives. In addition, LF-LS-P17 recognises that soil biological activity and structure is key to soil health, both of which can be improved with organic matter. Without more specific information on the emphasis sought, I do not recommend any changes.
1385. I acknowledge the submission of Horticulture NZ, and agree that the management of highly productive land should be done considered together with urban development. I consider that UFD – O4, UFD – P6 and UFD – P7 provide for this consideration. I consider that economic and environmental sustainability is tied to the land use activity occurring, rather than the highly productive land itself. I consider that discussion later in this report related to LF-LS-P19 takes into consideration a range of natural and physical components that contribute to making land highly productive. I consider that the current direction provided by the LF-LS policies ensures that the use of highly productive land is suited to its characteristics, and does not result in fragmentation through activities such as subdivision. I recommend accepting the submission, though note that any changes aligning with this submission will be made as a result of additional submission points discussed later in the report.
1386. In relation to the submission by Beef + Lamb and DINZ, I consider that as drafted, and subject to the changes sought through submissions, the chapter is largely consistent with the dNPSHPL. That NPS is due to be finalised and take effect in the first half of 2022, so depending on the timing, there may be scope through the hearings process to recommend further changes to give effect to its content. I do not recommend accepting the submission of Beef + Lamb and DINZ at this stage. I consider that the risk of not including soil protective policies is greater than the risk of potential inconsistency with the NPSHPL, if it comes into effect.
1387. I consider that several LF-LS provisions already provide for the outcome sought by Toitū te Whenua. Additionally, it is not clear what specifically the submitter is seeking or whether that would be within the scope of what was notified. Without further clarification on how provisions could be amended to provide for the relief sought, I recommend rejecting this submission point.

9.8.2.4. Recommendation

1388. I do not recommend any specific amendments in response to these submissions, but note that I have recommended amendments in response to similar submissions on other provisions.

9.8.3. Definitions

1389. There are a range of submissions relating to defined terms used in this section, some of which are addressed in other parts of this report. In summary:

- Defined terms used throughout the pORPS, including in this section, are addressed in *Report 2: Submissions on Part 1 – Introduction and general provisions*.
- Defined terms used only in the LF chapter, but across two or more of the sections within the LF chapter, are addressed in section 9.4 of this report.
- Defined terms used only in the LF-LS section are addressed in this section of the report.

1390. In relation to the last bullet point, there are three relevant defined terms addressed in this section:

- Primary production, and
- Highly productive land.

9.8.3.1. Primary production

1391. Particularly relevant for this report is the evaluation of submissions on the term “primary production”, including as it is used in relation to managing highly productive land. Those submissions alongside other, similar submissions on terminology are addressed in *Report 1: Introduction and general themes*. Given the importance of this term to a number of LF-LS provisions, I have included that assessment below.

Submissions

1392. OWRUG submits that the food and fibre sector is a significant part of the national and regional economy that accounts for 75% of New Zealand’s merchandise exports and is particularly important in Otago. The submitter states that as compared to the national average of 6.2%:

- in the Central Otago district, primary industries make up 14.6% of GDP,
- in the Clutha district, agriculture, forestry and fishing make up 32.1% of GDP, and
- in the Waitaki district, agriculture, forestry and fishing make up 32.5% of GDP.

1393. OWRUG seeks to include a definition for the food and fibre sector as follows:⁹⁸⁴

food and fibre sector includes the primary sector production industries (excluding mining), the related processing industries and services industries along the value

⁹⁸⁴ 00235.008 OWRUG

chain from producer to final consumer including transporters, storage, distribution marketing and sales.

1394. The submitter seeks to replace all references to “agriculture” with “food and fibre sector”.⁹⁸⁵ In relation to the LF-LS section, OWRUG seeks to replace “primary production” with “food and fibre sector”.⁹⁸⁶
1395. Three submitters support the definition of primary production⁹⁸⁷ and six seek amendments. Matakanui Gold Limited, Alluvium and Stoney Creek, and Danny Walker and others seek to amend the definition to remove mining, quarry and forestry activities, or otherwise not give preference to these activities occurring on highly productive land.⁹⁸⁸ This reflects the use of the term in a number of provisions in the LF-LS section that
1396. Kāi Tahu ki Otago seeks to delete the definition and replace it with a term that is clearly limited to outdoor agricultural, pastoral and horticultural activities.⁹⁸⁹ The submitter considers that the National Planning Standards definition is not consistent with the way the term is used in the pORPS provisions relating to highly productive land because it includes a range of activities that do not rely on highly productive land, including mining, quarrying, forestry, and production of commodities within buildings. This is supported by the further submissions of Beef + Lamb NZ, Te Rūnanga o Ngāi Tahu, and Ngia Tahu ki Murihiku and opposed by Fulton Hogan, Federated Farmers, Horticulture NZ, and OWRUG. The opposition is generally to using a term not defined in the Planning Standards.
1397. Ngāi Tahu ki Murihiku seeks that references to primary production differentiate forestry activities, particularly where the term is used in relation to highly productive land.⁹⁹⁰
1398. Beef + Lamb and DINZ seek to specifically exclude forestry for the purposes of carbon sequestration.⁹⁹¹ The submitters consider that extractive industries, agriculture, forestry, fisheries, and aquaculture all share a common characteristic in that they produce a primary product, whereas forestry for the purposes of carbon sequestration does not produce a primary product. This is supported by the further submissions of Ernslaw One and Waitaki DC and opposed by Rayonier Matariki, and OWRUG. NZ Carbon Farming and Federated Farmers also made further submissions on this point but remained neutral.
1399. Federated Farmers supports the use of the term “primary production” in LF-LS-O11.⁹⁹²

⁹⁸⁵ 00235.035 OWRUG

⁹⁸⁶ 00235.103 OWRUG

⁹⁸⁷ 00322.002 Fulton Hogan, 00115.001 Oceana Gold, 00122.002 Sanford

⁹⁸⁸ 00021.002 Matakanui Gold Limited, 00016.009 Alluvium Limited and Stoney Creek Mining, 00017.007 Danny Walker and others

⁹⁸⁹ 00226.033 Kāi Tahu ki Otago

⁹⁹⁰ 00223.094 Ngāi Tahu ki Murihiku

⁹⁹¹ 00237.004 Beef + Lamb and DINZ

⁹⁹² 00239.093 Federated Farmers

Analysis

1400. Primary production is term with a mandatory definition in the National Planning Standards which is carried through to the pORPS. The definition is:

means:

- (a) *any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and*
- (b) *includes initial processing, as an ancillary activity, of commodities that result from the listed activities in (a);*
- (c) *includes any land and buildings used for the production of the commodities from (a) and used for the initial processing of the commodities in (b); but*
- (d) *excludes further processing of those commodities into a different product.*

1401. “Primary production” is used predominantly in the LF-LS and UFD chapters.⁹⁹³ The relevant provisions from these chapters use the term in relation to the management regime for highly productive land. In essence, the provisions collectively seek to protect highly productive land, including by prioritising its use for primary production. In that context, as highlighted by submitters, “primary production” is problematic because it includes activities that generally do not need or seek to operate on highly productive land, such as mining and quarrying. I agree with submitters that these activities should be not prioritised on highly productive land. I note that the draft NPSHPL largely adopts the Planning Standards definition of primary production but excludes mining, quarrying, and aquaculture. For completeness, I also consider that it is illogical to prioritise highly productive land for aquaculture.

1402. Kāi Tahu ki Otago submits that “primary production” is also problematic because it refers to ancillary activities such as initial processing, as well as the land and buildings used for producing commodities and initial processing. While I agree that those activities on their own do not rely on highly productive land, they are integral to the land-based activities. For example, crops are generally washed and packaged for transport on-site and the facilities used for this need to be located where the crops are grown. I do not recommend accepting this submission point.

1403. Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku, Matakanui Gold, Alluvium and Stoney Creek, and Danny Walker and others seek to exclude all forestry activities on the basis that forestry activities do not rely on highly productive land. While I agree with the submitters that forestry can occur on less productive (and sometimes marginal) land, I do not consider it can only occur on that type of land. LF-LS-P19(1)(a) states that one of the criteria to be used to identify highly productive land is the capability and versatility of the land based on the Land Use Capability (LUC) classification system. I note that that system specifically includes reference to the suitability of land for “production forestry” in LUC classes 1 to 5 (Lynn, et al., 2009). The submitters have not provided evidence for their relief sought or an assessment of the costs and benefits. Without further evidence, I do

⁹⁹³ LF-LS-O11, LF-LS-P19, LF-LS-E4, LF-LS-PR4, UFD-P7, UFD-P8.

not recommend accepting these submission points. The submitters may wish to address this in their evidence on this topic.

1404. Beef + Lamb and DINZ seek to exclude forestry for the purposes of carbon sequestration on the basis that it is not a productive activity in the same way as the other activities included in the definition of primary production. I have discussed this activity (carbon or permanent forestry) in section 1.45 of *Report 1: Introduction and general themes*. For the reasons set out in that section, and the references I have noted above to “production forestry” in the LUC classes, I agree that permanent forestry is not productive and that it would not be a good use of highly productive land to prioritise its use for permanent forestry. I recommend accepting this submission point.

1405. Overall, I do not consider “primary production” is an appropriate term to use in the provisions in the LF and UFD chapters where it is part of the management of highly productive land. In my opinion, mining, quarrying, and permanent forestry should be excluded from the activities being prioritised on highly productive land. I note that OWRUG has sought to include a new definition for the term “food and fibre sector” to use this term instead of “primary production” in the provisions relating to highly productive land. I have some difficulties with the definition as sought:

- While it excludes mining, it includes quarrying and permanent forestry which do not produce food or fibre,
- It includes aquaculture which is not a land use,
- The remainder of the definition includes a significantly broader range of supporting or ancillary activities than the definition of production (for example, transporters, storage, distribution, marketing, and sales).

1406. In my opinion, “primary production” is not the appropriate term to use in the context of highly productive land and that an alternative term and definition would be more effective in achieving the desired outcome (protection of highly productive soils). Given that OWRUG has sought “food and fibre sector” and this is generally consistent with the activities to be captured by the term, I recommend accepting this submission in part and using the term “food and fibre production”. However, I consider that an alternative definition would be preferable to the definition sought by OWRUG for this term. In my view, the definition of “food and fibre sector” could largely mirror the definition of “primary production” but exclude aquaculture, mining, quarrying, and permanent forestry activities, and make minor grammatical improvements, as follows:

Food and fibre production means:

- (a) any agricultural, pastoral, horticultural, or plantation forestry activities;
- (b) includes, as an ancillary activity, the initial processing of commodities that result from the activities listed in (a); and
- (c) includes any land and buildings used for (a) and (b); but
- (d) excludes further processing of those commodities into a different product.

1407. I consider that “production” is a more accurate description of the activities captured by the definition above than “sector”. Adopting the majority of the definition of “primary

production” means that it is only the specific production activities that is amended, rather than the scope and nature of any ancillary activities. I recommend that the term “primary production” in LF-LS-O11, LF-LS-P19, LF-LS-E4, LF-LS-PR4 and UFD-P7 is replaced with “food and fibre production”.

Recommendation

1408. I recommend replacing all references in LF-LS and UFD-P7 to “primary production” with “food and fibre production”.

9.8.3.2. Highly productive land

1409. Highly productive land is not currently defined in the pORPS 2021, although LF-LS-P19 provides criteria for its identification.

Submissions

1410. OWRUG submits that LF-LS-P19 is dependent on development of the LWRP for its implementation, meaning until that plan is prepared (December 2023) there is a lack of clarity about how the policy will be applied. The submitter notes that the dNPSHPL has a default definition of “highly productive land” for the interim period until full identification has occurred which the submitter considers should be adopted in the pORPS. OWRUG seeks the following definition of highly productive land:⁹⁹⁴

highly productive land means:

- (a) land that has been identified as highly productive land using LF-LS-P19; OR
- (b) where identification has not occurred as in (a), land in the rural area that is classified as LUC 1,2 3 or 4 as mapped by the NZ Land Resource Inventory or by more detailed site mapping.

1411. OWRUG considers that LUC class 4 should be included as this land is currently used for highly productive activities in Otago and that only referring to LUC classes 1 to 3 would not capture some of the most productive land in Otago.

1412. Horticulture NZ seeks a similar definition to OWRUG but proposes using LUC classes 1-3 only.⁹⁹⁵ The submitter considers that the proposed use of LUC classes is consistent with the dNPSHPL. The definition sought is:

highly productive land means:

- (a) land that has been identified as highly productive land using LF-LS-P19; OR
- (b) where identification has not occurred as in (a), land in the rural area that is classified as LUC 1,2 or 3 as mapped by the NZ Land Resource Inventory or by more detailed site mapping.

⁹⁹⁴ 00235.009 OWRUG

⁹⁹⁵ 00236.013 Horticulture NZ

1413. NZ Pork submits that highly productive land should be defined, but does not include definition wording.⁹⁹⁶

Analysis

1414. The dNPSHPL includes the following definition of “highly productive land”:

Highly productive land means:

- (a) land that has been identified as highly productive by a local authority in accordance with Policy 1 and Appendix A of this national policy statement; or*
- (b) where a local authority has not identified highly productive land in accordance with Policy 1 and Appendix A, a land parcel in a rural area that contains at least 50% or 4 hectares of land (whichever is the lesser) defined as Land Use Capability 1, 2, and 3 as mapped by the New Zealand Land Resource Inventory or by more detailed site mapping; but*
- (c) does not include urban areas or areas that have been identified as a future urban zone in a district plan or proposed district plan.*

1415. The inclusion of the LUC classes is intended to ensure that some of the proposed policies in the dNPSHPL would have immediate effect, rather than being contingent on regional councils first needing to identify and map highly productive land. I agree with OWRUG that identification of highly productive land is contingent on the LWRP plan being developed and that because that plan is not due to be notified until December 2023 there is a ‘gap’ in the management of highly productive land in the interim period.

1416. I consider that an interim framework set out by way of a definition of “highly productive land” is an effective way to provide clarity on the meaning of highly productive land, prior to land being specifically defined as part of the regional plan process described in LF-LS-M11. Existing LUC mapping can be utilised, and any disagreements in classification remedied through a property specific LUC assessment. I acknowledge the risk of having a simplified definition of highly productive land prior to the identification through the regional plan, but consider that the greater risk lies in not having any definition over that period, and in effect not being able to apply many of the LF-LS objectives and policies.

1417. There is a risk that the use of LUC classes only for identifying highly productive land, before the land is formally identified as required by LF-LS-M11, would exclude some highly productive land not captured by those classes. This may include land that is used for viticulture and orchards, where climate is the main driver of productivity, over land’s physical features. Given the notification of the LWRP will occur by December 2023, and the identification of highly productive land will need to occur as part of the plan process through LF-LS-M11, I consider that the risk of not capturing these areas is limited, given the interim framework is timebound. Once the LWRP is notified and highly productive

⁹⁹⁶ 00240.025 NZ Pork

land is identified using the broader criteria (incorporating LUC classes but also other factors) then the interim framework of relying only on LUC classes will cease to apply.

1418. I understand that some of Otago’s productive land is not classified as LUC classes 1 to 3 and note OWRUG seeks to include reference to LUC class 4. To briefly summarise the descriptions of these classes:

- LUC Class 1: “LUC Class 1 is the most versatile multiple-use land with minimal physical limitations for arable use. It has high suitability for cultivated cropping (many different crop types), viticulture, berry production, pastoralism, tree crops and production forestry.” (Lynn, et al., 2009, p. 51)
- LUC Class 2: “This is very good land with slight physical limitations to arable use, readily controlled by management and soil conservation practices. The land is suitable for many cultivated crops, vineyards and berry fields, pasture, tree crops or production forestry.” (Lynn, et al., 2009, p. 53)
- LUC Class 3: “Class 3 land has moderate physical limitations to arable use. These limitations restrict the choice of crops and the intensity of cultivation, and/or make special soil conservation practices necessary. Class 3 land is suitable for cultivated crops, vineyards and berry fields, pasture, tree crops or production forestry.” (Lynn, et al., 2009, p. 56)
- LUC Class 4: Class 4 land has severe physical limitations to arable use. These limitations substantially reduce the range of crops which can be grown, and/or make intensive soil conservation and management necessary. In general, Class 4 land is suitable only for occasional cropping (e.g. once in 5 years or less frequently) although it is suitable for pasture, tree crops or production forestry.” (Lynn, et al., 2009, p. 58)

1419. Based on these descriptions, I consider there is a clear shift away from productivity in LUC class 4, compared to classes 1 to 3. I acknowledge that LUC classes 1 to 3 may not capture some of Otago’s productive land, particularly where climate is the primary factor in determining productivity. OWRUG has not provided evidence to demonstrate how much of Otago’s productive land occurs on LUC Class 4. For these reasons, I consider that any interim framework based on LUC classes should be limited to classes 1 to 3.

1420. The New Zealand Land Resource Inventory – Soils Portal includes a layer with the Land Use Capability classification for the entire Otago region.⁹⁹⁷ This mapping is to a scale of 1:50,000 to 1:63,000, so may not be sufficient to accurately identify where mapped LUC areas sit in relation to property boundaries. I consider the consequence of this is limited, in comparison to the risk of not having an interim definition, and the cost of developing higher resolution LUC mapping for a short period of use. Where any disagreements are found with the currently mapped LUC classes, this may be pursued on a property specific basis.

