

Before a Hearing Panel in Dunedin

Under the Resource Management Act 1991 (the Act)

In the matter of Submissions on the Proposed Otago Regional Policy Statement
2021 (Non-freshwater parts)

Between **Otago Regional Council**
Local Authority

And **Waka Kotahi NZ Transport Agency**
Submitter 305

**Evidence in chief of Aileen Mary Crow for Waka Kotahi NZ Transport Agency
on Chapter 9 – Land and Freshwater (Planning)**

Dated 23 November 2022

1 Executive Summary

- 1.1 Waka Kotahi NZ Transport Agency (“**Waka Kotahi**”), as the controlling authority for New Zealand’s State Highway Network, has significant infrastructure assets across New Zealand, including in the Otago region. **Mr Peter Robinson’s** statement of evidence describes Waka Kotahi’s role and responsibilities as the controlling authority of the State Highway Network, including the nature and operation of Waka Kotahi’s assets in the Otago region. **Mr Robinson** has also described the essential role the State Highway Network plays as a facilitator of growth for the Otago region through the safe and reliable supply of roads to transport people, goods and services around the region, and to other regions of New Zealand.
- 1.2 The national significance of the State Highway Network is recognised by the Proposed Otago Regional Policy Statement (“**PORPS**”) by listing it in the definition for “Nationally significant infrastructure”.
- 1.3 Waka Kotahi’s submission and further submissions with regards to Chapter 9 – Land and Freshwater of the PORPS are primarily concerned with ensuring that the PORPS appropriately gives effect to the Resource Management Act 1991 (**‘RMA’**) and the National Policy Statement for Freshwater Management 2020 (**‘NPSFM’**) by:
- a Recognising the benefits of a safe and reliable State Highway Network, provided by Waka Kotahi, that underpins the concept of “wellbeing” in section 5 of the RMA;
 - b Providing for the use, maintenance, development and protection of the State Highway Network (as a physical resource in terms of section 5 of the RMA); and
 - c Appropriately managing the adverse effects of the State Highway Network, particularly on freshwater resources.
- 1.4 Waka Kotahi’s submission is generally supportive of the approach taken within Chapter 9 of the PORPS (Non-freshwater parts) in that it generally gives effect to the NPSFM. However, I consider that some additional specific amendments are required in order to appropriately give effect to the RMA and ensure that the provisions within the Chapter 9 are practical for infrastructure providers to implement; ensuring there is flexibility to allow for the continued operation, maintenance, upgrade and development of the State Highway Network.
- 1.5 It is concluded that, in my view, the amendments as set out in this evidence, enable Chapter 9 of the PORPS to appropriately give effect to the NPSFM and as such, achieve the purpose of the RMA by:
- a Providing for the use, maintenance, upgrade and development of the State Highway Network whilst also protecting outstanding and significant values of outstanding water bodies; and

- b Appropriately managing the adverse effects from the use, maintenance, upgrade and development of the State Highway Network, ensuring there is flexibility for infrastructure providers such as Waka Kotahi.

2 Qualifications and Experience

- 2.1 My full name is Aileen Mary Crow. I am employed by WSP Limited (**'WSP'**) as a Senior Planner based in Dunedin. I hold the qualification of a Bachelor of Science (Ecology and Natural Resource Management) with First Class Honours from Massey University, Palmerston North. I am an Associate member of the New Zealand Planning Institute.
- 2.2 I have over thirteen years' experience in planning practice both in New Zealand and the United Kingdom, primarily as a consultant planner, during which time I have undertaken both consenting and policy planning work. More specifically, I have provided advice to network utility clients in relation to the preparation of policy documents, including preparing submissions, further submissions and presenting evidence on behalf of clients such as Waka Kotahi, Transpower New Zealand Limited and Aurora Energy Limited. This advice has been on various policy documents, including the Proposed Otago Regional Policy Statement (2015); Proposed Queenstown Lakes District Plan; Proposed Dunedin City District Plan (2GP); and the Proposed Canterbury Regional Policy Statement.
- 2.3 I have also assisted Councils in the preparation of policy documents, such as various plan changes for Environment Canterbury relating to water quality and quantity, as well as writing section 32 reports. I have prepared and processed numerous applications for resource consents and notices of requirement for designations, including making recommendations on consent applications to hearing panels.
- 2.4 I have been engaged by Waka Kotahi to assist in its review of the PORPS and consider the effectiveness of the outcomes proposed. In this capacity I have:
 - a assisted with the preparation of Waka Kotahi's further submissions; and
 - b attended the three pre-hearing meetings for Chapter 9: Land and Freshwater on 27th and 30th June 2022.
- 2.5 I am familiar with Waka Kotahi's roles and responsibilities, having acted for, or advised, Waka Kotahi on both statutory and policy planning matters over the last thirteen years.
- 2.6 I am familiar with regional policy statement approaches to providing for infrastructure across New Zealand through my work for Waka Kotahi and other network utility operators.

