
BRIEF OF SUPPLEMENTARY EVIDENCE OF FELICITY ANN BOYD
LF – LAND AND FRESHWATER

Qualifications and Experience

- 1 My qualifications and experience are set out in paragraphs 13 to 15 of my section 42A report titled *Chapter 9: LF – Land and Freshwater* and dated 4 May 2022.

Code of Conduct

- 2 I have read and agree to comply with the Environment Court’s Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2014. I have complied with the Code in preparing my evidence. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Evidence

- 3 This supplementary statement of evidence updates the recommendations I made in my section 42A report titled *Chapter 9: LF – Land and freshwater*. That report included provisions¹ that were re-notified as a Freshwater Planning Instrument on 30 September 2022 and subsequently are no longer in scope of the Schedule 1 process underway or this statement of evidence.
- 4 That chapter comprises four sub-sections: LF-WAI – Te Mana o te Wai, LF-VM – Visions and management, LF-FW – Freshwater, and LF-LS – Land and soils. The matters addressed in this statement of evidence, in relation to each sub-section, are set out below.
- 5 For LF-WAI – Te Mana o te Wai:
- 5.1 Amendment to LF-WAI-P3(6);
- 5.2 Deleting “appropriate” in the recommended additional paragraph in LF-WAI-E1;

¹ The provisions are listed in the public notice here: <https://www.orc.govt.nz/news-and-events/news-and-media-releases/2022/september/public-notice-fpirps-21>

- 6 For LF-FW – Freshwater, the protection of outstanding water bodies and their values;
- 7 For LF-LS – Land and soils:
- 7.1 Amendments to LF-LS-O11 and LF-FW-O12, and a new LF-LS-O11A.
- 7.2 Amendments to LF-LS-P16.
- 7.3 Management of montane tall tussock grasslands.
- 8 In the sections below, and in relation to each matter above, I have:
- 8.1 Identified the recommendation that is to be amended or replaced.
- 8.2 Identified the authority relied upon to make these amendments or replacements.
- 8.3 Provided an explanation for the amendment or replacement.
- 8.4 Set out the proposed amendments to the relevant pORPS provisions.
- 8.5 Evaluated the amendment or replacement in accordance with section 32AA of the RMA (where applicable).
- 9 Where I have recommended additional amendments to provisions, my recommendations are shown in addition to my original section 42A recommendations. The key below sets out how these different recommendations are shown.

Key to proposed amendments

Appearance	Explanation
Black text	Text as notified.
Black text with <u>underlining</u> or strikethrough	Amendments recommended in section 42A report.
Red text with <u>underlining</u> or strikethrough	Additional amendments recommended in supplementary evidence where there has been no previous amendment to the 'as notified' provision text.
Black text with <u>red underlining</u>	Text that was recommended to be deleted in s42A report but now recommended to be retained ("undeleted") by supplementary evidence.
Red strikethrough with <u>black underlining</u> .	Text that was recommended to be inserted in s42A report (black underline) but now recommended to be deleted by supplementary evidence (red strikethrough).

- 10 In the same way as the original section 42A report recommendations, the scope for all proposed amendments is included as a footnote in the amended provisions. Where the amendments were recommended in the section 42A report, the supporting explanation is in the section 42A report. Where the amendments are recommended through this supplementary evidence, the supporting explanation is contained in this supplementary evidence.

Highly productive land

- 11 LF-LS-O11 and LF-LS-P19 relate to the management of highly productive land. Some submitters have sought a new method to clarify which council(s) will be responsible for identifying highly productive land. These provisions and submissions were subject to pre-hearing discussions and my subsequent reconsideration.
- 12 The National Policy Statement for Highly Productive Land 2022 was released on 19 September and will come into effect on 17 October 2022. Its provisions directly affect the provisions above. As a result, this statement of evidence does not address LF-LS-P19 or the issue of identification and only addresses LF-LS-O11 in relation to its structure, not content. A further statement of evidence will be published on 21 October with my analysis and recommendations in relation to provisions managing highly productive land and the implications of the new National Policy Statement.

Overlooked submission points

- 13 One submission point by Ravensdown was incorrectly coded in the Summary of Decisions Requested and I did not consider it in my section 42A report.² Ravensdown sought to delete LF-VM-O7 because the objective relates to integrated management which is specifically addressed in Objective IM-O2 and Policy LF-WAI-P3. I agree with Ravensdown that LF-VM-O7 presents a simplified version of policy direction already set out in more detail elsewhere in the pORPS. I recommend deleting the provision:

~~LF-VM-O7 – 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.³~~

² 00121.056 Ravensdown

³ 00121.056 Ravensdown

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- 14 In my view, deleting the objective removes duplication and therefore improves the efficiency of the LF-VM section. There is no substantive change to the pORPS warranting a s32 evaluation.