1421. The definition sought by submitters does not specify that whole land parcels may be defined as highly productive land if a portion of the land parcel is LUC 1-3, as is intended

⁹⁹⁷ <https://iris.scinfo.org.nz/layer/48076-nzlri-land-use-capability/>

through the dNPSHPL. This recognises that in many areas, land parcels do not follow the productive capacity of an area, so classifying an entire land parcel as highly productive may inadvertently protect land outside the definition.

1422. Both OWRUG and Horticulture NZ include consistency with the dNPSHPL in their reasons for seeking a definition. I note that while the definitions sought by OWRUG and Horticulture NZ mirror clauses (a) and (b) of the dNPSHPL definition, both submitters exclude clause (c) relating to urban areas. There is little explanation in the dNPSHPL about the intent of clause (c) and I note that one reference to the definition in that document does not contain clause (c). The definition sought by submitters applies to “rural land” which is defined in the pORPS as:

means any area of land that is not an urban area

1423. “Urban area” is then defined in the pORPS as:

means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that is, or is intended to be, predominantly urban in character. This includes but is not limited to any land identified in District Plans as being within any urban growth boundary or equivalent however described, any residential zone, commercial and mixed use zone, industrial zone and future urban zone as listed in the National Planning Standards or its present District Plan zone equivalent. Urban environments are a subset of urban areas.

1424. On this basis, I consider that clause (c) of the dNPSHPL definition is unnecessary and agree with submitters it should not be included.

1425. I recommend accepting in part the submission point by OWRUG and accepting in full the submission points by Horticulture NZ and NZ Pork.

Recommendation

1426. I recommend including a definition of Highly Productive Land as per Horticulture New Zealand’s submission.

9.8.4. LF-LS-O11 – Land and soil

9.8.4.1. Introduction

1427. As notified, LF-LS-O11 reads:

LF–LS–O11 – Land and soil

The life-supporting capacity of Otago’s soil resources is safeguarded and the availability and productive capacity of highly productive land for *primary production* is maintained now and for future generations.

9.8.4.2. Submissions

1428. Six submitters support LF-LS-O11 and seek that it be retained as notified.⁹⁹⁸ CODC supports the objective but seeks that highly productive land be identified at a regional level.⁹⁹⁹ No submitters oppose LF-LS-O11 in its entirety.
1429. Several submitters seek changes in relation to the definition of primary production. These submissions have been evaluated in section 9.8.3.1 of this report.¹⁰⁰⁰
1430. Federated Farmers seeks that the term highly productive land is removed from the objective, as it indicates that the objective applies only to highly productive land, and not all productive land.¹⁰⁰¹ In addition, they consider that this is inconsistent with Objective LF-LS-O12, which does not specify highly productive land.
1431. Conversely, Fulton Hogan seeks that references to soil resources are removed, with the objective instead relying on the term highly productive land.¹⁰⁰² The submitter considers that the term highly productive land is relied upon as it recognises the many components that contribute to value (including soil characteristics), and also how the ideal characteristics vary for different types of primary production (for example farming and quarrying). The submitter also considers that the proposed change will avoid potential conflict with any future national direction.
1432. Infinity and NZ Cherry Corp seek that the objective be reworded to support the maintenance of the availability and productive capacity of highly productive land, rather than requiring that these values are maintained outright.¹⁰⁰³ They consider that the objective is overly directive, and that “support” wording is reflective of maintenance not being appropriate in all circumstances. The submitters note that their amendments reflect the direction in the dNPSHPL.
1433. AgResearch and Rural Contractors NZ seek that the objective is amended to include supporting activities alongside primary production.¹⁰⁰⁴ The submitters consider it essential that the objective recognises and provides for critical rural activities which support, service or are dependent on primary production, and have an operational need to locate in rural areas. AgResearch identifies their need to utilise highly productive land for research purposes, given the eventual commercial application and economic benefits, while Rural Contractors NZ identifies rural contractor yards as such activities. Both submitters also seek a similar change to LF-LS-P19.

⁹⁹⁸ 00121.060 Ravensdown, 00213.022 Waitaki Irrigators, 00236.067 Horticulture NZ, 00138.091 QLDC, 00140.019 Waitaki DC, 00510.026 The Fuel Companies

⁹⁹⁹ 00201.018 CODC

¹⁰⁰⁰ 00226.199 Kāi Tahu ki Otago, 00235.103 OWRUG

¹⁰⁰¹ 00239.093 Federated Farmers

¹⁰⁰² 00322.021 Fulton Hogan

¹⁰⁰³ 00413.003 NZ Cherry Corp, 00414.001 Infinity

¹⁰⁰⁴ 00208.006 AgResearch, 00410.004 Rural Contractors NZ

1434. Wise Response seeks that alongside life-supporting capacity, water-holding capacity of Otago’s soil resources should be safeguarded *and enhanced*.¹⁰⁰⁵ The submitter recognises that soil water-holding capacity can change under different management regimes, and that building water-holding capacity goes hand in hand with building biophysical capacity.
1435. Gavan Herlihy does not specifically support nor oppose the objective, but seeks to clarify that the life supporting capacity of soils in many areas of Otago is only achieved by the use of water. The submitter considers that there is a disconnect between the use of water resources and the use of land. Two examples in relation to productive land are given, being land adjacent to the Clutha River for growing apples and apricots that is only highly productive because of the use of water, and formerly unproductive land in the Cromwell, Tarras and Wanaka area that has become productive for growing grapes and cherries through the use of water.¹⁰⁰⁶
1436. DCC seeks that LF-LS-O11 (as well as LF-LS-O12) is drafted in a way that that is connected with direction on how to balance with urban growth objectives, in a way that provides for some loss of soil resource to support urban growth.¹⁰⁰⁷ The submitter considers that it will be impossible to achieve zero loss and comply with the NPS-UD or achieve affordable housing. The submitter also states that clarity is needed on how the effects on soil productivity conversion for non-native forests fit with the objective. DCC points to research which shows that soil fertility in plantations is unlikely to restore to the level in natural forests, implying that replacing natural forests with plantations may be best avoided to maintain ecosystem sustainability.
- 9.8.4.3. Analysis
1437. As I have set out in more detail in section 9.8.3.1 of this report, I recommend replacing “primary production” with “food and fibre production” in this objective.
1438. Federated Farmers and Fulton Hogan seek similar but opposing relief, in terms of the use of highly productive land. Federated Farmers seeks that the objective apply to all land, while Fulton Hogan seeks that the reference to soil resources is removed, and highly productive land relied upon. There are two outcomes described in LF-LS-O11: one for soil resources and one for highly productive land. In my view, the first part of the objective applies to all soil resources, including all productive land (including, but not limited to, highly productive land). It is only the second part that is limited to highly productive land. To clarify this, I recommend accepting the submission point by Federated Farmers in part and including commas in front of and at the end of the sentence regarding highly productive land.
1439. I do not consider that the amendment sought by Fulton Hogan reflects the purpose of the RMA, which includes specific reference to safeguarding the life-supporting capacity of soil (among other things). For this reason, I do not recommend accepting this submission point.

¹⁰⁰⁵ 00509.087 Wise Response

¹⁰⁰⁶ 00104 Gavan James Herlihy (uncoded submission point - page 4 of submission)

¹⁰⁰⁷ 00139.117, 00139.118 DCC

1440. I consider the direction to “maintain” the availability of productive land is more appropriate than “support” as sought by Infinity and NZ Cherry Corp. It is not clear from the submissions how the availability of productive land would be supported. In my view, there is greater clarity about what is meant by maintaining. I recommend rejecting the submission points of Infinity and NZ Cherry Corp.
1441. I acknowledge concerns raised by AgResearch and Rural Contractors NZ around supporting activities and agree that some such activities are required to locate near primary production activities. However, I consider that the detail around supporting activities is best included at the policy level, to ensure the focus of the objective remains on the retention of land for primary production only. In addition, UFD-P7 facilitates the locating of rural industry and supporting activities within rural areas. On this basis, I recommend rejecting the submission points of AgResearch and Rural Contractors NZ.
1442. The inclusion of “enhancing” alongside “safeguarding” life supporting capacity of soil resources as sought by Wise Response would add complexity to the provision. It is not clear in what circumstances enhancing is required, or how it is undertaken. This would need to be set out in accompanying policy direction. The submitter does not elaborate on when enhancing would be required in addition to safeguarding, nor is this change reflected in their relief sought on other LF-LS provisions. I recommend rejecting the submission point of Wise Response.
1443. I do not consider it is necessary to include water-holding capacity in the objective as water-holding capacity is captured by the term life-supporting capacity. Soil’s ability to hold water is a contributing factor to its health and productivity, and I consider that it does not require specific reference. I recommend rejecting the submission point of Wise Response.
1444. I agree with DCC that there is inevitably a tension between maintaining highly productive land and providing for urban growth, and I recognise that the NPSUD anticipates urban expansion into greenfield areas. I do not consider that either LF-LS-O11 or LF-LS-O12 requires zero loss of highly productive land. The provisions of the LF-LS section must be read alongside the provisions of the UFD chapter, which I note specifically addresses urban expansion in UFD-P4. I am unsure what relief DCC seeks in relation to non-native forests. I note that my recommendation to replace “primary production” with “food and fibre production” excludes permanent forests from the highly productive land framework. I do not recommend accepting this submission point.

9.8.4.4. Recommendation

1445. I recommend amending LF-LS-O11 to:

LF-LS-O11 – Land and soil

The life-supporting capacity of Otago’s soil resources is safeguarded,¹⁰⁰⁸ and the availability and productive capacity of ~~highly productive land~~ highly productive

¹⁰⁰⁸ 00239.093 Federated Farmers

*land*¹⁰⁰⁹ for ~~primary production~~ *food and fibre production*¹⁰¹⁰ is maintained,¹⁰¹¹ now and for future generations.

9.8.5. LF-LS-O12 – Use of land

9.8.5.1. Introduction

1446. As notified, LF-LS-O12 reads:

LF-LS-O12 – Use of land

The use of *land* in Otago maintains soil quality and contributes to achieving *environmental outcomes for fresh water*.

9.8.5.2. Submissions

1447. Seven submitters support LF-LS-O12 and seek that it be retained as notified.¹⁰¹² No submitters oppose LF-LS-O12 in its entirety.

1448. Toitū Te Whenua seeks that the maintain wording is amended to be maintain and enhance, on the basis that land use in the region should strive to maintain and enhance soil quality.¹⁰¹³

1449. Fulton Hogan seeks that the reference to maintain soil quality is removed, in accordance with the proposed changes to LF-LS-O11.¹⁰¹⁴ The submitter considers that an additional objective addressing soil is not necessary, and the objective can be left to address land use and freshwater outcomes only.

1450. In a similar vein, the Minister for the Environment seeks that the objective is amended to pull out the land use and freshwater section into a separate objective from the soil quality aspect.¹⁰¹⁵ The Minister considers that the provisions appear to favour soil health objectives, to the detriment of land use provisions to protect freshwater. No proposed wording is included.

1451. Wise Response seeks some additional explanation in the objective, to focus on building biophysical capacity.

1452. As with LF-LS-O11, DCC seeks that LF-LS-O12 needs to be drafted in a way that is connected with direction on how to balance with urban growth objectives, in a way that provides for some loss of soil resource to support urban growth.¹⁰¹⁶ The submitter considers that it will be impossible to achieve zero loss and comply with the NPSUD or

¹⁰⁰⁹ 00236.013 Horticulture NZ

¹⁰¹⁰ 00235.008 OWRUG

¹⁰¹¹ 00239.093 Federated Farmers

¹⁰¹² 00121.061 Ravensdown, 00236.068 Horticulture NZ, 00138.092 QLDC, 00226.200 Kāi Tahu ki Otago, 00235.104 OWRUG, 00240.026 NZ Pork, 00140.020 Waitaki DC, 00510.027 The Fuel Companies

¹⁰¹³ 00101.041 Toitū Te Whenua

¹⁰¹⁴ 00322.022 Fulton Hogan

¹⁰¹⁵ 00136.008 Minister for the Environment

¹⁰¹⁶ 00139.117 DCC, 00139.118 DCC

achieve affordable housing. The submitter also suggests that clarity is needed on how the effects on soil productivity conversion for non-native forests fits with the objective. They point to research which shows that soil fertility in plantations is unlikely to restore to the level in natural forests, implying that replacing natural forests with plantations may be best avoided to maintain ecosystem sustainability.

9.8.5.3. Analysis

1453. I consider that the inclusion of enhancing, alongside maintaining soil quality adds complexity to the provision, on the basis that the circumstances where enhancing is required would need to be set out. The submitter does not elaborate on when enhancing would be required in addition to maintaining, nor is this change reflected in their relief sought on other LF-LS provisions. I recommend rejecting this submission point.

1454. The change sought by Fulton Hogan to remove soil quality is on the basis of this already being included in LF-LS-O11. While I agree that soils are already captured, LF-LS-O12 is specific to the use of land and its effects on soil quality, whereas LF-LS-O11 is more general in its application. I consider the specific consideration of land uses is useful to be retained, and highlights the importance of land uses in maintaining soil quality. While some land uses have the potential to improve soil quality through good management, many may result in a decrease in soil quality, such as farming activities that result in pugging or compaction, or earthworks that result in the loss of top soil. I recommend rejecting this submission point.

1455. I do not agree with the Minister for the Environment that the inclusion of soil quality in LF-LS-O12 favours soil health objectives. I consider that the wording of this objective reflects that while land uses affect soil quality directly, they affect fresh water indirectly and there are a range of other activities that also contribute to the health and well-being of freshwater. The requirement to manage land uses to maintain soil quality will not be at the detriment of freshwater, with the LF chapter hierarchy such that the LF-WAI provisions sit above the LF-LS provisions. I recommend rejecting this submission point.

1456. I consider that the level of detail sought by Wise Response is not appropriate for an objective just is outcome-focused. In addition, the concept of soil quality is considered to capture many of the listed matters, and they do therefore not require specific reference. I recommend rejecting this submission point as it relates to LF-LS-O12, but consider that the focus on biophysical capacity may be able to be captured by other provisions, including LF-LS-P17 and LF-LS-P20.

1457. I have addressed the submission point by DCC above in relation to LF-LS-O11 and for the same reasons I do not recommend accepting this submission point.

9.8.5.4. Recommendation

1458. I recommend retaining LF-LS-O12 as notified.

9.8.6. New objectives

9.8.6.1. Submissions

1459. The Director-General of Conservation seeks the addition of two new objectives, and considers that the existing objectives fail to address terrestrial values, and the consequential effects of land use activities.¹⁰¹⁷ The new objectives are:

LF-LS-OA

Otago’s land environments support healthy habitats for indigenous species and ecosystems.

LF-LS-OB

Land use activities in Otago are managed in a way which recognises and protects terrestrial, freshwater and coastal values which land use activities could affect either directly or indirectly.

9.8.6.2. Analysis

1460. I do not consider that the first objective sought by DOC is appropriate for this chapter. Ecosystems and indigenous biodiversity are addressed through the *ECO* chapter (and particularly through ECO-O1, ECO-P3, and ECO-P4) which applies to land environments.

1461. In relation to the second objective sought, it is not clear what terrestrial, freshwater, or coastal values are. Without further evidence, I do not recommend accepting this submission point.

9.8.6.3. Recommendation

1462. I do not recommend including any new objectives.

9.8.7. LF-LS-P16 – Integrated management

9.8.7.1. Introduction

1463. As notified, LF-LS-P16 reads:

LF–LS–P16 – Integrated management

Recognise that maintaining soil quality requires the integrated management of *land* and *freshwater* resources including the interconnections between soil health, vegetative cover and *water* quality and quantity.

9.8.7.2. Submissions

1464. This policy is supported by seven submitters.¹⁰¹⁸

¹⁰¹⁷ 00137.076 DOC, 00137.078 DOC

¹⁰¹⁸ 00140.021 Waitaki DC, 00138.093 QLDC, 00240.027 NZ Pork, 00236.069 Horticulture NZ, 00236.105 Horticulture NZ, 00321.039 Te Waihangā, 00139.114 DCC

1465. Ravensdown opposes the provision in its entirety and considers that the policy is not needed on the basis that IM–O2 and LF-WAI-P3 have similar requirements, and LF-LS-O12 specifically refers to soil quality and freshwater outcomes.¹⁰¹⁹

1466. Kāi Tahu ki Otago submits that the policy direction should be stronger than simply recognising the need for integrated management, by requiring integrated management, and including in the outcome that it this should maintain soil quality and achieve freshwater outcomes.¹⁰²⁰ This is reflected across various provisions, where Kāi Tahu ki Otago considers that the general policy direction on integrated management is not reflected in specific policies. Their amendment is intended to clarify the link between land management and freshwater outcomes. Fish and Game seeks a similar amendment to include alongside soil quality the achievement of environmental outcomes for freshwater.¹⁰²¹

9.8.7.3. Analysis

1467. I recommend rejecting Ravensdown’s submission on the basis that LF-LS-P16 provides explicit recognition of the key connections for the management of soil quality. Although these links are provided more generally in LF-LS-O12, I consider that LF-LS-P16 makes these links clear and ensures that activities affecting soil quality do not look at soil health in isolation.

1468. In my opinion, the amendments sought by Kāi Tahu ki Otago seek to achieve a different outcome than that intended by the notified provision. This policy is primarily to highlight the need for an integrated approach to managing land and water due to the many factors that contribute to overall soil quality. I do not recommend accepting this submission point.