3 Code of Conduct

- 3.1 While these proceedings are not before the Environment Court, I confirm that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court's Consolidated Practice Note 2014. I have complied with the Practice Note when preparing my written statement of evidence. My qualifications as an expert are set out above.
- 3.2 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 3.3 Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

4 Scope of evidence

- 4.1 My evidence addresses Waka Kotahi's submissions and further submissions on Chapter 9 – Land and Freshwater (non-freshwater parts), with specific reference to the relief sought in relation to the following provisions:
- a LF-FW-P12 – Identifying and managing outstanding water bodies
 - b LF-LS-M12 – District plans
- 4.2 I have considered the following documents when preparing my evidence:
- a the RMA;
 - b the NPSFM 2020;
 - c the National Policy Statement on Highly Productive Land 2022 ('**NPSHPL**');
 - d the partially Operative Otago Regional Policy Statement 2019;
 - e the proposed Otago Regional Policy Statement 2021 ('**PORPS**') including the associated Summary of Decisions Requested;
 - f the Section 32 report and appended documents;
 - g submissions and further submissions of a number of parties, particularly those related to infrastructure matters or land holding that are traversed by Waka Kotahi's assets;
 - h the further submissions on Waka Kotahi's submission;
 - i the Section 42a Hearing Report (dated May 2022); and
 - j the Supplementary Evidence (dated 11th October 2022).

5 Relevance of Chapter 9 to Waka Kotahi

- 5.1 As described in the Evidence in Chief of **Mr Peter Robinson**, Waka Kotahi manages a number of assets in, under, on and over the freshwater environment, including bridges and culverts located within significant rivers and creeks in the Otago region (such as the Clutha River / Mata-Au, Taieri River, Kakanui River and Big Kuri Creek). Waka Kotahi also undertakes various maintenance and upgrade activities within water bodies in the Otago region, particularly after large flood events where assets have been damaged, or where debris may need to be cleared.
- 5.2 **Mr Robinson** describes the importance of transport infrastructure located in, on, under or over water bodies, which includes the operational and functional need for roads to traverse water bodies in order to service the Otago region, as well as connect the region to the rest of New Zealand.
- 5.3 As described by **Mr Robinson**, Waka Kotahi relies on provisions which allow it to effectively and efficiently manage its infrastructure in water bodies, as well as upgrade and develop future transport assets where required. **Mr Robinson** also explains that Waka Kotahi relies on a range of resource consents which are due to expire within 10 years for operation and maintenance.

6 Higher order documents

- 6.1 I have considered higher order policy direction relating to the freshwater environment, particularly the NPSFM.
- 6.2 In relation to the PORPS and the relief sought by Waka Kotahi in relation to Chapter 9, I consider the following objectives and policies of the NPSFM are of particular relevance:
- a **Objective 1;**
 - b **Policy 4:** Freshwater is managed as part of New Zealand's integrated response to climate change;
 - c **Policy 8:** The significant values of outstanding water bodies are protected; and
 - d **Policy 15:** Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.
- 6.3 In a general sense, the PORPS, in giving effect to the NPSFM, should achieve the following:

- a Protect the significant values of outstanding water bodies, whilst also enabling communities to provide for their social, economic and cultural well-being. Waka Kotahi's assets are critical to ensuring communities can provide for their social, economic and cultural well-being as the network of State Highways allow people to move around, whether for economic or social well-being reasons.
- b Manage freshwater as part of New Zealand's integrated response to climate change, which includes undertaking repairs and upgrades to Waka Kotahi's assets which may be damaged due to large flood events, or to upgrade the assets to protect them from climate change in the future.