Updates to LF-WAI – Te Mana o te Wai

- 15 In paragraph 287 of the section 42A report, I recommended accepting the submission from Kāi Tahu ki Otago seeking the addition of a new paragraph to LF-WAI-E1, as well as partially accepting the submission by OWRUG also seeking to include additional content in the explanation.⁴ The amendments sought by Kāi Tahu ki Otago are supported in further submissions by OWRUG and Ngāi Tahu ki Murihiku.⁵ The amendments sought by OWRUG are opposed by Kāi Tahu ki Otago.⁶
- 16 I agreed with Kāi Tahu ki Otago and OWRUG that the explanation should recognise the importance of water to the well-being of all people and communities, not only Kāi Tahu. The proposed wording from Kāi Tahu provided this additional context, while the first and last sentences of the OWRUG proposed paragraph provided recognition of the various reasons people and communities value water, while also acknowledging that access to water contributes to social, cultural and economic well-being in Otago. The provision as I recommended is set out in paragraph 289 of my section 42A report.
- 17 Some parties consider the term “appropriate” in the new paragraph to be ambiguous and unnecessary because the NPSFM sets out in detail how limits are to be established. On balance, I accept that the direction in the NPSFM is clear and that “appropriate” is not necessary.
- 18 I recommend the following amendments:

LF-WAI-E1 – Explanation

...

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.⁷ *Water* is valued by the community.⁸ The life-giving qualities of *freshwater* support the

⁴ 00226.165 Kāi Tahu ki Otago, 00235.082 OWRUG

⁵ FS00235.289 OWRUG, FS00223.067 Ngāi Tahu ki Murihiku

⁶ FS00226.363 Kāi Tahu ki Otago

⁷ 00226.165 Kāi Tahu ki Otago

⁸ 00235.082 OWRUG

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.⁹ Access to water, within appropriate¹⁰ environmental limits, is an important contributor achieving social, cultural and economic well-being within Otago.¹¹

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- 19 In my opinion, deleting “appropriate” is an amendment of minor effect and does not alter the substance of the sentence. In my view, this amendment therefore does not require assessment under section 32AA.

LF-FW – Freshwater

- 20 The LF-FW section contains a series of provisions that collectively manage outstanding water bodies, including Policies LF-FW-P11, LF-FW-P12, LF-FW-M5 and LF-FW-M7.
- 21 Blackthorn Lodge, Trojan, and Wayfare seek amendments to LF-FW-P12 to clarify that protecting significant values requires avoiding, remedying or mitigating adverse effects rather than just avoiding adverse effects.¹² In paragraph 774 of my section 42A report I discussed why I did not agree that protection can be achieved by avoiding, remedying or mitigating adverse effects and I did not recommend that these submissions be accepted.
- 22 I agreed that the direction in the pORPS as notified was more stringent than the NPSFM and indicated that I was not opposed to including a degree of flexibility in this policy if submitters wished to address this further in their evidence (paragraph 779 of my section 42A report). This stringency was discussed in some detail during the pre-hearing meetings.
- 23 I understand from the Otago Regional Council that there is currently a project underway to identify Otago’s outstanding water bodies, with the intended outcome to incorporate them and their values into the new land and water regional plan. Given that project is already underway, I consider it would be beneficial for the project to be completed and its findings incorporated into the land and water regional plan. I also consider that having the outstanding water

⁹ 00226.165 Kāi Tahu ki Otago

¹⁰ Clause 16(2), Schedule 1, RMA.

¹¹ 00235.082 OWRUG

¹² 00119.011 Blackthorn Lodge, 00206.033 Trojan, 00411.045 Wayfare

bodies identified, as well as their values, will greatly assist with developing a policy framework to protect those values and provide for a more nuanced approach (for example, protection mechanisms based on the values to be protected).

- 24 In paragraph 780 of my section 42A report, I recommended including reference to policies EIT-INF-P13 and EIT-INF-P13A to address concerns about the direction in LF-FW-P12 being too restrictive for infrastructure providers. That reference was unhelpful as it was circular – those policies refer back to LF-FW-P12 for the policy direction. I now rescind that recommendation for that reason and note that the other amendment I propose to the policy provides the type of flexibility sought by submitters.
- 25 As a result, I now recommend accepting the submissions by Blackthorn, Trojan, and Wayfare and amending LF-FW-P12 as follows:

LF-FW-P12 – Protecting identifying and managing¹³ *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.¹⁴~~

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.~~^{15 16}

- 26 I also recommend a consequential amendments to LF-FW-M5 so that the method implements the policy direction, as follows:

LF-FW-M5 – Outstanding water bodies

No later than 31 December 2023, Otago Regional Council must:

- (5) include provisions in *regional plans* ~~that protect to avoid the adverse effects of activities on~~¹⁷ the significant and outstanding values of outstanding water bodies.