1469. Although I acknowledge that the suggested amendment to include freshwater outcomes reflects the direction in LF-LS-O12, one of the focuses of this chapter is on maintaining soil quality, while being cognisant of other related outcomes, such as those for freshwater quantity and quality. I do not recommend accepting this part of Kāi Tahu ki Otago’s submission point.

9.8.7.4. Recommendation

1470. I recommend retaining LF-LS-P16 as notified.

9.8.8. LF-LS-P17 – Soil values

9.8.8.1. Introduction

1471. As notified, LF-LS-P17 reads:

LF–LS–P17 – Soil values

¹⁰¹⁹ 00121.062 Ravensdown

¹⁰²⁰ 00226.201 Kāi Tahu ki Otago

¹⁰²¹ 00231.063 Fish and Game

Maintain the mauri, health and productive potential of soils by managing the use and development of *land* in a way that is suited to the natural soil characteristics and that sustains healthy:

- (1) soil biological activity and *biodiversity*,
- (2) soil structure, and
- (3) soil fertility.

9.8.8.2. Submissions

1472. This policy is supported by seven submitters.¹⁰²² No submitters oppose the provision in its entirety.
1473. DCC seeks similar changes to those sought in relation to the LF-LS objectives.¹⁰²³ The submitter suggests replacing the term maintain with “minimise to the degree practical, considering other objectives in the RPS”, the effects on mauri, health and productive potential.
1474. OWRUG seeks that the reference to mauri is replaced with well-being, and that the word “natural” is deleted.¹⁰²⁴ The submitter considers that maintenance of the productive potential of soil is critical.
1475. Tōitu Te Whenua seeks that the soil characteristics and values listed in the policy are replaced with the national soil quality indicators, and soil biology.¹⁰²⁵
1476. J Griffin considers that the policy does not specifically acknowledge soil organic carbon, or the benefits that it has on soil biodiversity, structure and fertility.¹⁰²⁶ He seeks that the policy promote management systems that build soil carbon, which will in turn improve soil biodiversity, structure and fertility, and provide some degree of climate remediation.

9.8.8.3. Analysis

1477. As I have stated in relation to LF-LS-O11 and LF-LS-O12, I do not agree with DCC that the provisions in this chapter require zero loss of highly productive land. In my view, this policy sets out the purpose of management regimes and provides flexibility for a range of actions to occur. I do not recommend accepting this submission point.
1478. OWRUG does not state why the removal of “mauri” from the policy is sought. In other submission points on the pORPS, OWRUG notes the difficulty with objectively assessing mauri. The LF-WAI provisions provide direction on the meaning of mauri, and how fresh water and land should be managed to protect and restore mauri. In the LF chapter hierarchy, the LF-LS provisions must give effect to the provisions in the LF-WAI section. In

¹⁰²² 00140.022 Waitaki DC, 00138.094 QLDC, 00240.028 NZ Pork, 00236.070 Horticulture NZ, 00121.063 Ravensdown, 00407.047 Greenpeace and 1259 supporters, 00226.202 Kāi Tahu ki Otago

¹⁰²³ 00139.120 DCC

¹⁰²⁴ 00235.106 OWRUG

¹⁰²⁵ 00101.042 Toitū Te Whenua

¹⁰²⁶ 00031.001 J Frank and T Griffin

relation to the mauri of the soil specifically, clauses (1)-(3) of LF-LS-P17 are considered to provide clear guidance. I recommend rejecting this submission point.

1479. Tōitu Te Whenua seeks to use soil characteristics/value as defined by a 2009 report by the Land Monitoring Forum, New Zealand, titled *Land and Soil Monitoring: A guide for SoE and regional council reporting*. In Chapter 3, Section 3, the report lists the following soil characteristics/values to be used as key indicators of soil quality:

- The biological component (measured by total carbon, total nitrogen and mineralisable nitrogen);
- The chemical component (measured by soil pH and Olsen P);
- The physical component (measured by bulk density and macroporosity);
- Optional indicators for intensively cultivated land are included, being aggregate stability and soil profile description to >0.5 m.

1480. The report includes target ranges for each indicator, which includes ample, adequate or optimal values, alongside values either side of the optimum.

1481. I consider these indicators are already provided for under the three clauses of the policy as notified. In addition, I consider specific details relating to target ranges, if any, are best placed in a regional plan. In the case of farming land use activities, specific soil quality targets could be included in a freshwater farm plan, which will take into consideration the soil type and land use system. Based on the comments above, I recommend rejecting Tōitu Te Whenua's submission point.

1482. As identified by J Griffin, soil organic carbon has benefits for biodiversity, structure and fertility. While the policy does not provide any guidance about promoting specific management systems, I consider the role of soil carbon is captured under the three clauses as currently written. I recommend rejecting the submission point.

9.8.8.4. Recommendation

1483. I recommend that LF-LS-P17 is retained as notified.

9.8.9. LF-LS-P18 – Soil erosion

9.8.9.1. Introduction

1484. As notified, LF-LS-P18 reads:

LF-LS-P18 – Soil erosion

Minimise soil erosion, and the associated risk of sedimentation in water bodies, resulting from *land* use activities by:

- (1) implementing effective management practices to retain topsoil in-situ and minimise the potential for soil to be *discharged* to *water bodies*, including by controlling the timing, duration, scale and location of soil exposure,
- (2) maintaining vegetative cover on erosion-prone *land*, and
- (3) promoting activities that enhance soil retention.

9.8.9.2. Submissions

1485. This policy is supported by seven submitters.¹⁰²⁷ No submitters oppose the provision in its entirety. The remaining submitters sought a range of amendments which I have set out below.
1486. Moutere Station opposes clause (1), stating that this is a large topic which needs more science behind it to understand the full effects.¹⁰²⁸ The submitter does not provide any additional detail regarding their opposition.
1487. Tōitu Te Whenua seeks that clause (1) be amended as set out below.

Implementing effective and appropriate management practices ...

1488. This amendment is sought to ensure that, in the example of vegetation cover, species are used that are appropriate for the surrounding environment, as well as being effective for the intended purpose.¹⁰²⁹
1489. Graymont (NZ) Limited considers that extraction-based activities, by their nature, are not able to maintain vegetative cover during works. They seek the addition of wording to require that vegetation cover on erosion-prone land shall be maintained to the extent practicable, rather than maintained outright.¹⁰³⁰ The submitter states that the use of 'practicable' is deliberate, and better understood than alternative terms.

9.8.9.3. Analysis

1490. Soil loss to water ways is known to be an issue both in terms of the loss of the soil resource itself, and the resulting sedimentation of waterways. There is also a significant amount of guidance available to minimise soil loss in both urban and rural settings, such as the *Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region* (Auckland Council, 2016) and the *Industry-agreed Good Management Practices relating to water quality* (FAR, New Zealand Pork, DairyNZ, Beef + Lamb NZ, Horticulture New Zealand & Deer Industry New Zealand, 2015). The policy does not preclude the use of the most up to date knowledge on soil loss management practices, in particular where it improves on current knowledge. I recommend rejecting the submission point of Moutere Station.
1491. I agree with Tōitu Te Whenua that not all effective management practices may be appropriate. I consider that the inclusion of appropriate will provide for the ability to ensure the soil retention methods are suitable for their surrounding environment, and do not result in unintended adverse effects, such as the introduction of pest plant species or the loss of waterbody extent or value. I recommend accepting this submission point.

¹⁰²⁷ 00138.095 QLDC, 00240.029 NZ Pork, 00236.071 Horticulture NZ, 00121.064 Ravensdown, 00235.107 OWRUG, 00226.203 Kāi Tahu ki Otago, 00139.116 DCC

¹⁰²⁸ 00026.013 Moutere Station

¹⁰²⁹ 00101.043 Toitū Te Whenua

¹⁰³⁰ 00022.019 Graymont

1492. I agree with Graymont (NZ) Limited that maintaining vegetative cover on erosion-prone land may not be possible in all cases, and that the wording of clause (2) should reflect that. Where maintaining vegetative cover is not practicable, clauses (1) and (3) are still applicable and should ensure that other practices are used to manage erosion-prone land. I consider that the use of the term practicable is consistent with the language used elsewhere in the pORPS and reflects that there may be some situations where compliance with clause (2) is impractical. I recommend accepting this submission point.

9.8.9.4. Recommendation

1493. I recommend amending LF-LS-P18 to:

LF-LS-P18 – Soil erosion

Minimise soil erosion, and the associated risk of sedimentation in water bodies, resulting from *land* use activities by:

- (1) implementing appropriate and¹⁰³¹ effective management practices to retain topsoil in-situ and minimise the potential for soil to be *discharged* to *water bodies*, including by controlling the timing, duration, scale and location of soil exposure,
- (2) maintaining vegetative cover on erosion-prone *land*, to the extent practicable,¹⁰³² and
- (3) promoting activities that enhance soil retention

9.8.10. LF-LS-P19 – Highly productive land

9.8.10.1. Introduction

1494. As notified, LF-LS-P19 reads:

LF-LS-P19 – Highly productive *land*

Maintain the availability and productive capacity of highly productive *land* by:

- (1) identifying highly productive *land* based on the following criteria:
 - (a) the capability and versatility of the *land* to support primary production based on the Land Use Capability classification system,
 - (b) the suitability of the climate for primary production, particularly crop production, and
 - (c) the size and cohesiveness of the area of *land* for use for primary production, and
- (2) prioritising the use of highly productive *land* for primary production ahead of other *land* uses, and

¹⁰³¹ 00101.043 Toitū Te Whenua

¹⁰³² 00022.019 Graymont

- (3) managing urban development in rural areas, including rural lifestyle and rural residential areas, in accordance with UFD–P4, UFD–P7 and UFD–P8.

9.8.10.2. Submissions

1495. This policy is supported by three submitters.¹⁰³³ No submitters oppose the provision in its entirety. Several submitters seek additions in relation to a definition of highly productive land.¹⁰³⁴
1496. Infinity and NZ Cherry Corp seek that the policy be reworded to “support” the availability and productive capacity of highly productive land, rather than requiring that these values are “maintained” outright.¹⁰³⁵ The direction to maintain is considered by the submitters to be overly directive, while the support wording is reflective of maintenance not being appropriate in all circumstances.

Clause (1)

1497. Tōitu Te Whenua seeks that the LUC system be used to classify highly productive land, alongside the other factors that make land highly productive.¹⁰³⁶ The submitter does not specify which classes should apply. Similar to Tōitu Te Whenua, DCC seeks that Clause 1(a) is amended to specify which LUC classes apply.¹⁰³⁷ They have not suggested which LUC classes are relevant. Lauder Creek Farming seeks that there should be identification of the LUC classes that will be defined as highly productive and suggest classes 1-4.¹⁰³⁸
1498. CODC supports the focus on productive capacity, rather than the use of LUC classes 1-3, but considers that mapping of highly productive land should be done at a regional level.¹⁰³⁹ The submitter has not sought any amendments to support the statement regarding mapping.
1499. Fulton Hogan seeks that the use of the LUC system be deleted from Clause 1(a).¹⁰⁴⁰ They consider that the reference to soils through the LUC creates a tension within the definition of primary production, and that the reference to the capability and versatility of the land does not exclude the use of the LUC at the regional plan level.
1500. Trojan and Wayfare seek that clause (1) is amended to require the mapping of highly productive land in addition to identifying.¹⁰⁴¹ No reasoning for the requested amendment is provided.

¹⁰³³ 00121.065 Ravensdown, 00218.007 Susan and Donald Broad, 0020.014 Rayonier

¹⁰³⁴ 00235.108 OWRUG, 00226.204 Kāi Tahu ki Otago

¹⁰³⁵ 00413.004 NZ Cherry Corp, 00414.002 Infinity Investment Group

¹⁰³⁶ 00101.044 Toitū Te Whenua

¹⁰³⁷ 00139.122 DCC

¹⁰³⁸ 00406.009 Lauder Creek Farming

¹⁰³⁹ 00201.019 CODC

¹⁰⁴⁰ 00322.023 Fulton Hogan

¹⁰⁴¹ 00206.040 Trojan, 00411.052 Wayfare

1501. Ballance seeks that the need for cohesiveness be deleted from clause 1(c).¹⁰⁴² They question the importance of cohesiveness in identifying highly productive land, stating that cohesiveness should not impact how land is classified. They note that many primary production operations occur over multiple land parcels that are not necessarily spatially cohesive.
1502. Several submitters seek that clause 1 is amended to include other matters, including:
- Access to transport routes and labour markets,¹⁰⁴³
 - Current and potential availability of water,¹⁰⁴⁴
 - Water quality issues that may limit the use of land for primary production.¹⁰⁴⁵
1503. QLDC seeks that clause (1) is amended to include two new components: the receiving environment and other factors that contribute to the land being highly productive, such as access to markets and the existing productive systems or agglomeration economies (spatial clustering) in place.¹⁰⁴⁶ The submitter considers that the receiving environment is important in determining any existing sensitive receptors that may make farming less viable. The submitter also identifies several spatial clustering aspects that contribute to land being highly productive, including access to a tourism market (Gibbston wine area), labour pooling, sharing of suppliers and specialization.

Clause (2)

1504. Infinity and NZ Cherry Corp seek that clause (2) be reworded to support the use of highly productive land, rather than requiring outright prioritisation.¹⁰⁴⁷ They also seek that “ahead of other land uses” be deleted.
1505. AgResearch and Rural Contractors NZ seek that clause (2) is amended to provide for the use of highly productive land for critical activities which support, service or are dependent on primary production, and have an operational need to locate in rural areas.¹⁰⁴⁸ AgResearch identifies their need to utilise highly productive land for research purposes, given the eventual commercial application and economic benefits, while Rural Contractors NZ identifies rural contractor yards as such activities that are dependent on primary production. The submitters consider that this amendment provides greater consistency with parallel provisions UFD-O4 and UFD-P7.
1506. Transpower seeks that the prioritisation of primary production is not ahead of regionally and nationally significant infrastructure.¹⁰⁴⁹ The submitter considers that there is no rationale for prioritising primary production over all other land uses, and that in some

¹⁰⁴² 00409.014 Ballance

¹⁰⁴³ 00101.044 Toitū Te Whenua

¹⁰⁴⁴ 00213.023 Waitaki Irrigators, 00413.004 NZ Cherry Corp, 00414.002 Infinity

¹⁰⁴⁵ 00413.004 NZ Cherry Corp, 00414.002 Infinity

¹⁰⁴⁶ 00138.095 QLDC

¹⁰⁴⁷ 00413.004 NZ Cherry Corp, 00414.002 Infinity

¹⁰⁴⁸ 00208.007 AgResearch, 00410.005 Rural Contractors NZ

¹⁰⁴⁹ 00314.027 Transpower

cases, primary production and the National Grid can co-exist, so there is no need to exercise priority.

Clause (3)

1507. Horticulture NZ seeks that clause (3) includes reference to UFD-O4, given this is the objective that establishes the framework for the listed policies.¹⁰⁵⁰
1508. Silver Fern Farms seeks an amendment to clause (3) to align with their submission on policies UFD-P4, UFD-P7 and UFD-P8, being that urban development should be restricted rather than managed, with a focus on highly productive land, rather than rural lifestyle and rural residential areas.¹⁰⁵¹
1509. Trojan and Wayfare seek a similar amendment, removing the reference to rural lifestyle and residential areas only.¹⁰⁵² The submitters consider that this adds confusion to the policy and is redundant, as it is captured by policies UFD-P4, UFD-P7 and UFD-P8.

Other matters

1510. Matakanui Gold Limited opposes the policy and seeks that it is either deleted or amended to provide for mining.¹⁰⁵³ The submitter states that policy direction should recognise the functional and operational needs of mining and clarify the relationship between mining and the use of highly productive land, given mining is captured by the definition of primary production.

9.8.10.3. Analysis

1511. Where Infinity and NZ Cherry Corp seek that “support” is sought to be used over the current “maintain” (chapeau) and “prioritise” (clause (2)), is not clear from the submissions how the availability of productive land would be supported, nor the circumstances where supporting highly productive land for primary production would not be appropriate. In comparison, the notified provision provides clearer direction about the actions to be taken to implement the policy. I note that I have raised the same issues in relation to similar amendments sought to LF-LS-O11. I recommend rejecting the submission points.

Clause (1)

1512. The submissions on the use of LUC classes in clause (1)(a) vary from support through to deletion of the reference to LUC altogether. I consider that the use of the LUC is a useful means to assist in determining whether land is highly productive but is not the only criteria for identifying highly productive land, as discussed earlier in relation to viticulture and orchards. The remaining criteria in clause (1) ensure that LUC is not the defining

¹⁰⁵⁰ 00236.072 Horticulture NZ

¹⁰⁵¹ 00221.009 Silver Fern Farms

¹⁰⁵² 00413.004 NZ Cherry Corp, 00414.002 Infinity

¹⁰⁵³ 00021.006 Matakanui Gold

matter for highly productive land. However, I acknowledge that the current wording of clause (1) restricts assessments of the capability and versatility of the land to the LUC classification system, which may not capture some productive land in Otago that is not classified as 'traditionally' productive under the LUC classification system. To address this, I recommend replacing "based on" with "including" so that the LUC classification system is one way to determine whether this criterion is met, but not the only way.