7 Chapter 9 – Land and Freshwater

LF-FW-P12 – Identifying and managing outstanding water bodies

- 7.1 The notified version of LF-FW-P12 seeks to protect significant and outstanding values of outstanding water bodies by avoiding adverse effects on those values.
- 7.2 Waka Kotahi's submission seeks that the provision be amended to recognise and provide for the functional and operational needs of infrastructure. The complete avoidance of effects is too stringent for infrastructure providers as it does not allow for regionally and nationally significant infrastructure that may need to be located in such areas.
- 7.3 The Section 42a Hearing Report agreed with Waka Kotahi's submission and stated that infrastructure may not be able to practically give effect to the policy. The Section 42a Hearing Report recommended inserting a reference to EIT-INF-P13 within the policy to provide flexibility for regionally and nationally significant infrastructure.
- 7.4 On behalf of Waka Kotahi, Nicky McIndoe (Dentons) and I stated in the pre-hearing meeting on 30th June 2022 that Waka Kotahi supports providing an exemption for nationally and regionally infrastructure in LF-FW-P12. However, Ms McIndoe and I stated that providing a reference to EIT-INF-P13 creates a circular issue as EIT-INF-P13 directs the user back to LF-FW-P12. Ms McIndoe and I, on behalf of Waka Kotahi, recommended in the pre-hearing discussion that the planner removes clause EIT-INF-P13(2)(a)(iii) so that the plan user is not directed back to LF-FW-P12.
- 7.5 The supplementary evidence (dated 11 October 2022) agreed that the reference to policies EIT-INF-P13 and EIT-INF-P13A was unhelpful as it became circular. The supplementary evidence proposes the following recommendation:

“LF-FW-P12 – Identifying and managing outstanding water bodies

Identify outstanding water bodies and their significant and outstanding values in the relevant regional plans and district plans and protect those values.”

- 7.6 I note that the policy is now more consistent with Policy 8 of the NPSFM. However, I am concerned that the policy no longer provides flexibility for nationally and regionally significant infrastructure. In addition, “protect those values” may be interpreted to mean avoiding all adverse effects on those values.
- 7.7 The Section 42a Hearing Report discusses the interpretation of “protect those values” (paragraph 774). The author states that protection cannot be achieved by avoiding, remedying or mitigating adverse effects; rather, the author states that “this is the ‘baseline’ approach in the RMA to managing any adverse effects, and protection requires a more stringent approach.” The Section 42a Hearing Report acknowledges that the direction in the PORPS is more stringent than what the NPSFM requires.
- 7.8 Based on the author’s interpretation of “protect those values” (that it does not include remedying and mitigating adverse effects), I interpret LF-FW-P12 to mean that significant and outstanding values in outstanding water bodies shall be protected by avoiding all adverse effects. I consider that this is not practical for nationally and regionally significant infrastructure, such as State Highways, that in many circumstances have a functional and / or operational need to be located in, under and over outstanding water bodies (such as the many bridges located over the Clutha River / Mata-Au, Taieri River). The Section 42a Hearing Report agrees with this and states that nationally and regionally significant infrastructure should be provided with some flexibility.
- 7.9 **Mr Robinson** sets out the practical difficulties associated with ‘avoidance’ in certain circumstances and gives examples of such practical difficulties.
- 7.10 Although the words “avoiding adverse effects on them” have been removed from the policy, the intent of the policy has not changed. There is now no flexibility for nationally and regionally significant infrastructure, which the Section 42a Hearing Report stated there should be as otherwise the policy is impractical for these infrastructure providers.
- 7.11 In addition, EIT-INF-P13 states that new infrastructure should avoid, as the first priority, locating infrastructure in outstanding water bodies; if this is not possible due to the functional or operational needs of infrastructure, then for outstanding water bodies, adverse effects should be managed in accordance with LF-P12, which is interpreted as avoiding all adverse effects on those values. I consider that this is far too stringent for nationally and regionally significant infrastructure and provides no flexibility.
- 7.12 I also note that LF-FW-P12, as currently worded, is not consistent with section 6(a) of the RMA which aims to recognise and provide for the protection of lakes and rivers and their margins from inappropriate subdivision, use and development. The policy does not allow for appropriate use