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¹³ Clause 16(2), Schedule 1, RMA

¹⁴ 00230.091 Forest and Bird

¹⁵ 00235.095 OWRUG, 00315.032 Aurora Energy, 00305.023 Waka Kotahi

¹⁶ 00230.091 Forest and Bird, 00119.011 Blackthorn Lodge, 00206.033 Trojan, 00411.045 Wayfare

¹⁷ 00230.091 Forest and Bird, 00119.011 Blackthorn Lodge, 00206.033 Trojan, 00411.045 Wayfare,

27 My recommendation to rescind the direction to avoid adverse effects on the outstanding and significant values of outstanding water bodies removes some certainty from the provision, however this provides greater flexibility for protection to occur in ways that are appropriate to the water body and its values, which ultimately will be more efficient by not imposing a greater degree of restriction than is required to protect these values. This does not alter the outcome (i.e. protection of those values).

LF-LS – Land and soils

LF-LS objectives

28 There are numerous submissions on LF-LS-O11 and LF-LS-O12 seeking to amend the scope of these objectives, including:

28.1 Federated Farmers considers LF-LS-O11 should apply to all productive land instead of only highly productive land;¹⁸

28.2 Wise Response seeks that, as well as life-supporting capacity, the water-holding capacity of soil resources are safeguarded and enhanced in LF-LS-O11;¹⁹

28.3 The Minister for the Environment seeks that soil quality and freshwater quality are separated in the objective to avoid soil health objectives being favoured over land use provisions to protect freshwater;²⁰

28.4 Fulton Hogan seeks to remove reference to soil quality in LF-LS-O11 and LF-LS-O12.²¹

29 I did not recommend accepting these submission points in my section 42A report. The relevant recommendations can be found in paragraphs 1445 and 1458.

30 Following pre-hearing discussions, I reconsidered these objectives and noted that both objectives are outlining two outcomes: LF-LS-O11 contains outcomes for both soil resources and highly productive land and LF-LS-O12 contains outcomes for soil quality and freshwater. I consider that it would be preferable for separate outcomes to be the focus of separate objectives.

¹⁸ 00239.093 Federated Farmers

¹⁹ 00509.087 Wise Response

²⁰ 00136.008 Minister for the Environment

²¹ 00322.021, 00322.022 Fulton Hogan

- 31 LF-LS-O11 contains two outcomes: safeguarding the life-supporting capacity of Otago's soil resources and maintaining the availability and productive capacity of highly productive land. I recommend retaining the former in LF-LS-O11 and creating a new LF-LS-O11A for the outcome regarding highly productive land.
- 32 LF-LS-O12 also contains two outcomes: that the use of land maintains soil quality and contributes to achieving environmental outcomes for freshwater. I agree with the Minister for the Environment that these are two separate matters. I recommend removing the outcome related to soil quality to LF-LS-O11 and retaining the remainder of LF-LS-O12.
- 33 Consequential amendments to the titles of LF-LS-O11 and LF-LS-O12 are also necessary to reflect the change in their scope.
- 34 I recommend the following amendments:

LF-LS-O11 – ~~Land and soil~~ Soil²²

The life-supporting capacity of Otago's soil resources is safeguarded or enhanced,²³ and soil quality is maintained,²⁴ and the availability and productive capacity of highly productive land for primary production ~~food and fibre production²⁵~~ is maintained,²⁶ now and for future generations.

LF-LS-O11A – Highly productive land

The availability and productive capacity of highly productive land for agricultural and horticultural production is maintained²⁷ now and for future generations.²⁸

LF-LS-O12 – ~~Use of land~~ Land and fresh water²⁹

The use of *land* in Otago ~~maintains soil quality and³⁰~~ contributes to achieving *environmental outcomes* for *fresh water*.

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- 35 My recommendation to reorganise the LF-LS objectives and add another (LF-LS-O11A) will provide clarity by ensuring that each objective corresponds to one

²² Clause 10(2)(b)(i) – consequential to 00136.008 Minister for the Environment

²³ 00239.093 Federated Farmers

²⁴ 00136.008 Minister for the Environment

²⁵ 00235.008 OWRUG

²⁶ 00239.093 Federated Farmers

²⁷ 00239.093 Federated Farmers

²⁸ 00322.021 Fulton Hogan, 00322.022 Fulton Hogan, 00509.068 Wise Response

²⁹ Clause 10(2)(b)(i) – consequential to 00136.008 Minister for the Environment

³⁰ 00136.008 Minister for the Environment

outcome. As this does not alter the overall outcomes in the suite of objectives, there is no change to the assessment of whether the objectives are the most appropriate way to achieve the purpose of the RMA in the Section 32 Evaluation Report. Therefore, I do not consider that further evaluation is required under section 32AA.