1513. For the same reasons, I do not consider that referencing specific LUC classes is necessary. Earlier in this report, I have recommended including a definition of "highly productive land" that relies on LUC classes 1 to 3 in the interim period before the full identification process has occurred. I recommend accepting in part the submission points by Toitū te Whenua and CODC and rejecting those by DCC, Lauder Creek Farming, and Fulton Hogan.
1514. Trojan and Wayfare seek to amend this policy to require highly productive land to be mapped but do not provide any explanation for seeking this change. I understand the general benefits of mapping when planning documents require identification of particular areas or features. I note that the dNPSHPL requires regional councils to map highly productive land and include those maps in their regional policy statements. However, that document is currently a draft and there may be amendments to its content. I consider that the requirement to identify highly productive land allows councils to map these areas, should they choose to, or identify them in some other way (for example, in a Schedule). Given the uncertainty about the national level requirements, I consider there are benefits to having some flexibility in the identification requirements. I do not recommend accepting the amendment sought by Trojan and Wayfare.
1515. Several submitters seek the addition of new clause (1) criteria, being:
- the current or future potential availability of water;
 - water quality issues or constraints that may limit the use of the land for primary production (particularly for more intensive forms of primary production)
 - access to transport routes and labour markets
 - existing productive systems or agglomeration economies (spatial clustering)
1516. I consider that tying the identification of highly productive land to current water quantity and/or quality limits has the potential to result in 'grandfathering', where identification is based on the current knowledge and availability. Over time, there may be a reduction in water available for abstraction, or a decline in water quality, meaning that land previously identified as highly productive based on those factors would then not meet the clause (1)(a) criteria. Conversely, a reduction in water availability or decline in water quality may trigger a change in land use to a highly productive land use that has a lesser reliance on water quality, and lesser negative impact on water quality. I consider that the greater risk lies in tying the identification of highly productive land to water availability and quality, given there are likely to be other mechanisms in the regional plan that will effectively limit what can occur in locations where there is limited water availability or there are water quality issues. I do not recommend including water quantity and quality criteria in clause (1) and therefore recommend rejecting the submission points related to their inclusion.

1517. Access to transport routes and labour markets is relevant for some primary products, particularly those which are time sensitive for delivery to market or are labour intensive in their cultivation or harvesting. However, this does not relate directly to the suitability of the land itself for food and fibre production and therefore I do not consider it should be included as a criterion in (1). I recommend rejecting the submission point by Toitū te Whenua.
1518. I consider the spatial clustering or agglomeration identified by QLDC to be in part captured by cohesiveness as described in clause (1)(c). Spatial clustering or cohesiveness of productive land is considered important, given smaller, fragmented blocks are less likely to be utilised for primary production. As I consider the matter is already addressed, I do not recommend accepting this submission point.
1519. QLDC also identifies consideration of the receiving environment as an additional criterion for clause (1), as a means to consider any existing sensitive receptors that may make farming less viable due to reverse sensitivity effects. Similarly, to the recommendation in relation to water quality and quantity, I consider there are likely to be other mechanisms in the regional plan that will effectively limit what can occur. In addition, it is not clear what ‘the receiving environment’ could capture outside reverse sensitivity, introducing uncertainty. On this basis I recommend rejecting this submission point.

Clause (2)

1520. Infinity and NZ Cherry Corp seek to delete the phrase “ahead of other land uses” in Clause (2). I recommend accepting the relief sought as the first part of the clause already provides priority for primary production on highly productive land. The submitters also seek to replace “prioritise” with “support”. As stated previously, I am unsure what action this would require or what the submitters intend by the term support. For this reason, I do not recommend accepting this submission point.
1521. I agree with AgResearch and Rural Contractors NZ that some activities that support primary production have an operational need to be located in rural areas and should also be prioritised in clause (2). I note that the term “rural industry” is used in UFD-P7 and the following definition from the National Planning Standards is proposed to be included in the pORPS:
- means an industry or business undertaken in a rural environment that directly supports, services, or is depend on primary production.*
1522. I consider this captures the activities identified by AgResearch and Rural Contractors NZ in their submission points in LF-LS-P19 and that the operational need for those activities to be located in rural areas is managed by UFD-P7. I do not recommend accepting these submission point.
1523. Outside those activities intrinsically linked to primary production, such as rural industry, I consider that introducing additional matters where the priority does not apply undermines the intent of the policy to maintain the productive capacity of highly productive land. However, I agree with Transpower that regionally and nationally significant infrastructure should be an exception to this. Policies EIT-INF-P12 and EIT-INF-

P16 provide for the use of land for nationally and regionally significant infrastructure, including the National Grid, and the integration or co-ordination of that development with land use is required where practicable. Given the enabling provisions elsewhere in the pORPS 2021 regarding significant infrastructure, I recommend amending clause (2) so that it is clear that the requirements of EIT-INF-P12 and EIT-INF-P16 prevail over LF-LS-P19. On this basis, I recommend accepting the submission point in part and including the reference to the EIT policies at the end of the clause.

Clause (3)

1524. I do not consider that including reference to the relevant overarching UFD objective in clause (3), as sought by Horticulture NZ, is necessary as the referenced UFD policies are required to give effect to this objective. I do not recommend accepting the submission point.
1525. Clause (3) requires managing urban development in rural areas in accordance with UFD-P4 (Urban expansion), UFD-P7 (Rural areas), and UFD-P8 (Rural lifestyle and rural residential zones). I do not agree with Silver Fern Farms that the collective direction in those policies is always to “restrict” urban development, and therefore consider that “manage” is a more appropriate term. I do not recommend accepting this submission point.
1526. Silver Fern Farms also seeks to incorporate reference to highly productive land in clause (3). I do not consider that is necessary as the direction specifically for highly productive land is set out in clause (2). In my opinion, clause (3) recognises the range of supporting industries and businesses that, while not necessarily needing highly productive land to function, rely on food and fibre production from that land. I do not recommend accepting this submission point.
1527. I agree with Trojan and Wayfare that the reference to rural lifestyle and rural residential areas in clause (3) is uncertain and note that these land uses are captured by several UFD policies. I recommend accepting the submission point and deleting the reference to those terms.

Other matters

1528. I agree with Matakanui Gold Limited that clarification is required about the management of mining on highly productive land given that mining is included in the notified definition of “primary production”. I have recommended replacing “primary production” with “food and fibre production” as well as an accompanying definition that does not include mining, which I consider clarifies this issue. I therefore recommend accepting this submission point in part.

9.8.10.4. Recommendation

1529. I recommend amending LF-LS-P19 to:

LF-LS-P19 – Highly productive land

Maintain the availability and productive capacity of ~~highly productive land~~ highly productive land¹⁰⁵⁴ by:

- (1) identifying ~~highly productive land~~ highly productive land¹⁰⁵⁵ based on the following criteria:
 - (a) the capability and versatility of the *land* to support food and fibre production ~~primary production~~¹⁰⁵⁶ based on, including¹⁰⁵⁷ the Land Use Capability classification system,
 - (b) the suitability of the climate for food and fibre production ~~primary production~~¹⁰⁵⁸ particularly crop production, and
 - (c) the size and cohesiveness of the area of *land* for use for food and fibre production ~~primary production~~¹⁰⁵⁹ and
- (2) prioritising the use of ~~highly productive land~~ highly productive land¹⁰⁶⁰ for food and fibre production ~~primary production~~¹⁰⁶¹ ahead of other ~~land uses~~¹⁰⁶² except as provided by EIT-INF-P12 and EIT-INF-P16,¹⁰⁶³ and
- (3) managing urban development in rural areas, ~~including rural lifestyle and rural residential areas~~¹⁰⁶⁴ in accordance with UFD-P4, UFD-P7 and UFD-P8.

9.8.11. LF-LS-P20 – Land use change

9.8.11.1. Introduction

1530. As notified, LF-LS-P20 reads:

LF-LS-P20 – Land use change

Promote changes in *land* use or *land* management practices that improve:

- (1) the sustainability and efficiency of *water* use,
- (2) resilience to the impacts of *climate change*, or
- (3) the health and quality of soil.

¹⁰⁵⁴ 00236.013 Horticulture NZ

¹⁰⁵⁵ 00236.013 Horticulture NZ

¹⁰⁵⁶ 00235.008 OWRUG

¹⁰⁵⁷ 00114.025-031 Mt Cardrona Station, 00118.025-031 Maryhill Limited, 00209.012-015 Universal Developments, 00210.011-013 & 015 Lane Hocking, 00211.011-013 & 015 LAC Properties Trustees Limited

¹⁰⁵⁸ 00235.008 OWRUG

¹⁰⁵⁹ 00235.008 OWRUG

¹⁰⁶⁰ 00236.013 Horticulture NZ

¹⁰⁶¹ 00235.008 OWRUG

¹⁰⁶² 00413.004 New Zealand Cherry Corp, 00414.002 Infinity Investment Group

¹⁰⁶³ 00314.027 Transpower

¹⁰⁶⁴ 00413.004 New Zealand Cherry Corp, 00414.002 Infinity Investment Group

9.8.11.2. Submissions

1531. This policy is supported by two submitters.¹⁰⁶⁵ Moutere Station opposes the provision in its entirety.¹⁰⁶⁶ The submitter considers that people should be able manage their land as they see fit, providing they meet all relevant regulations.
1532. Ngāi Tahu ki Murihiku seeks that the policy chapeau be amended to “support” rather than “improve” the stated outcomes.¹⁰⁶⁷ The submitter also seeks that clause (1) be amended to include reference to implementing Te Mana o te Wai and the achievement of freshwater visions. The submitter considers that the implementation of Te Mana o te Wai is not limited to water use and so seeks to insert “including” at the end of the clause.
1533. Kāi Tahu ki Otago seeks that the reference to efficiency be removed from clause (1).¹⁰⁶⁸ They consider that the reference to efficiency could be interpreted as encouraging efficiency of use, without a broader sustainability focus. They state that this approach has previously had adverse effects on the health and wellbeing of water bodies.
1534. Wise Response seeks that clause (1) be applied at a catchment scale.¹⁰⁶⁹
1535. Several submitters seek additional clauses to be added to LF-LS-P20, being:
- Hydrology, as it is the crucial process that links the three elements, and is key to aspects of the climate crisis, being drought and global heating,¹⁰⁷⁰
 - The mitigation of climate change, through a reduction in net greenhouse gas emissions,¹⁰⁷¹
 - The quality of surface and/or groundwater, through the management of diffuse discharges of sediment or other contaminants,¹⁰⁷²
 - Habitat, back country areas and indigenous vegetation, and amenity and recreation values and public access to waterbodies and the CMA, on the basis that appropriate land use management practices can help to improve the surrounding environment and ecosystem health.¹⁰⁷³
1536. Wise Response seeks several changes to better express LF-LS-O12.¹⁰⁷⁴ The submitter seeks that the chapeau refer to an Integrated Landscape Management approach, and that clause (3) include biophysical capacity, alongside health and quality. The submitter states that the integrated landscape management approach treats catchments as water

¹⁰⁶⁵ 00138.097 QLDC, 00240.031 NZ Pork

¹⁰⁶⁶ 00026.014 Moutere Station

¹⁰⁶⁷ 00223.096 Ngāi Tahu ki Murihiku

¹⁰⁶⁸ 00226.205 Kāi Tahu ki Otago

¹⁰⁶⁹ 00509.089 Wise Response

¹⁰⁷⁰ 00309.002 Andy Barratt

¹⁰⁷¹ 00139.123 DCC

¹⁰⁷² 00409.015 Ballance

¹⁰⁷³ 00231.064 Fish and Game

¹⁰⁷⁴ 00509.089 Wise Response

retention vessels whose nutrient and water holding capacity can be enhanced, rather than drainage areas with largely fixed hydrological characteristics.

9.8.11.3. Analysis

1537. I do not agree with Moutere Station that this policy should be deleted and recommend their submission point is rejected. This policy seeks to promote changes in land use and land management to achieve a range of outcomes but does not require those changes occur.
1538. I agree with Ngāi Tahu ki Murihiku that land use changes to support the outcomes sought in the policy is also appropriate policy direction. However, I consider this could be in addition to, instead of, “improving” the outcomes. I recommend accepting this submission point in part and amending the chapeau to refer to supporting and improving.
1539. In relation to the amendment sought by Ngāi Tahu ki Murihiku to clause (1), I consider that the implementation of clause (1) will not be to the detriment of Te Mana o te Wai, particularly because the application of the LF-LS provisions must give effect to the provisions in the LF-WAI chapter, as required by LF-WAI-P4. I also note that LF-LS-P21 provides more direction on managing the interactions between land use and freshwater, and particularly as part of implementing the NPSFM. I do not recommend accepting this submission point.
1540. I acknowledge the concern by Kāi Tahu ki Otago about the term efficiency, however I note that Policy 11 of the NPSFM requires freshwater to be allocated and used efficiently. I also note that both sustainability and efficiency will need to be evaluated in order demonstrate an improvement under clause (1). For these reasons, I do not recommend accepting the submission point.
1541. In response to submitters seeking that clause (1) apply at a catchment scale, it is not clear how this would be determined, and how it would relate to property level land use change. Without further information supporting this request, I recommend rejecting the submission point.
1542. Andy Barratt seeks that hydrology be included as a new clause, therefore promoting changes in land use or management practices that improve hydrology. As noted by the submitter, hydrology links the three clauses included in the policy as notified, so improvements in hydrology may be implicit where improvement in any of the three clauses is demonstrated. I am unsure how improvements in hydrology in its own right would be determined and consider that improvements may occur as part of the other criteria. I do not recommend accepting the submission point.
1543. I agree with DCC that mitigation of climate change through a reduction in net greenhouse gases is different to becoming resilient to its impacts. However, I consider that the amendment sought by DCC would expand the policy in a way that is not consistent with the objectives in this chapter, which do not seek to implement climate change mitigation. Further, I note that climate change mitigation is addressed specifically in the *IM* chapter. I do not recommend accepting this submission point.

1544. Regarding the additional clause sought by Ballance, I consider that land use changes that improve water quality are a means to assist with achieving Te Mana o te Wai. While I agree that diffuse discharges are a key contributor of contaminants to water, I do not consider the clause needs to stipulate what kind of management is required to achieve improvement. I recommend accepting the submission point in part and an additional clause as follows: “water quality.” This recommendation aligns with LF-LS-M11(1), which sets out several methods to achieve water quality outcomes, including reducing the risk of sediment and nutrient loss to water, and effective management of effluent application systems.

1545. I acknowledge that land management has an impact on habitat, back country areas and indigenous vegetation, and amenity and recreation values and public access to waterbodies and the CMA as identified by Fish and Game. However, it is not clear from the submission by Fish and Game how each feature or area would be defined, nor what their significance is. In addition to this uncertainty, it is unclear how any improvement for these features might be determined. Given public access to private land is not an explicit right, I do not consider it is appropriate to include the recreation values and public access in the policy. I recommend rejecting the submission point.

9.8.11.4. Recommendation

1546. I recommend amending LF-LS-P20 to:

LF-LS-P20 – Land use change

Promote changes in *land* use or *land* management practices that support and¹⁰⁷⁵ improve:

- (1) the sustainability and efficiency of *water* use,
- (2) resilience to the impacts of *climate change*, ~~or~~
- (3) the health and quality of soil, ~~or~~
- (4) water quality.¹⁰⁷⁶

9.8.12. LF-LS-P21 – Land use and freshwater

9.8.12.1. Introduction

1547. As notified, LF-LS-P21 reads:

LF-LS-P21 – Land use and fresh water

Achieve the improvement or maintenance of *fresh water* quantity or quality to meet *environmental outcomes* set for *Freshwater Management Units* and/or rohe by:

¹⁰⁷⁵ 00223.096 Ngāi Tahu ki Murihiku

¹⁰⁷⁶ 00409.015 Ballance

- (1) reducing direct and indirect *discharges of contaminants to water* from the use and development of *land*, and
- (2) managing *land* uses that may have adverse *effects* on the flow of *water* in surface *water bodies* or the recharge of *groundwater*.

9.8.12.2. Submissions

1548. This policy is supported by three submitters.¹⁰⁷⁷ In their support, Greenpeace notes that intensive farming and the use of synthetic nitrogen fertiliser are inconsistent with the water quality and quantity values. Beef + Lamb and DINZ seek that the policy be deleted, or moved to the LF-FW chapter, on the basis that it is in the wrong subchapter.¹⁰⁷⁸
1549. Ravensdown considers that that the phrasing of the policy is unusual. The submitter seeks to amend the wording to “improve or maintain” fresh water quantity, rather than “achieve the improvement or maintenance of” these matters.¹⁰⁷⁹ Kāi Tahu ki Otago seeks that ecosystem values be included in the matters to be improved or maintained, to ensure an integrated management approach is taken.¹⁰⁸⁰
1550. Wise Response seeks that alongside side the outcomes set for FMUs and/or rohe, the improvement or maintenance of freshwater quantity or quality include consistency with other regional and national policy.¹⁰⁸¹
1551. Several parties seek amendments to clause (1), to either only require reductions in contaminant discharges where practicable,¹⁰⁸² or where improvements to water quality are required.¹⁰⁸³ Graymont (NZ) Limited notes that extraction-based activities, by their nature, result in some discharges of contaminants to water, and that this is within the limits of their existing resource consents. The submitter also notes that its use of the term “where practicable” is deliberate, and better understood than alternative terms. Ballance, Alluvium and Stoney Creek and Danny Walker and Others also seek to include “where practicable”.¹⁰⁸⁴ Horticulture NZ seeks to only require reductions where improvements to water quality are required on the basis that it is not appropriate to require reductions in contaminant discharges in all cases, particularly when the chapeau refers also to maintaining water quality.
1552. Silver Fern Farms also seeks an amendment to clause (1), replacing the term “reducing” with “managing the adverse effects of”.¹⁰⁸⁵ The submitter considers that this amendment

¹⁰⁷⁷ 00138.098 QLDC, 00407.048 Greenpeace and 1259 supporters, 00510.028 The Fuel Companies

¹⁰⁷⁸ 00237.046 Beef + Lamb and DINZ

¹⁰⁷⁹ 00121.066 Ravensdown

¹⁰⁸⁰ 00226.206 Kāi Tahu ki Otago

¹⁰⁸¹ 00509.090 Wise Response

¹⁰⁸² 00409.016 Ballance, 00016.011 Alluvium and Stoney Creek, 00017.009 Danny Walker and Others

¹⁰⁸³ 00236.073 Horticulture NZ, 00121.066 Ravensdown, 00235.109 OWRUG

¹⁰⁸⁴ 00409.016 Ballance, 00016.011 Alluvium and Stoney Creek, 00017.009 Danny Walker and Others

¹⁰⁸⁵ 00221.010 Silver Fern Farms

will provide flexibility where a discharge cannot practicably be reduced, but adverse effects can be avoided or appropriately mitigated.