and development, such as new or upgraded State Highways, to be located within an outstanding water body and have a temporary adverse effect on any significant or outstanding water bodies. Section 6 of the RMA allows the decision-maker to determine if an “appropriate” development, such as State Highways, should be located within outstanding water bodies.

7.13 Waka Kotahi therefore seeks that an exemption be provided within the LF-FW-P12 to allow nationally and regionally significant infrastructure to be managed under EIT-INF-P13 and P13A and remove the reference to LF-P12 from these policies (EIT-INF-P13 and P13A). In my view, this is consistent with Part 2 of the RMA which is an ‘enabling legislation’, particularly as it applies to the provision of regionally and nationally significant infrastructure.

7.14 To ensure effect is given to Policy 8 of the NPSFW, and having regard to Waka Kotahi’s pre-hearing discussion and the Section 42a Hearing Report recommendation, Waka Kotahi seek the following changes (as well as the change to EIT-INF-P13 and EIT-INF-P13A):

“Identify outstanding water bodies and their significant and outstanding values in the relevant regional plans and district plans and protect those values, except for regionally and nationally significant infrastructure which shall be managed in accordance with EIT-INF-P13 and P13A.”

LF-LS-M12 – District plans

7.15 Waka Kotahi’s further submission seeks that the submission by Royal Forest and Bird Protection Society of NZ Incorporated (Forest and Bird) be rejected. Forest and Bird seeks LF-LS-M12 be amended as follows:

“1) manage land use change by:

....

b) ~~minimising~~ avoiding the removal of montane tall tussock grasslands ...”

7.16 Waka Kotahi requests Forest and Bird’s submission be rejected as “avoiding” the removal of montane tall tussock is much more onerous than minimising, and it may not always be practicable to avoid removing montane tall tussock grasslands during Waka Kotahi’s projects.

7.17 The Section 42a Hearing Report (dated 4 May 2022) recommend accepting Forest and Bird’s submission to replace “minimising” with “avoiding”.

7.18 During the pre-hearing discussion on 30th June 2022, on behalf of Waka Kotahi, I requested the reasoning as to why montane tall tussock grasslands should not be removed within the Otago region, particularly given that the Wildland Consultants report (2020) states that montane

tussocks grassland habitat remains extensive in the Otago region. The Wildlands report also states that montane tall tussocks grasslands do not represent the original natural vegetation and they occupy a far greater area in Otago than they would have normally due to anthropogenic deforestation.

- 7.19 The Supplementary Evidence (dated 11 October 2022) states that the author agrees that avoiding the removal of the grasslands is too restrictive and should be rescinded. The Supplementary Evidence also states that the reason to minimise the removal of montane tall tussock grasslands is because they play an important role in maintaining water yield. The author has included text within LF-LS-M12 to explain the reasoning and context.
- 7.20 I agree with Waka Kotahi's further submission point and I support the planner's recommendation in the Supplementary Evidence to retain the notified text of "minimising the removal of montane tall tussock grasslands" as well as the additional text will provide clarity to users of the plan, including decision-makers.

8 Conclusions

- 8.1 The PORPS must recognise and give effect to the NPSFM and must achieve the purpose of the RMA, which includes managing the use, development and protection of physical resources (such as the State Highway Network) in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being. Waka Kotahi's submission and further submissions seeks amendments to achieve this.
- 8.2 In my view, the amendments as set out in this evidence enable the PORPS to appropriately give effect to the NPSFM and as such, achieve the purpose of the RMA by:
- a Providing for the use, maintenance, development and protection of State Highway assets;
and
 - b Appropriately managing the adverse effects from the use, maintenance, development and upgrade of the State Highway Network to ensure that the social, cultural and economic well-being of communities are provided for.

Aileen Mary Crow

23 November 2022