LF-LS-P16

36 Ravensdown and Kāi Tahu ki Otago submitted on this policy seeking different amendments. Ravensdown seeks deletion on the basis that IM-O2 and LF-WAI-P3 have similar requirements.³¹ Kāi Tahu ki Otago seeks amendments to strengthen the requirement for integrated management and clarify the link between land management and freshwater outcomes.³²

37 At paragraph 1470 of my section 42A report I did not recommend accepting either of these submission points. I did not agree that the provision duplicated other policy direction and I considered that the amendments sought by Kāi Tahu ki Otago would have altered the policy direction in a way that was not intended.

38 Having had the benefit of further discussion with submitters, I consider that the use of the term “integrated management” in the title and in the text suggests duplication with other parts of the pORPS that use the term in a different context. I therefore recommend removing the words “integrated management” from this policy. The purpose of this policy is to specifically highlight that maintaining soil quality requires managing land and freshwater.

39 I recommend the following amendments:

LF-LS-P16 – Integrated management Maintaining soil quality³³

~~Recognise that maintaining~~ Maintain soil quality ~~requires the integrated management of by managing both~~³⁴ *land and freshwater* resources, including the interconnections between soil health, vegetative cover and *water* quality and quantity.

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³¹ 00121.062 Ravensdown

³² 00226.201 Kāi Tahu ki Otago

³³ 00226.201 Kāi Tahu ki Otago, 00121.0062 Ravensdown

³⁴ 00226.201 Kāi Tahu ki Otago, 00121.0062 Ravensdown

40 The amendments I recommend do not alter the scope of the policy or change the policy direction. Therefore I do not consider require evaluation under section 32AA.

Removal of montane tall tussock grasslands

41 Forest and Bird seeks to amend “minimising” to “avoiding” in LF-LS-M12(1)(b).³⁵ In paragraph 1640 of my section 42A report, I recommend accepting this submission in part and making that change. Meridian made a further submission on the submission by Forest and Bird and stated that the amendment was too absolute and potentially not consistent with the National Policy Statement for Renewable Electricity Generation 2011.³⁶ Oceana Gold also opposed the amendment in its further submission, stating that avoidance was too high a threshold and there are other methods that could be implemented to appropriately manage adverse effects on tussock grasslands.³⁷

42 As a result of the pre-hearing discussions, I now agree with Meridian and Oceana Gold that the amendment I recommended is too restrictive and should be rescinded. Montane tall tussock grasslands occupy a far greater area in Otago than they naturally would due to their invasion into montane landscapes following deforestation.³⁸ It would not be practical to avoid their removal in all circumstances, such as to repair the edge of a road.

43 It was apparent during the discussions that not all submitters understood why this method sought to minimise the removal of montane tall tussock grassland or what relation this had to freshwater management. These areas play an important role in maintaining water yield due to their ability to capture and hold precipitation and previous consultation with stakeholders identified managing clearance of montane tall tussock grasslands as a way to ensure maintenance of stream water yields.³⁹ I recommend incorporating some explanation into the clause to provide the context for it.

44 I recommend the following amendments:

LF-LS-M12 – District plans

³⁵ 00230.095 Forest and Bird

³⁶ FS00306.056 Meridian

³⁷ FS00115.106 Oceana Gold

³⁸ Section 32 Evaluation Report, Appendix 17: Wildlands Report (2021a), p.10.

³⁹ Wildlands. (2017). *Strategic analysis of options to improve management of ecosystems and biodiversity for Otago region*. Wildlands, Dunedin, p.44, 50.

Territorial authorities must prepare or amend and maintain their district plans no later than 31 December 2026 to:

(1) manage *land* use change by:

...

(b) minimising ~~avoiding~~⁴⁰ the removal of montane⁴¹ tall tussock grasslands, to recognise their ability to capture and hold precipitation and therefore affect water yield,⁴²

...

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45 My recommendation to replace “minimising” with “avoiding” was made through the section 42A report. Rescinding this recommendation returns the provision to its wording as notified. The incorporation of short explanatory text into the clause does not alter the substance of the clause but expresses its purpose. I do not consider that further evaluation is required under section 32AA.

Felicity Ann Boyd

11 October 2022

⁴⁰ 00230.95 Forest and Bird

⁴¹ Clause 16(2), Schedule 1, RMA

⁴² 00509.092 Wise Response