1553. Wise Response seeks that clause (1) be changed from reducing discharges to enforcing discharge standards.¹⁰⁸⁶ It is not clear from the submission what the reason for this amendment is.
1554. Wise Response seeks clause (2) be changed from managing adverse effects of land uses, to actively promoting their beneficial effects.¹⁰⁸⁷ These changes are intended to make the link between land use and water quality. Moutere Station opposes clause (2) and states that people should be able manage their land as they see fit, providing they meet all regulations.¹⁰⁸⁸
1555. COES and Lynne Stewart seek that a clause be added to manage land uses that have an adverse effect on water quality that cannot effectively be managed through mitigation.¹⁰⁸⁹ The submitter considers that for some land uses, such as dairying on alluvial soils adjacent to the Manuherekia River, reducing indirect discharges is not possible. In these cases, the submitter considers controls on activities such as intensive dairying and winter feeding of forage crops are required.
1556. John Highton seeks that the RPS should place a particular emphasis on protection of water yielding capabilities in the upper reaches of river catchments, including examples like upland tussock grasslands and wetlands in upper catchments.¹⁰⁹⁰
1557. Kāi Tahu ki Otago seeks the addition of the following new clause:¹⁰⁹¹

managing riparian margins to maintain or enhance their habitat and biodiversity values, reduce sedimentation of water bodies and support improved functioning of catchment processes.

1558. The submitter considers that the policy should include direction on management of riparian margins, given the functions relating to health and well-being of waterbodies. They also note that LF-LS-M13 includes methods to achieve integrated management of riparian margins, but that these are not supported by policy direction.
1559. DCC seeks that the policy be amended to restrict its application to a more specific set of land use activities, with a more realistic policy outcome threshold.¹⁰⁹² They consider that clause (2) gives a very broad mandate to manage land uses that may have an adverse effect on the flow of water, and that on a strict literal interpretation, would create too much uncertainty around what urban land uses may be permissible under the RPS. They propose the following wording:

¹⁰⁸⁶ 00509.090 Wise Response

¹⁰⁸⁷ 00509.090 Wise Response

¹⁰⁸⁸ 00026.015 Moutere Station

¹⁰⁸⁹ 00202.029 COES, 00030.023 Lynne Stewart

¹⁰⁹⁰ 00014.060 John Highton

¹⁰⁹¹ 00226.206 Kāi Tahu ki Otago

¹⁰⁹² 00139.124 DCC

When considering appropriate areas to enable new urban growth or setting rules to manage land uses, consider how land uses may have adverse effects on the flow of water in surface water bodies or the recharge of groundwater, and ensure that management approaches will achieve the environmental outcomes set for Freshwater Management Units and/or rohe.

1560. OWRUG seeks that consideration should be given to a new provision encouraging the adoption of good practice measures.¹⁰⁹³

9.8.12.3. Analysis

1561. Given this policy seeks to manage the effects of land uses on freshwater, I consider it is best placed in the LF-LS chapter. I recommend rejecting the submission point by Beef + Lamb and DINZ.

1562. I agree with Ravensdown that the wording of the chapeau could be simplified. However, Policy 5 requires that water bodies are improved where they are degraded and otherwise maintained. I consider that the wording “improve or maintain” as sought by the submitter does not recognise that distinction. I recommend accepting this submission point in part and amending the chapeau to align with the language in LF-FW-P7(1).

1563. Kāi Tahu ki Otago seeks to include reference to ecosystem values in the chapeau of this policy in order to ensure an integrated approach is taken. I agree with the submitter’s reasoning but am unsure what is meant by ecosystem values. I note that Policy 5 requires the “health and well-being” of water bodies to be improved, where degraded, or maintained. I consider that would address the submitter’s concern in a way that is consistent with the NPSFM and does not introduce additional terms to the policy that may not be widely understood.

1564. I do not consider that the amendment sought by Wise Response to include reference to other regional and national policy is necessary. The Council has a range of obligations to meet under the RMA, including responding to the direction in other policy instruments in the manner set out in the RMA. I recommend rejecting this submission point.

1565. I agree with Ravensdown, OWRUG, Graymont, Horticulture NZ Ballance, Allyvium and Stoney Creek, and Danny Walker and others that there may be circumstances where it is not necessary to reduce discharges of contaminants to water. I do not consider that qualifying clause (1) by including “where practicable” is appropriate because practicability is not the test required in freshwater management. Where contaminant concentrations do not meet national bottom lines, water quality must be improved in accordance with Policy 5 of the NPSFM. The practicability of the methods to improve water quality are a matter for the regional plan to determine as each council implements the steps required by the NOF. In relation to the decision sought by Horticulture NZ, I do not consider that reductions will only be required to improve the health of fresh water – in some cases, reductions may be required to maintain water quality, for example. As highlighted by submitters, reductions will not always be necessary therefore I

¹⁰⁹³ 00235.109 OWRUG

- recommend including “or otherwise managing” after “reducing”. I consider it is clear that the outcome sought of reducing or managing these contaminants is to meet environment outcomes, as stated in the chapeau. I recommend accepting in part the submission points by Ravensdown, OWRUG, Graymont and Horticulture NZ.
1566. Silver Fern Farms seeks to replace “reducing” with “managing the adverse effects of” in clause (1). I agree with the submitter than a straight reduction in the discharge may not be the only way to reduce contaminant discharges and that alternative methods may also be appropriate. I do not agree that “managing” is an appropriate substitution for “reducing”. It is inevitable that some reductions in contaminants being discharged to water will be required to meet environmental outcomes set using the NOF process. I recommend including “the adverse effects of” in front of “direct and indirect discharges” and therefore recommend accepting this submission point in part.
1567. I do not recommend accepting the submission point by Wise Response seeking to reference the enforcement of discharge standards. Not all contaminants may be subject to standards, and not all contaminant discharges may be sufficiently measurable to determine compliance. The submitter has also sought to refocus clause (2) from managing land uses to actively promoting their beneficial effects. It is unclear how this promotion might occur, and what guidance there would be for activities that have adverse effects. I recommended rejecting the submission point.
1568. I consider that LF-LS-P21 assists land users to comply with regulatory requirements, particularly those in the NPSFM. In my opinion, land users have had many decades to manage their land in ways that do not result in adverse effects on the environment and in many places that has not occurred. Significant change will be required to meet environmental outcomes and give effect to Te Mana o te Wai. I recommend rejecting the submission point by Moutere Station.
1569. In a similar vein, I agree with Lynne Stewart and COES that some activities will require “more management” than others. However, I consider that specific guidance on such activities is best placed in a regional plan, with the FMU sections able to provide specific guidance as required. I recommend rejecting the submissions points by these submitters.
1570. I consider Highton’s requested addition is captured by clause (2), which seeks to manage land uses that affect flows of water. This will be applicable in upper catchment areas where land use affects surface flows and groundwater recharge. I recommend rejecting the submission point.
1571. I agree with Kāi Tahu ki Otago that healthy riparian margins contribute to the wider health and well-being of freshwater bodies and that it is appropriate to recognise that in LF-LS-P21, particularly given the requirements set out in LF-LS-M13. Rather than “managing”, I consider that “maintaining or, where degraded, enhancing” better aligns with the chapeau of this policy and the content of LF-LS-M13. I recommend accepting this submission point in part.
1572. I disagree with DCC that clause (2) is uncertain, given the management of land uses that may adversely affect water flows is likely to require policy and rule direction in regional plans. I recommend rejecting this submission point.

9.8.12.4. Recommendation

1573. I recommend amending LF-LS-P21 to:

LF-LS-P21 – Land use and fresh water

~~Achieve the improvement or maintenance of fresh water quantity, or quality. The health and well-being of water bodies is maintained¹⁰⁹⁴ or, if degraded, improved¹⁰⁹⁵ to meet environmental outcomes set for Freshwater Management Units and/or rohe by:~~

- ~~(1) reducing or otherwise managing¹⁰⁹⁶ the adverse effects of¹⁰⁹⁷ direct and indirect discharges of contaminants to water from the use and development of land to meet environmental outcomes,¹⁰⁹⁸ and~~
- ~~(2) managing land uses that may have adverse effects on the flow of water in surface water bodies or the recharge of groundwater, and~~
- ~~(3) maintaining or, where degraded, enhancing the habitat and biodiversity values of riparian margins in order to reduce sedimentation of water bodies and support improved functioning of catchment processes.¹⁰⁹⁹~~

9.8.13. LF-LS-P22 – Public access

9.8.13.1. Introduction

1574. As notified, LF-LS-P22 reads:

LF-LS-P22 – Public access

Provide for public access to and along lakes and rivers by:

- (1) maintaining existing public access,
- (2) seeking opportunities to enhance public access, including by *mana whenua* in their role as kaitiaki and for gathering of mahika kai, and
- (3) encouraging landowners to only restrict access where it is necessary to protect:
 - (a) public health and safety,
 - (b) significant natural areas,
 - (c) areas of outstanding natural character,
 - (d) outstanding natural features and landscapes,

¹⁰⁹⁴ 00121.066 Ravensdown

¹⁰⁹⁵ 00226.206 Kāi Tahu ki Otago

¹⁰⁹⁶ 00236.073 Horticulture NZ

¹⁰⁹⁷ 00221.010 Silver Fern Farms

¹⁰⁹⁸ 00236.073 Horticulture NZ

¹⁰⁹⁹ 00226.206 Kāi Tahu ki Otago

- (e) places or areas with special or outstanding *historic heritage* values, or
- (f) places or areas of significance to *takata whenua*, including wāhi tapu and wāhi tūpuna.

9.8.13.2. Submissions

1575. This policy is supported by four submitters.¹¹⁰⁰ Trustpower seeks to ensure that clause (3)(a) is retained. John Highton notes the necessity to consider public access when planting water margins.
1576. Kāi Tahu ki Otago seeks several wording changes¹¹⁰¹, being the inclusion of “access” by mana whenua in clause (2), and amending clause (3) to refer to Kāi Tahu instead of takata whenua, and including wāhi tāoka as areas of significance.
1577. Fish and Game seeks an amendment to the wording of clause (3) so that the policy requires avoiding restrictions on access unless necessary, rather than only restricting access where necessary to protect the matters listed.¹¹⁰²
1578. DCC seeks to clarify how the term “necessary to protect” will be determined.¹¹⁰³ They consider that the criteria could be misused to restrict access where these values are present alongside other reasons. Risks to these values from access may be minimal, or could be appropriately managed.
1579. Federated Farmers seeks that the reference to public be removed from clause 3(a), to refer to health and safety more generally.¹¹⁰⁴
1580. Several submitters seek additional sub-clauses in (3) to include other values or circumstances where access should be restricted:
- Areas of establishing vegetation/restoration projects, on the basis that access should be restricted to avoid or minimise damage to young and establishing vegetation,¹¹⁰⁵
 - Against negative impacts of public access on farming business, to ensure negative impacts from public access on farming businesses can be mitigated¹¹⁰⁶.
 - Beef + Lamb and DINZ seek to protect against interruption of business operations, for health and safety matters, and for animal welfare issues, in order to provide for landowner’s interests¹¹⁰⁷.

¹¹⁰⁰ 00138.099 QLDC, 00201.020 CODC, 00311.021 Trustpower, 00014.061 John Highton

¹¹⁰¹ 00226.207 Kāi Tahu ki Otago

¹¹⁰² 00231.065 Fish and Game

¹¹⁰³ 00139.125 DCC

¹¹⁰⁴ 00239.094 Federated Farmers

¹¹⁰⁵ 00206.041 Trojan, 00411.053 Wayfare

¹¹⁰⁶ 00406.010 Lauder Creek Farming

¹¹⁰⁷ 00237.047 Beef + Lamb and DINZ

- Critical farming activities including lambing, fawning, mustering and the movement of stock¹¹⁰⁸.
- Biosecurity¹¹⁰⁹.
- To ensure a level of security with the operational requirements of a lawfully established activity.¹¹¹⁰ The submitter considers that this approach is consistent with CE-P8, and will ensure public access is appropriately restricted to protect people and the National Grid asset.

9.8.13.3. Analysis

1581. I consider the amendments sought by Kāi Tahu ki Otago clarify the application of clauses (2) and (3)(f). I recommend accepting this submission and making the changes sought.
1582. The wording of clause (3) as notified recognises that there is no general right of public access across private land. I consider the amendments sought by Fish and Game do not alter the intent of the policy but do clarify what is meant in clause (3). I recommend accepting this submission point.
1583. I acknowledge the concern raised by DCC and agree that there may be differences in interpretation as a result of the wording in clause (3). However, ultimately owners of private land have the right of exclusive occupation and are not required to provide access to the public. The sub-clauses are intended to provide guidance on the matters to be considered for protection, with each landowner responsible for determining the level of necessary protection. I do not recommend accepting the submission point by the DCC.
1584. Federated Farmers seeks to remove “public” from health and safety in clause (3)(a). I agree that restrictions on public access may not only protect public health and safety, but also the health and safety of landowners, staff and contractors. I accept the submission point and recommend removing the reference to public in clause (3)(a).
1585. Several submitters propose additions to clause (3) to include additional circumstances where access should be restricted. Trojan seeks a new clause that would restrict access in areas of establishing vegetation or restoration projects to avoid damage to young and establishing vegetation. Riparian planting can be beneficial for the health of water bodies by providing habitat for indigenous species and filtering contaminants from nearby land uses. I recommend the submission point by Trojan is accepted in part – I recommend including “establishing vegetation” but not “restoration projects” as it is unclear what type of restoration projects would be included.
1586. Beef + Lamb and DINZ and Federated Farmers both seek an additional clause relating to business operations and/or farming activities in order to avoid or mitigate effects on farming businesses. Federated Farmers also seeks a new clause to restrict access for biosecurity reasons. Transpower seeks to include a new clause providing for access restrictions where it is necessary to ensure a level of security consistent with the

¹¹⁰⁸ 00239.094 Federated Farmers

¹¹⁰⁹ 00239.094 Federated Farmers

¹¹¹⁰ 00314.028 Transpower

operational requirements of a lawfully established activity. The submitter notes that this is the wording used in CE – P8 which addresses public access to and along the coastal marine area.

1587. I agree with the submitters that there are operational reasons to restrict access to private land and I consider the wording proposed by Transpower would address the matters raised by Beef + Lamb and DINZ, Federated Farmers, and Transpower. I recommend accepting the submissions by Beef + Lamb and DINZ, Federated Farmers and Transpower in part. Although I agree with the wording proposed by Transpower, it is not grammatically correct when included within the policy as proposed by the submitter. I recommend including the clause as sought by Transpower except for “to ensure” at the beginning.

9.8.13.4. Recommendation

1588. I recommend amending LF-LS-P22 to:

LF-LS-P22 – Public access

Provide for public access to and along *lakes* and *rivers* by:

- (1) maintaining existing public access,
- (2) seeking opportunities to enhance public access, including access¹¹¹¹ by *mana whenua* in their role as kaitiaki and for gathering of ~~mahika kai~~ *mahika kai*¹¹¹², and
- (3) encouraging landowners to ~~only~~ avoid restricting access ~~where~~ unless¹¹¹³ it is necessary to protect:¹¹¹⁴
 - (a) ~~public~~¹¹¹⁵ health and safety,
 - (b) significant natural areas,
 - (c) areas of outstanding natural character,
 - (d) outstanding natural features and landscapes,
 - (e) places or areas with special or outstanding *historic heritage* values, ~~or~~
 - (f) places or areas of significance to ~~takata whenua~~ Kāi Tahu, including wāhi taoka,¹¹¹⁶ wāhi tapu and wāhi tūpuna,
 - (g) establishing vegetation, or¹¹¹⁷

¹¹¹¹ 00226.206 Kāi Tahu ki Otago

¹¹¹² Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

¹¹¹³ 00231.065 Fish and Game

¹¹¹⁴ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendments arising from 00314.028 Transpower

¹¹¹⁵ 00239.094 Federated Farmers

¹¹¹⁶ 00226.207 Kāi Tahu ki Otago

¹¹¹⁷ 00206.041 Trojan, 00411.053 Wayfare

(h) level of security consistent with the operational requirements of a lawfully established activity.¹¹¹⁸

9.8.14. LF-LS-M11 – Regional plans

9.8.14.1. Introduction

1589. As notified, LF-LS-M11 reads:

LF–LS–M11 – Regional plans

Otago Regional Council must publicly notify a Land and Water *Regional Plan* no later than 31 December 2023 and then, when it is made operative, maintain that *regional plan* to:

(1) manage *land* uses that may affect the ability of *environmental outcomes* for *water* quality to be achieved by requiring:

(a) the development and implementation of *certified freshwater farm plans* as required by the RMA and any regulations,

(b) the adoption of practices that reduce the *risk* of sediment and nutrient loss to *water*, including by minimising the area and duration of exposed soil, using buffers, and actively managing critical source areas,

(c) effective management of effluent storage and applications systems, and

(d) *earthworks* activities to implement effective sediment and erosion control practices and setbacks from *water bodies* to reduce the *risk* of sediment loss to *water*, and

(2) provide for changes in *land* use that improve the sustainable and efficient allocation and use of *fresh water*, and

(3) implement policies LF–LS–P16 to LF–LF–P22.

9.8.14.2. Submissions

1590. Three submitters seek to retain this method.¹¹¹⁹ Beef + Lamb and DINZ seek that the method be deleted or moved to the LF-FW chapter on the basis that it is in the wrong subchapter.¹¹²⁰ No further rationale is provided. DOC seeks that this method be revised to ensure that regional plans give effect to all relevant matters relating to land, other than the narrow range of effects on water.¹¹²¹ NZ Pork seeks that the method is consistent

¹¹¹⁸ 00237.047 Beef + Lamb and DINZ

¹¹¹⁹ 00138.100 QLDC, 00236.074 Horticulture NZ, 00121.067 Ravensdown

¹¹²⁰ 00237.08 Beef + Lamb and DINZ

¹¹²¹ 00137.077 DOC

with the terminology used in Proposed Plan Change 8 to the Water Plan for effluent systems, facilities, storage and application.¹¹²²

1591. DCC neither supports nor opposes LF-LS-M11 but notes comments about consultation on the yet to be developed land and water regional plan, their concerns regarding the policies referenced in clause (3), and their effect on content in the Regional Plan.¹¹²³ The submission does not include any proposed amendments to the wording of the methods.

Clause (1)

1592. Fish and Game and Kāi Tahu ki Otago seek to delete the reference to certified freshwater farm plans being 'required by the RMA and any regulations' in the second part of clause (1)(a).¹¹²⁴ John Highton seeks that wording be added to clause (1)(a) requiring individual farm plans to be informed by a related catchment plan.¹¹²⁵ Specific wording is not included in his submission.

1593. Moutere Station opposes clause (1)(b), stating that this is a large topic which needs more science behind it to understand the full effects.¹¹²⁶ Also in clause (1)(b), Fish and Game seeks to require avoiding land uses which result in any pugging in critical source areas and to limit high risk activities on steep slopes. The submitter considers that the importance of managing these areas for water quality and soil health is well researched, and this should be reflected in the management of land in the region. Wise Response seeks amendments to clause (1)(b) to include reference to minimising the use of supplementary nutrients.¹¹²⁷ The submitter considers that this change will provide for better control over the use of supplementary nutrients.

1594. Rayonier seeks that clauses (1)(b) and (d) be amended to add that the provisions of the NESPF apply to plantation forestry.¹¹²⁸ They submit that before a provision may be more stringent if giving effect to a freshwater objective, there must be an assessment of the effectiveness of the NESPF. The submitter considers that this assessment has not been made.

1595. Greenpeace seeks that an additional method be added to clause (1):¹¹²⁹

Phase out synthetic nitrogen fertiliser and intensive dairy farming to reduce impacts on soil, freshwater, ecosystems and the climate.

1596. Greenpeace submits that synthetic nitrogen fertiliser should be phased out by 2024, for several reasons, being:

- That its use is incompatible with protecting Te Mana o te Wai;

¹¹²² 00240.032 NZ Pork

¹¹²³ 00139.026 DCC

¹¹²⁴ 00231.066 Fish and Game, 00226.208 Kāi Tahu ki Otago

¹¹²⁵ 00014.062 John Highton

¹¹²⁶ 00026.016 Moutere Station

¹¹²⁷ 00509.091 Wise Response

¹¹²⁸ 0020 Rayonier, page 8 of submission

¹¹²⁹ 00407.049 Greenpeace and 1259 supporters

- That it will aid in tackling the climate crisis; and
- That it is required in order to identify limits based on environmental impacts.

1597. Lloyd McCall submits that there could be a clause added to require ORC to promote implementation of new farming techniques, and non-soluble and/or alternative fertiliser solutions.¹¹³⁰ Chemical natural fertiliser solutions are understood to be those that are derived from natural products, such as plant material or manure, rather than manufactured components, such as urea, diammonium phosphate or ammonium sulphate. This addition is not listed against a specific part of LF-LS-M11 but is considered most likely to be captured by the matters included under clause (1).

Clause (2)

1598. Wise Response seeks that clause (2) be amended to actively promote, rather than provide for, changes in land use, and seeks to specify that the changes in land use promoted will be for systems compatible with national net zero carbon goals.¹¹³¹ This change is intended to ensure the methods are consistent with the national zero carbon goals.

1599. Kāi Tahu ki Otago seeks an amendment to clause (2) to remove the reference to efficient allocation and include reference to reducing demand on freshwater resources to give effect to objectives developed under the NPSFM.¹¹³² This amendment is sought for the same reasons as described for LF-LS-P21, with the submission also noting that allocation of water is a management technique, not the result of a change in land use.

Additional clauses

1600. OWRUG seeks an additional clause requiring identification and mapping of highly productive land.¹¹³³ The submitter considers that mapping highly productive land is an important part of achieving LF-LS-P19.

1601. COES and Lynne Stewart seek that the regional council identifies where adverse effects on freshwater cannot be practically avoided, remedied or mitigated for certain land uses, and where these land uses are discretionary activities.¹¹³⁴ The submitters consider that clauses (1)-(3) are inadequate and unlikely to achieve the desired outcomes.

9.8.14.3. Analysis

1602. This method sets out a range of requirements for ORC's land and water regional plan, which will manage some uses of land (including for the purpose of maintaining or improving water quality). I consider the LF-LS section is the correct part of the chapter for this method and I recommend rejecting the Beef + Lamb and DINZ submission point.

¹¹³⁰ 00319.007 Lloyd McCall

¹¹³¹ 00509.091 Wise Response

¹¹³² 00226.208 Kāi Tahu ki Otago

¹¹³³ 00235.110 OWRUG

¹¹³⁴ 00202.030 COES, 00030.024 Lynne Stewart

1603. In relation to DOC’s submission, I consider that the matters in LF-LS-M11 are specific to land and soil, including quality, productive capacity and influence on water quality. I acknowledge that the method may not recognise or address all matters related to land but note that methods relating to land are included in other chapters of the pORPS 2021 as well, such as ECO and HAZ. Without further information from the submitter as to the other matters they seek to be included in LF-LS-M11, I recommend rejecting the submission point.

Clause (1)

1604. I agree with Fish and Game and Kāi Tahu ki Otago that the clause (1)(a) reference to the RMA and any regulations is not necessary. Freshwater farm plans are already required by Part 9A of the RMA, with work ongoing to develop regulations that will set out requirements for freshwater farm plans. Any compulsory requirement for freshwater farm plans will likely stem from national guidance, rather than a regional plan. I consider that farm plans will be a means to achieve catchment and wider FMU outcomes once those have been developed in the land and water regional plan. On this basis, I accept all submissions relating to clause (1), but only recommend removing the reference to the RMA and regulations.

1605. I disagree with Moutere Station that more science is required to understand the full effects associated with adopting practices that reduce the risk of sediment and nutrient loss to water. I consider there is a considerable volume of information around good management practices for reducing sediment and nutrient loss to water, as previously discussed in relation to LF-LS-P18. I consider that clause (1)(b) is not prescriptive in the practises required, with the ability for these to be tailored to fit each situation, subject to achieving the water quality outcomes. I recommend rejecting this submission point.

1606. In terms of specific best practices sought by Fish and Game in clause (1)(b), I consider that pugging is captured by the management of critical sources areas, and the practices as notified capture the key risk pathways on steep slopes. I note that the wording of the clause is “the adoption of practices that reduce the risk of sediment and nutrient loss to water, including ...” (my emphasis). This is not an exhaustive list and it is anticipated that other measures to achieve the same outcomes will also be identified in the land and water regional plan. I do not recommend accepting the submission point.

1607. While I agree with Wise Response that minimising the use of supplementary nutrients is a means to reduce nutrient losses to water, I am unsure how this would be implemented given that nutrients could include both artificial and natural fertilisers, as well as nutrient supplements fed directly to stock. In addition, the use of supplementary nutrients in some circumstances may aid in reducing nutrient losses to water, rather than increase those losses, as implied by submitter. I consider that specific management of nutrient inputs is best managed by the regional plan, alongside the synthetic nitrogen provisions in the NESF. I recommend rejecting the submission point.

1608. As with supplementary nutrients, I consider that the additional clauses sought by Greenpeace and Lloyd McCall are best placed in the regional plan, particularly where the direction can be tailored to specific FMUs and their values and visions. Phasing out the

use of synthetic nitrogen fertiliser and intensive dairy farming would have significant costs for Otago's communities and the submitters have not provided any analysis to support the relief they seek, particularly in relation to the costs and benefits as required by section 32 of the RMA. I am also unclear how ORC would promote implementation of certain farming techniques. I recommend rejecting both submission points.

1609. I acknowledge that clause (1)(b) and (d) would appear to apply to plantation forestry, despite the provisions of the NESPF. The NESPF contains regional and district rules and is therefore most relevant to that 'level' of planning document. In my view, it is acceptable for a regional policy statement to contain broader direction which is then interpreted and given effect through the relevant regional and district plans. I consider that the specific and detailed requirements of the NESPF will inform the development of any regional plan rules for these types of land uses. Therefore, I do not consider it is necessary to specify in the pORPS 2021 every instance where the NESPF (or any other NES) may apply.

Clause (2)

1610. In relation to Wise Response's amendments to clause (2), I consider it is not clear what 'active promotion' would look like in practice, nor how the relevant land use changes that are compatible with net zero carbon goals would be identified. I recommend rejecting this submission point.
1611. As discussed in relation to LF-LS-P20(1), I recommend retaining reference to efficiency of use as this is the direction provided in Policy 12 of the NPSFM. Additionally, any water use will be required to comply with other relevant direction in the LF chapter, including LF-WAI. On this basis, I recommend rejecting the submission point of Kāi Tahu ki Otago.

Additional matters

1612. I note that the amendments sought by OWRUG to require mapping of highly productive land are consistent with the submissions by CODC, Trojan and Wayfare on LF-LS-P19. I agree that mapping provides certainty to regional and district plans about the area where particular policy direction applies (or not). I do not agree that the land and water regional plan is the appropriate place to contain the maps. One of the key threats to highly productive land is urban development, therefore maps of highly productive land will be equally as important for territorial authorities, however district plans only have to be "not inconsistent" with regional plans in accordance with section 75(4)(b).
1613. Where and by whom highly productive land is identified is a matter covered by the dNPSHPL which proposed that regional councils would identify highly productive land and map those areas in their regional policy statements. While I acknowledge that document is only a draft and therefore does not have legal effect, I am aware that on 14 March 2022 the Ministry for Primary Industries (which is the agency responsible for leading the development of the dNPSHPL) advised publicly that Cabinet would consider the dNPSHPL in May 2022 and, if approved, the dNPSHPL would likely take effect in June 2022 (Ministry for Primary Industries, 2022). This is problematic timing for the pORPS which will be in hearings at that time. In light of this uncertainty, I consider that at this stage it would be preferable for the pORPS to retain its direction as notified and not specifically identify

where or by whom highly productive land will be identified. If the dNPSHPL is released as expected, there will be an opportunity to reconsider the submission points by OWRUH, Blackthorn Lodge, Trojan, and Wayfare through evidence. At this stage I do not recommend accepting these submission points for this reason.

1614. I acknowledge the concerns of COES and Lynne Stewart around identifying areas that may not be suitable for particular land uses. However, I consider that this type of activity-specific management is more appropriately considered in the regional plan. I understand that the Council's new land and water regional plan will set out the environmental outcomes to be achieved in each FMU as well as any limits on resource use needed to meet those outcomes. That will provide an opportunity for the Council, in consultation with communities, to identify and evaluate the methods available to achieve the outcomes sought. On this basis, I recommend rejecting the submission point.

1615. I note that clause (3) refers to LF-LF-P22 which does not exist. The correct reference is to LF-LS-P22. I recommend this change be made under clause 16(2) of Schedule 1 of the RMA.

9.8.14.4. Recommendation

1616. I recommend amending LF-LS-M11 to:

LF-LS-M11 – Regional plans

Otago Regional Council must publicly notify a Land and Water Regional Plan no later than 31 December 2023 and then, when it is made operative, maintain that *regional plan* to:

(1) manage *land* uses that may affect the ability of *environmental outcomes* for *water* quality to be achieved by requiring:

- (a) the development and implementation of *certified freshwater farm plans*, ~~as required by the RMA and any regulations,~~¹¹³⁵
- (b) the adoption of practices that reduce the *risk* of sediment and nutrient loss to *water*, including by minimising the area and duration of exposed soil, using buffers, and actively managing critical source areas,
- (c) effective management of animal effluent systems storage and the applications systems of animal effluent to land,¹¹³⁶ and
- (d) *earthworks* activities to implement effective sediment and erosion control practices and setbacks from *water bodies* to reduce the *risk* of sediment loss to *water*, and

(2) provide for changes in *land* use that improve the sustainable and efficient allocation and use of *fresh water*, and

¹¹³⁵ 00231.066 Fish and Game, 00226.208 Kāi Tahu ki Otago

¹¹³⁶ 00240.032 NZ Pork

(3) implement policies LF-LS-P16 to LF-LS-P22.¹¹³⁷

9.8.15. LF-LS-M12 – District plans

9.8.15.1. Introduction

1617. As notified, LF-LS-M12 reads:

LF–LS–M12 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* no later than 31 December 2026 to:

- (1) manage *land* use change by:
 - (a) controlling the establishment of new or any spatial extension of existing *plantation forestry activities* where necessary to give effect to an objective developed under the NPSFM, and
 - (b) minimising the removal of tall tussock grasslands, and
- (2) provide for and encourage the creation and enhancement of vegetated riparian margins and constructed *wetlands*, and maintain these where they already exist, and
- (3) facilitate public access to *lakes* and *rivers* by:
 - (a) requiring the establishment of *esplanade reserves* and *esplanade strips*, and
 - (b) promoting the use of legal *roads*, including paper *roads*, that connect with *esplanade reserves* and *esplanade strips*.

9.8.15.2. Submissions

1618. This method is supported by two submitters.¹¹³⁸

1619. Waitaki Irrigators seeks that the method require district plans to be amended by 31 December 2023, rather than 31 December 2026 as notified.¹¹³⁹ The submitter considers that the notified deadline is too far into the future and may allow for significant plantation forestry development to occur over the next five years, with little control able to be exercised by territorial authorities.

1620. Ernslaw One seeks that the wording “prepare, amend or retain” be amended to “review and finalise”.¹¹⁴⁰ The submitter considers that given the timeframes in which councils must notify and make operative planning documents to give effect to the NPSFM, the amended wording reflects that it is critical that plans are finalised, and that the Council’s effort extend beyond simply preparing.

¹¹³⁷ Clause 16(2) Schedule 1, RMA

¹¹³⁸ 00138.101 QLDC, 0014.063 John Highton

¹¹³⁹ 00213.024 Waitaki Irrigators

¹¹⁴⁰ 00412.016 Ernslaw One, 00412.022 Ernslaw One

1621. City Forests Limited opposes clause 1(a) and seeks that it is deleted.¹¹⁴¹ The submitter considers that ample protection is already provided for afforestation under the NESPF, and that it is entirely inappropriate to single out plantation forestry expansion. Rayonier also opposes clause 1(a), stating that there is no evidence as to why plantation forestry should be restricted.¹¹⁴² The submitter states that the NESPF already provides restrictions on afforestation in areas of high erosion risk and outstanding values. Ernslaw One seeks that clause 1(a) is reconsidered, given the NESPF provides for the regulation of plantation forestry activities resulting in specified adverse effects.¹¹⁴³
1622. Federated Farmers, Kāi Tahu ki Otago, and Waitaki DC seek to include carbon farming or forestry activities in clause 1(a), given such activities are not included in the definition of plantation forestry, but can still have significant impacts on freshwater outcomes.¹¹⁴⁴ Federated Farmers seeks a reference to carbon forestry is included on the basis that the activities have similar impacts on land, despite there being no intention to harvest carbon forestry.
1623. Forest and Bird seeks that clause (1)(b) is amended from minimising to avoiding¹¹⁴⁵ in order to protect and restore the remaining tall tussock grasslands, given the extensive loss that has already occurred. Similar to Forest and Bird, Fish and Game seeks to amend the term ‘minimising’ to ‘strongly discouraging’, with tall tussock grasslands considered to play an important role in ecosystem functions and health.¹¹⁴⁶ In a similar vein, Wise Response seeks that clause 1(b) is amended from ‘minimising’ to ‘prohibiting’.¹¹⁴⁷
1624. Danny Walker et al and Alluvium Limited seek that clause 1(b) is deleted, as it is unclear why district plans must seek to minimise removal of tall tussock grasslands across the region, with the only reference in the Section 32 report being in relation to the Taieri FMU.¹¹⁴⁸
1625. Waitaki DC seeks that two new sub-clauses be added to clause (1):¹¹⁴⁹
- (c) Managing land uses practices that may have adverse effects on the flow of water in surface water bodies or the recharge of groundwater
- (d) Prioritise the use of highly productive land for primary production ahead of other land uses including carbon forestry
1626. The submitter states that new clause (c) is intended to provide guidance for managing water short catchments, while new clause (d) is intended to ensure carbon forestry is appropriately located away from highly productive land, based on ‘the right tree in the

¹¹⁴¹ 00024.009 City Forests

¹¹⁴² 00020.016 Rayonier

¹¹⁴³ 00412.020 Ernslaw One

¹¹⁴⁴ 00239.095 Federated Farmers, 00226.209 Kāi Tahu ki Otago, 00120.023 Waitaki DC

¹¹⁴⁵ 00230.095 Forest and Bird

¹¹⁴⁶ 00231.067 Fish and Game

¹¹⁴⁷ 00509.092 Wise Response

¹¹⁴⁸ 00017.010 Dany Walker and others, 00016.012 Alluvium and Stoney Creek

¹¹⁴⁹ 00140.023 Waitaki DC

right place' philosophy. The submitter considers that this direction will enable territorial authorities to prioritise productive land for primary production ahead of other land uses.

1627. COES and Lynne Stewart seek that a new provision be added to clause (1) to require controlling land use change to intensive dairy within areas identified by ORC as 'sensitive to uncontrolled discharge of nutrients and sediment'.¹¹⁵⁰ Reasons for the amendment are not provided. The identification of this land is proposed by the submitter in relation to LF-LS-M11, while additional policy direction is proposed at LF-LS-P21.
1628. Greenpeace seeks that two additional sub-clauses be added to clause (1)¹¹⁵¹, being:
- (a) control dairy intensification, including through phasing out synthetic nitrogen fertiliser by 2024, via a sinking cap on synthetic nitrogen fertiliser use over time
 - (b) develop and apply controls to remove regulatory permissions to intensified farming, including in high country ecosystems.
1629. Wise Response seeks that clause (2) is amended from 'encourage' to 'promote'.¹¹⁵²
1630. DCC seeks a definition of constructed wetlands, as there may be consenting implications for stormwater discharges and/or maintenance of constructed wetlands.¹¹⁵³
1631. Trojan, Wayfare and Fish and Game seek changes to clause (3), to include access along margins of lakes and rivers as well as to margins of lakes and rivers and promoting the use of any other means of public access rights, in addition to the means already listed.¹¹⁵⁴ The submitters consider that it is appropriate to promote improved access to and along the margins of waterbodies and use any means legally or practically available to do this.
1632. Horticulture New Zealand seeks that an additional clause is added, requiring territorial authorities to include identified highly productive land in district plans, and avoiding urban or rural residential development on such land.¹¹⁵⁵ The submitter considers that avoiding these types of development is an important part of achieving LF-LS-P19.
1633. Wise Response seeks that two additional clauses are added to LF-LS-M12:¹¹⁵⁶
- (a) actively promote changes in land use that improve the sustainable and effective use of fresh water, reduce the need for chemical inputs and that are consistent with national net zero carbon goals
 - (b) implementation of policies LF-LS-P16 to LF-LF-P22.

¹¹⁵⁰ 00202.031 COES, 00030.025 Lynne Stewart

¹¹⁵¹ 00407.05 Greenpeace and 1259 supporters

¹¹⁵² 00509.092 Wise Response

¹¹⁵³ 00139.127 DCC

¹¹⁵⁴ 00206.042 Trojan, 00411.054 Wayfare, 00231.067 Fish and Game

¹¹⁵⁵ 00236.075 Horticulture NZ

¹¹⁵⁶ 00509.092 Wise Response

1634. The submitter considers that these additions are intended to actively promote land management that reduces the need for artificial inputs and are consistent with the national zero carbon goals.

9.8.15.3. Analysis

1635. I am not convinced that implementing LF-LS-M12 in district plans by 31 December 2023 is achievable. I am aware that DCC and QLDC in particular are still in the late stages of their proposed district plan processes, making it unlikely that either council has the resourcing to implement the method as sought by the submitter. I do not recommend accepting this submission point.

1636. I do not recommend accepting the submission point by Ernslaw One regarding the wording of the chapeau of this method. "Finalise" is not a term used in the RMA and it is not clear whether this would refer to final decision-making by the relevant council or the plan becoming operative. There is also potential that parts of district plans will not need to be amended, and can simply be retained where they give effect to the pORPS 2021. I consider the notified wording is more accurate and better aligned with the language in the RMA.

1637. I consider that there is evidence to demonstrate that afforestation (of both plantation and permanent forests) can affect water yield. For example:

"The primary mechanism by which tall vegetation affects the water balance is through evaporation of intercepted rainfall, thereby reducing the amount of water available for runoff and streamflow. Generally trees have a high capability for interception due to a large leaf area and high aerodynamic roughness above the canopy. In experimental studies around New Zealand reductions in annual water yield of between 30-80% have been measured following afforestation of pasture."
(Davie & Fahey, 2005)

1638. In my opinion, given the dry nature of some of Otago's catchments and recent increases in forestry expansion, it may be necessary to control forestry activities in order to give effect to environmental outcomes established under the NPSFM. I note that regulation 4(1)(a) of the NESPF specifically allows plan rules to be more stringent than the NES if those rules give effect to an objective developed to give effect to the NPSFM. I do not recommend accepting the submission points by City Forests Limited, Rayonier Matariki, or Ernslaw One.

1639. I have addressed the topic of carbon forestry in section X of *Report 1: Introduction and General Themes*. In summary, I agree with submitters that carbon or permanent forestry poses similar risks to the achievement of freshwater objectives as plantation forestry, particularly in relation to water yield. As set out in *Report 1*, I recommend including reference to permanent forestry in LF-LS-M12(1) and therefore accepting the submission points by Federated Farmers, Kāi Tahu ki Otago, and Waitaki DC in part.

1640. In relation to clause (1)(b), several submitters seek strengthening of the protection of tall tussock grasslands, while other submitters seek that the clause is deleted. I understand that tall tussock grasslands have been extensively fragmented in rural areas but also now

occupy a far greater area in Otago than they would have naturally due to anthropogenic deforestation (Wildlands, 2021, p.10). However, tall tussock grasslands are an important nursery habitat for indigenous woody vegetation, as well as helping to buffer wetlands and providing connectivity between rock outcrops for threatened indigenous lizards (Wildlands, 2021, p.10). The more significant reductions in tall tussock grasslands are occurring in montane environments and I note that in ECO – M2(5), identification of significant natural areas is to be prioritised in areas of montane tall tussock grasslands. For these reasons, I recommend rejecting the submissions seeking to delete this clause and accept in part the submissions seeking to replace “minimise” with “avoid”. I also recommend aligning the wording with ECO – M2(5) and referring to “montane tall tussock grasslands.” I consider this will assist with addressing the concerns of those submitters seeking to delete the clause, by restricting the more directive amendment to those grasslands more at risk of depletion.

1641. Several parties seek the addition of new matters to clause (1), including controls on specific farming activities (intensive dairying and synthetic nitrogen fertiliser use), management of land use that affects water flows and recharge, and prioritising primary production ahead of carbon forestry on highly productive land.
1642. I consider that the controls on specific farming activities sought by Greenpeace, COES and Lynne Stewart are better placed in a regional plan, given they generally relate to adverse effects of land uses on water quality. The types of land use decisions being sought by these submitters need to be made within the context of the NOF process, and in particular the values identified for each FMU and the environmental outcomes developed. In the absence of a specified environmental outcome, I do not consider it is appropriate to ‘rule out’ specific activities in the ways sought by these submitters.
1643. In my opinion, it would not be effective or efficient to require territorial authorities to manage land use practices that may have adverse effects on water flow or recharge. Controlling the use of land for the purpose of maintaining the quantity of water in water bodies (including groundwater) is a function of regional councils, not territorial authorities. Practically speaking, a territorial authority is unlikely to have access to the type of information and expertise required to regulate these types of activities (for example, hydrologists). I recommend rejecting the submission point by Waitaki DC.
1644. Waitaki DC also seeks to prioritise the use of highly productive land for primary production. This is already required by LF-LS-P19 so I do not recommend including the clause as proposed, however I agree that the method should require territorial authorities to manage highly productive land. I recommend accepting this submission point in part, and including a new clause (4) cross-referencing the requirements of LF-LS-P19.
1645. Wise Response seeks to replace “encourage” with “promote” in clause (2). I agree that promotion is a slightly stronger form of direction than encourage, and note that “promote” is generally the term used in other parts of the pORPS, including in LF-LS-P20. I recommend accepting this submission point.

1646. DCC seeks to include a definition of “constructed wetland” but does not provide a definition in their submission. Without further detail from the submitter on what they consider an appropriate definition to be, I recommend rejecting this submission point. I note that the RMA contains a definition of “wetland” and the NPSFM defines “natural wetland” and “natural inland wetland”. In addition, the term “constructed” is understood to mean made, and in this context, being man made. I am not convinced that a definition of “constructed wetland” is necessary as the other definitions essentially define the term by process of elimination.
1647. The submissions by Trojan, Wayfare, and Fish and Game seek to include reference to public access ‘along’ the margins of lake and rivers as well as ‘to’ those water bodies. I recommend accepting these submission points in part. Section 6(d) of the RMA requires recognising and providing for the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers. On this basis, I agree with the submitters that it is appropriate to include reference in LF-LS-M11 to public access to “and along” lakes and rivers. I do not agree with the submitters’ proposal to include reference to margins. These areas are likely to be on private land in many cases and there is no legal right to public access to them. I consider it is more appropriate to adopt the wording used in section 6(d).
1648. These submitters have also sought to include reference to “any other means of public access rights” in clause (3)(b) but have not explained in their submissions why they seek this amendment or what other means there may be available to territorial authorities. Without further evidence from the submitters, I recommend rejecting this part of the submission point.
1649. Horticulture NZ seeks an additional clause requiring territorial authorities to identify highly productive land in district plans and to avoid urban or rural residential development on such land. For the reasons I have set out in relation to LF-LS-M11 (namely that a regional policy statement is the most appropriate place for this mapping given it is relevant to both district and regional plans) and in response to the submission by Waitaki DC on LF-LS-M12, I do not recommend accepting this part of the submission point. I agree with the submitter that LF-LS-M12 should include reference to the management of highly productive land and consider that this is provided through the change I have recommended in response to the submission by Waitaki DC.
1650. Wise Response seeks to include two additional clauses, one requiring actively promoting changes in land use that achieve specified outcomes and one requiring implementation of policies LF-LS-P16 to LF-LS-P22. In relation to the first matter, I consider that this is already captured by LF-LS-M11(2) and is a function of regional councils rather than district councils. For similar reasons, I consider that the extent to which district plans will be able to implement policies LF-LS-P16 to LF-LS-P22 is limited. I recommend rejecting the submission points.

9.8.15.4. Recommendation

1651. I recommend amending LF-LS-M12 to:

LF-LS-M12 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* no later than 31 December 2026 to:

- (1) manage *land* use change by:
 - (a) controlling the establishment of new or any spatial extension of existing *plantation forestry activities* or permanent forestry activities¹¹⁵⁷ where necessary to give effect to an objective developed under the NPSFM, and
 - (b) ~~minimising~~ avoiding¹¹⁵⁸ the removal of montane¹¹⁵⁹ tall tussock grasslands,
- (2) provide for and ~~encourage~~ promote¹¹⁶⁰ the creation and enhancement of vegetated riparian margins and constructed *wetlands*, and maintain these where they already exist, ~~and~~
- (3) facilitate public access to and along¹¹⁶¹ *lakes* and *rivers* by:
 - (a) requiring the establishment of *esplanade reserves* and *esplanade strips*, and
 - (b) promoting the use of legal *roads*, including paper *roads*, that connect with *esplanade reserves* and *esplanade strips*-. and
- (4) maintain the availability and productive capacity of highly productive land in accordance with LF-LS-P19.¹¹⁶²

9.8.16. LF-LS-M13 – Management of beds and riparian margins

9.8.16.1. Introduction

1652. As notified, LF-LS-M13 reads:

LF-LS-M13 – Management of *beds* and riparian margins

Local authorities must prepare or amend and maintain their *regional* and *district plans* to manage the condition of the *bed* and banks of *water bodies*, riparian margins and associated *lands*, including vegetative cover, to:

- (1) maintain existing *biodiversity* values,
- (2) increase the presence, resilience and abundance of indigenous flora and fauna, particularly taoka species, including by providing for *biodiversity*

¹¹⁵⁷ 00226.209 Kāi Tahu ki Otago,

¹¹⁵⁸ 00230.95 Forest and Bird

¹¹⁵⁹ Clause 16(2), Schedule 1, RMA

¹¹⁶⁰ 00509.092 Wise Response

¹¹⁶¹ 00206.042 Trojan, 00411.054 Wayfare, 00231.097 Fish and Game

¹¹⁶² 00140.023 Waitaki DC

corridors within *river* systems, and requiring riparian buffers that are sufficient to maintain indigenous *biodiversity*,

- (3) support improvement in the functioning of catchment processes where these have been adversely affected by changes in margins and connected *lands* over time, and
- (4) reduce unnatural sedimentation of *water bodies*.

9.8.16.2. Submissions

1653. This method is supported by two submitters.¹¹⁶³ DOC seeks that the reference to biodiversity values in clause (1) is amended to reference indigenous biodiversity.¹¹⁶⁴ The submitter considers that this amendment is necessary to align with the rest of the pORPS and higher order documents. Rayonier seeks an amendment to note that the provisions are subject to the NESPF controls on activities in margins.¹¹⁶⁵

1654. Wise Response seeks several changes to improve clarity of the method, as set out below:¹¹⁶⁶

- (1) maintain and enhance existing biodiversity and its values with enhanced habitat,
- (2) increase the presence, resilience and abundance of indigenous flora and fauna, particularly taoka species, including by providing for associated wetlands and backwaters, biodiversity corridors within river systems, and requiring riparian buffers that are sufficient to maintain indigenous biodiversity and water quality,
- ...
- (4) ~~reduce control~~ unnatural sedimentation of water bodies to meet ecological standards.

1655. DCC notes that consequential changes to this method may be needed as a result of the relief sought elsewhere in this section.¹¹⁶⁷

9.8.16.3. Analysis

1656. I consider that the amendment sought by DOC to refer to indigenous biodiversity only is appropriate, given biodiversity is a considerably wider term that captures all plants, animals and micro-organisms, and includes pest species, or species that are inappropriate for a specific area. I recommend accepting the submission point.

1657. I do not consider that it is necessary to specify that the LF-LS-M13 is subject to the NESPF. The NESPF will be considered when the method is being implemented (i.e. when councils

¹¹⁶³ 0026.210 Moutere Station, 00138.102 QLDC

¹¹⁶⁴ 00137.079 DOC

¹¹⁶⁵ 00020.017 Rayonier

¹¹⁶⁶ 00509.093 Wise Response

¹¹⁶⁷ 00139.128 DCC

are preparing or amending their plans). I do not recommend accepting the submission point by Rayonier.

1658. I have previously addressed the relationship between the NESPF (and other NESs) and the pORPS in my response to the submissions by Rayonier, Ernslaw One and City Forests Limited on LF – LF – M11. For the same reasons, I recommend rejecting the relief sought by Rayonier to include reference to the NESPF.
1659. I recommend accepting in part the amendments sought by Wise Response to clause (1). I agree that enhancement may be an appropriate action, however do not consider that enhancement is required in every case. I recommend adopting the wording “maintain or enhance” for this reason. I consider the remainder of the amendments sought to this clause introduce uncertainty and recommend rejecting them.
1660. Wise Response seeks to include reference to “associated wetlands and backwaters” in clause (2) as well as a reference to maintaining water quality. I am unsure what the submitter intends by “providing for associated wetlands and backwaters” and note that the term ‘backwaters’ is not used in the RMA or the pORPS. In my opinion, wetlands can be important parts of river systems so I consider it would be appropriate to include reference to them in this part of the clause. I agree that the actions in clause (2) will contribute to maintaining water quality and therefore recommend this submission point is accepted in part.
1661. It is not clear what Wise Response is referring to by “ecological standards”, which they seek to include in clause (4). I consider that replacing “reduce” with “control” would weaken the provision. For these reasons, I recommend rejecting the submission point.

9.8.16.4. Recommendation

1662. I recommend amending LF-LS-M13 to:

LF-LS-M13 – Management of *beds* and riparian margins

Local authorities must prepare or amend and maintain their *regional plans*¹¹⁶⁸ and *district plans* to manage the condition of the *bed* and banks of *water bodies*, riparian margins and associated *lands*, including vegetative cover, to:

- (1) maintain or enhance¹¹⁶⁹ existing indigenous¹¹⁷⁰ *biodiversity* values,
- (2) increase the presence, resilience and abundance of indigenous flora and fauna, particularly taoka species, including by providing for wetlands and¹¹⁷¹ *biodiversity* corridors within *river* systems, and requiring riparian buffers that are sufficient to maintain indigenous *biodiversity*,

¹¹⁶⁸ Clause 16(2), Schedule 1, RMA

¹¹⁶⁹ 00509.093 Wise Response

¹¹⁷⁰ 00137.079 DOC

¹¹⁷¹ 00509.093 Wise Response

- (3) support improvement in the functioning of catchment processes where these have been adversely affected by changes in margins and connected *lands* over time, and
- (4) reduce unnatural sedimentation of *water bodies*.

9.8.17. LF-LS-M14 – Other methods

9.8.17.1. Introduction

1663. As notified, LF-LS-M14 reads:

LF–LS–M14 – Other methods

In addition to methods LF–LS–M11 to LF–LS–M13, the methods in the LF–WAI, LF–VM and LF–FW sections are also applicable.

9.8.17.2. Submissions

1664. This method is supported by two submitters.¹¹⁷² DOC seeks that the ECO chapter is also referenced as those methods are considered to be equally relevant.¹¹⁷³

1665. Greenpeace seeks that additional wording be added:¹¹⁷⁴

other methods include a sinking cap on synthetic nitrogen fertiliser to phase it out by 2024 and phasing out intensive dairy farming.

1666. This addition is consistent with the changes sought by the submitter to LF-LS-M11 and LF-LS-M12 and is sought for the same reasons.

9.8.17.3. Analysis

1667. I agree with DOC that the provisions in the ECO chapter are also relevant to the LF-LS provisions. However, I consider that given the LF-LS chapter manages land use, the provisions of several other chapters, including EIT, HCV and NFL are also of relevance to the LF-LS section. I consider that the reference to the other LF chapter methods is appropriate and intentional, given the hierarchy of the chapter, in all giving effect to the LF-WAI provisions, but I do not see the need for cross-referencing beyond this chapter. Integration across the different RPS chapters is driven by the IM Chapter and the need to read the RPS as an integrated whole. I recommend rejecting the submission point.

1668. As discussed previously, I consider that specific direction on methods for a sinking cap on synthetic nitrogen fertiliser and intensive dairying are not appropriate to include in the pORPS 2021. Should such controls be considered necessary, they are best determined as part of the Land and Water Regional Plan development process, with the ability for FMU specific requirements to be established. In addition, the NESF already provides some

¹¹⁷² 0026.211 Moutere Station, 00138.103 QLDC

¹¹⁷³ 00137.080 DOC

¹¹⁷⁴ 00407.051 Greenpeace and 1259 supporters

interim controls on such activities, in lieu of more specific regional guidance. I recommend rejecting the submission point.

9.8.17.4. Recommendation

1669. I recommend retaining LF-LS-M14 as notified.

9.8.18. New methods

9.8.18.1. Submissions

1670. DOC seeks that a new method be added as follows: ¹¹⁷⁵

Local authorities must:

(1) establish a long term monitoring programme that incorporates cultural health monitoring;

(2) record information (including monitoring data) about the state of land and soils and the challenges to their health and well-being; and

(3) regularly prepare reports in the matters in (1) and (2) and publish those reports.

1671. The submitter considers that this monitoring is necessary to ensure effectiveness, and for consistency with other domains and topics.

9.8.18.2. Analysis

1672. Part 4 of the pORPS sets out how ORC intends to monitor the efficiency and effectiveness of the policy statement. In particular, it states that ORC will develop a regional monitoring strategy that will state the monitoring procedures and identify connections with other agencies. In light of that, I do not consider the method proposed by DOC is necessary and recommend rejecting the submission point.

9.8.18.3. Recommendation

1673. I do not recommend including any additional methods.

9.8.19. LF-LS-E4 – Explanation

9.8.19.1. Introduction

1674. As notified, LF-LS-E4 reads:

LF–LS–E4 – Explanation

The policies in this section of the LF chapter seek to maintain the health of Otago’s soils and manage *land* uses as part of an integrated approach to sustaining soil and

¹¹⁷⁵ 00137.077 DOC, 00137.081 DOC

water health. The connections and interactions between these resources require a holistic approach to management.

Managing soil resources, in particular, cannot be undertaken in isolation. The policies require managing the use and development of *land* and *fresh water* to maintain soil values, recognising that soil can be valued for more than its productive use and those values should be maintained. Soil erosion is problematic for both soil and *water* health. The policies provide direction on managing erosion resulting from *land* use activities to, primarily, retain soil and prevent its *discharge* to *water*.

Highly productive *land* is *land* used for primary production that provides economic and employment benefits. Providing for and managing such *land* types is essential to ensure its sustainability. The policies seek to identify and prioritise *land* used for productive purposes managing urban encroachment into rural environments where appropriate.

Responding to *climate change* and achieving *freshwater* visions is likely to require changes in *land* uses and land management practices in parts of Otago. This is recognised in the policies which seek to promote changes in *land* use or management that improve efficient use of *water*, *resilience* to *climate change* and the health and quality of soil. The policies also require reducing *discharges* to *water* from the use and development of *land* and managing *land* uses that are unsupportive of *environmental outcomes* for *fresh water* as identified by each *FMU*.

Maintaining public access to and along *lakes* and *rivers* is a matter of national importance under section 6 of the RMA 1991. The policies in this section seek to maintain existing and where appropriate promote public access to and along *lakes* and *rivers*. Circumstances which restrict public access are set out where, for example, public health and safety is at *risk* or valued parts of the *environment* may be compromised.

9.8.19.2. Submissions

1675. Greenpeace supports the explanation.¹¹⁷⁶ Fulton Hogan seeks to retain the explanation as written, with an amendment to change the term rural environments to “this land”.¹¹⁷⁷ They consider that while primary production generally occurs on rural land, this may not always be the case, and the explanation should recognise this.
1676. AgResearch and Rural Contractors NZ seek several changes to the wording of paragraph three to reflect their changes sought in relation to LF-LS-O11 and LF-LS-P11, being the provision for activities that support, service or are dependent on primary production, and noting that highly productive land is predominantly used for primary production.¹¹⁷⁸ They

¹¹⁷⁶ 00407.052 Greenpeace and 1259 supporters

¹¹⁷⁷ 00322.024 Fulton Hogan

¹¹⁷⁸ 00208.008 AgResearch, 00410.006 Rural Contractors NZ

also seek that the wording relating the urban encroachment is amended to refer to rural areas, rather than environments.

1677. Kāi Tahu ki Otago seeks several changes to the explanation to improve clarity and reflect their submission points for preceding provisions in the chapter, as set out below:¹¹⁷⁹

~~Managing soil resources, in particular, cannot be undertaken in isolation. The policies require managing the use and development of land and fresh water to maintain soil values, recognising that soil can be valued for more than its productive use and those values should be maintained. Soil erosion is problematic~~ for has adverse impacts on both soil and water health. The policies provide direction ~~on~~ for managing erosion resulting from land use activities to, ~~primarily,~~ retain ensure soil is retained and to prevent its discharge to water.

Highly productive land is land used for ~~primary agricultural, pastoral and horticultural~~ production that provides economic and employment benefits ...

... This is recognised in the policies which seek to promote changes in land use or management that improve ~~efficient~~ sustainable use of water, resilience to climate change and the health and quality of soil ...

... The policies in this section seek to maintain existing public access opportunities and where appropriate promote enhanced public access to and along lakes and rivers ...

9.8.19.3. Analysis

1678. In relation to the submission by Fulton Hogan, I note that the term rural areas is used in LF-LS-P19(3), in relation to managing urban development. Given the use of the term rural areas is recommended to be retained in LF-LS-P19(3), I recommend rejecting this submission point in order to provide consistency across the chapter.
1679. Based on my recommendations in relation to earlier submission points from AgResearch and Rural Contractors NZ on supporting industries, I recommend rejecting the submission points.
1680. I consider the amendments sought by Kāi Tahu ki Otago improve the clarity and readability of the explanation, and better align it with the direction set out in the policies. The exception to this is the replacement of “efficient” with “sustainable” and replacing “primary production” with “agricultural, pastoral, and horticultural production”. As I have set out previously in response to other submission points by this submitter, I consider it is appropriate to refer to efficiency of water use for consistency with the NPSFM. I have previously recommended replacing “primary production” with “food and fibre production”. I therefore recommend accepting this submission point in part.
1681. As a consequential amendment under clause 16(2) of Schedule 1 of the RMA, I recommend including the additional factor recommended for inclusion in LF-LS-P20 in paragraph 4 of LF-LS-E4.

¹¹⁷⁹ 00226.212 Kāi Tahu ki Otago

9.8.19.4. Recommendation

1682. I recommend amending LF-LS-E4 to:

LF-LS-E4 – Explanation

The policies in this section of the LF chapter seek to maintain the health of Otago’s soils and manage *land* uses as part of an integrated approach to sustaining soil and *water* health. The connections and interactions between these resources require a holistic approach to management.

Managing soil resources, in particular, cannot be undertaken in isolation. The policies require managing the use and development of *land* and *fresh water* to maintain soil values, recognising that soil can be valued for more than its productive use and those values should be maintained. Soil erosion is problematic for both soil and *water* health. The policies provide direction on managing erosion resulting from *land* use activities to, primarily, retain soil and prevent its *discharge* to *water*.

~~Highly productive land~~ *Highly productive land*¹¹⁸⁰ is *land* used for *food and fibre production* ~~primary production~~¹¹⁸¹ that provides economic and employment benefits. Providing for and managing such *land* types is essential to ensure its sustainability. The policies seek to identify and prioritise *land* used for productive purposes managing urban encroachment into rural environments where appropriate.

Responding to *climate change* and achieving *freshwater* visions is likely to require changes in *land* uses and land management practices in parts of Otago. This is recognised in the policies which seek to promote changes in *land* use or management that improve efficient use of *water*, *resilience* to *climate change* ~~and~~, the health and quality of soil, and water quality.¹¹⁸² The policies also require reducing *discharges* to *water* from the use and development of *land* and managing *land* uses that are unsupportive of *environmental outcomes* for *fresh water* as identified by each *FMU*.

Maintaining public access to and along *lakes* and *rivers* is a matter of national importance under section 6 of the RMA ~~1991~~.¹¹⁸³ The policies in this section seek to maintain existing public access opportunities¹¹⁸⁴ and where appropriate promote enhanced¹¹⁸⁵ public access to and along *lakes* and *rivers*. Circumstances

¹¹⁸⁰ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00236.013 Horticulture NZ

¹¹⁸¹ 00235.008 OWRUG

¹¹⁸² Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00409.015 Ballance

¹¹⁸³ Clause 16(2), Schedule 1, RMA

¹¹⁸⁴ 00226.212 Kāi Tahu ki Otago

¹¹⁸⁵ 00226.212 Kāi Tahu ki Otago

which restrict public access are set out where, for example, ~~public~~¹¹⁸⁶-health and safety is at *risk* or valued parts of the *environment* may be compromised.

9.8.20. LF-LS-PR4 – Principal reasons

9.8.20.1. Introduction

1683. As notified, LF-LS-PR4 reads:

LF–LS – PR4 – Principal reasons

Population growth and *land* use intensification in urban and rural environments has increased demand for *land* and soil resources. It has also impacted on the quality of our *water*, increasing contamination such as by nutrients and sediment and harming ecosystems. In Otago, historical and contemporary *land* uses have *degraded* some *water bodies*, both in terms of their quantity and quality, leading to adverse effects on the mauri of *water* and the diversity and abundance of mahika kai resources.

Soil health is vital to wider ecological health, human health, and economic *resilience*. Otago has a rich and long history of varied forms of primary production on a wide range of soil types and in variable climatic conditions. Otago’s highest quality soils (in terms of suitability for primary production) are mainly on the Taieri Plain, North Otago downlands, South Otago lowlands, parts of Central Otago and the Strath Taieri, and along some *river* margins. Their extent is limited and use of these soils can be constrained by external factors such as economics, erosion, natural and human induced hazards, animal, and plant pests.

Managing *land* uses is a critical component of implementing the NPSFM due to the effects of *land* use on the health and well-being of *water*. This chapter assists the Council to recognise and provide for the connections and interactions between Otago’s *land* and *fresh water*, while managing the use and development of this *land*, and its effects on *fresh water*.

9.8.20.2. Submissions

1684. Kāi Tahu ki Otago seeks that the reference to primary production be amended to refer to agricultural, pastoral and horticultural production.¹¹⁸⁷ The submitter also seeks the addition of a paragraph discussing riparian areas and their importance, given some provisions manage riparian margins. The following wording is proposed:

Riparian areas, in particular, play a key role in supporting the water quality and ecosystem values of water bodies, and it is important that this role is maintained.

1685. OWRUG seeks consequential amendments to give effect to the relief sought for preceding provisions in the chapter, to ensure it reflects the objectives, policies and

¹¹⁸⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00239.094 Federated Farmers

¹¹⁸⁷ 00226.213 Kāi Tahu ki Otago

methods in the chapter.¹¹⁸⁸ In particular, they seek an amendment to the first paragraph, replacing the term ‘mauri’ with ‘health’.

9.8.20.3. Analysis

1686. I consider amendment sought by Kāi Tahu ki Otago regarding riparian margins fills a key gap in the principal reasons and accurately reflects the content of LF-LS-M13. I recommend accepting the submission point.

1687. I recommend one consequential amendments: replacing “primary production” with “food and fibre production” to reflect the amendments I have made in other provisions in this chapter. I therefore recommend accepting the submission point by OWRUG.

9.8.20.4. Recommendation

1688. I recommend amending LF-LS-PR4 as follows:

LF-LS-PR4 – Principal reasons

Population growth and *land* use intensification in urban and rural environments has increased demand for *land* and soil resources. It has also impacted on the quality of our *water*, increasing contamination such as by nutrients and sediment and harming ecosystems. In Otago, historical and contemporary *land* uses have *degraded some water bodies*, both in terms of their quantity and quality, leading to adverse effects on the mauri of *water* and the diversity and abundance of ~~mahika kai~~ *mahika kai*¹¹⁸⁹ resources.

Soil health is vital to wider ecological health, human health, and economic *resilience*. Otago has a rich and long history of varied forms of *food and fibre production* ~~primary production~~¹¹⁹⁰ on a wide range of soil types and in variable climatic conditions. Otago’s highest quality soils (in terms of suitability for *food and fibre production* ~~primary production~~¹¹⁹¹) are mainly on the Taieri Plain, North Otago downlands, South Otago lowlands, parts of Central Otago and the Strath Taieri, and along some *river* margins. Their extent is limited and use of these soils can be constrained by external factors such as economics, erosion, natural and human induced hazards, animal, and plant pests.

Managing *land* uses is a critical component of implementing the NPSFM due to the effects of *land* use on the health and well-being of *water*. This chapter assists the Council to recognise and provide for the connections and interactions between Otago’s *land* and *fresh water*, while managing the use and development of this *land*, and its effects on *fresh water*.

¹¹⁸⁸ 00235.112 OWRUG

¹¹⁸⁹ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

¹¹⁹⁰ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00235.008 OWRUG

¹¹⁹¹ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00235.008 OWRUG

Riparian areas, in particular, play a key role in supporting the *water* quality and ecosystem values of *water bodies*, and it is important that this role is maintained.¹¹⁹²

9.8.21. LF-LS-AER12

9.8.21.1. Introduction

1689. As notified, LF-LS-AER12 reads:

LF–LS–AER12 The life-supporting capacity of soil is maintained or improved throughout Otago.

9.8.21.2. Submissions

1690. LF-LS-AER12 is supported by two submitters.¹¹⁹³

1691. Fulton Hogan seeks that LF-LS-AER13 be amalgamated with LF-LS-AER12.¹¹⁹⁴ The submitter considers that the specific reference to soils creates tension, given the definition of primary production, and seeks that the AERs refer to highly productive land only. Their proposed wording is included below:

The life-supporting capacity, ~~of soil is~~ availability and capability of Otago’s highly productive land is maintained or improved throughout Otago.

9.8.21.3. Analysis

1692. The proposed amendment by Fulton Hogan seeks to rationalise two of the LF-LS-AERs. I consider the tension described by the submitter is not present, as the chapter includes separate objective and policy direction that variously manages soil quality or the availability of highly productive land. I consider combining the two AERs is not required, and recommend rejecting the submission point.

9.8.21.4. Recommendation

1693. I recommend retaining LF-LS-AER12 as notified.

9.8.22. LF-LS-AER13

9.8.22.1. Introduction

1694. As notified, LF-LS-AER13 reads:

LF–LS–AER13 The availability and capability of Otago’s highly productive land is maintained.

¹¹⁹² 00226.213 Kāi Tahu ki Otago

¹¹⁹³ 00407.053 Greenpeace and 1259 supporters, 00138.104 QLDC

¹¹⁹⁴ 00322.025 Fulton Hogan

9.8.22.2. Submissions

1695. LF-LS-AER13 is supported by three submitters.¹¹⁹⁵ As discussed above, Fulton Hogan seeks that LF-LS-AER13 be amalgamated with LF-LS-AER12.¹¹⁹⁶

9.8.22.3. Analysis

1696. As per the discussion above for LF-LS-AER12, I do not recommend deleting LF-LS-AER13.

9.8.22.4. Recommendation

1697. I recommend retaining LF-LS-AER13 as notified.

9.8.23. LF-LS-AER14

9.8.23.1. Introduction

1698. As notified, LF-LS-AER14 reads:

LF-LS-AER14 The use of *land* supports the achievement of *environmental outcomes* and objectives in Otago's *FMUs* and rohe.

9.8.23.2. Submissions

1699. LF-LS-AER14 is supported by QLDC¹¹⁹⁷. No other submissions on LF-LS-AER14 were received.

9.8.23.3. Recommendation

1700. I recommend retaining LF-LS-AER14 as notified.

¹¹⁹⁵ 00407.054 Greenpeace and 1259 supporters, 00138.105 QLDC, 00236.076 Horticulture NZ

¹¹⁹⁶ 00322.025 Fulton Hogan

¹¹⁹⁷ 00138.106 QLDC

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Appendix 1: Memo regarding North Otago FMU boundary

