

**Before the Hearings Panel
For the Proposed Otago Regional Policy Statement**

Under the Resource Management Act 1991 (“**Act**”)

In the matter of Submissions on the Proposed Otago Regional Policy Statement 2021 (excluding parts determined to be a freshwater planning instrument)

Between **Otago Fish and Game Council and Central South Island Fish and Game Council**
Submitter #0231 & FS00231

Real Group Limited
Submitter #00411

NZSki Limited
Submitter #00206

Rebuttal Evidence of Ben Farrell (Planning)

14 December 2022

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INTRODUCTION

Name, Qualifications and experience

- 1 My full name is Ben Farrell. I am the owner and director of Cue Environmental Limited, an independent planning consultancy based in Queenstown. My qualifications and experience are set out in my EiC dated 28 November 2022.

Scope of evidence

- 2 This expert evidence has been commissioned by Otago Fish and Game Council and Central Otago Fish and Game Council (Fish & Game), Real Group Limited (Realnz), and NZSki Limited (NZSki). This evidence is focused on core issues and specific provisions of particular interest to these submitters.
- 3 In preparing this evidence I have reviewed or refer to the matters raised in my EiC, as well as the EiC of other parties as references throughout this evidence. In preparing this evidence I have also had discussions with planning experts and representatives of other parties.
- 4 This evidence responds to evidence in chief (EiC) provided by numerous other experts whom I have referenced throughout this evidence accordingly. I have considered the evidence of others and in places I support further amendments to the RPS compared to that set out in my EiC, as set out in my evidence below.

Code of conduct

- 5 While this matter is not before the Court, I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court of New Zealand Practice Note 2014.
- 6 As a member of NZPI I am also required to abide the NZPI Code of Ethics.
- 7 I declare that I am married to Ms Ailsa Cain who is a member of the Cain whanau. The Cain whanau are mana whenua in Otago and have an interest in the provisions in this RPS.

COMMON THEMES

- 8 There is much overlapping and evidence in common. Accordingly, for brevity, this evidence is structured around the RPS provisions and often references the relevant experts (whom this evidence rebuts) generally rather than individually or specifically.
- 9 Common themes related to matters raised in my EiC are summarised below.

Integrated Management – prioritisation and using resources within limits

- 10 For reasons set out in my EiC I agree with Mr Brass¹ that it is entirely appropriate to prioritise the long-term life supporting capacity and mauri of the natural environment ahead of the health needs of people.
- 11 There are diverging opinions about the appropriateness of including reference to limits in the RPS². Having reviewed the evidence of others I remain supportive of the position set out in my EiC – that it is appropriate for the RPS to require activities to be undertaken subject to biophysical limits that will be set for each FMU when it comes to freshwater. In short, reference to using resources subject to environmental limits is an important paradigm shift that needs to occur. The fundamental problem with allowing activities to occur without any environmental limits is that the natural environment will continue to degrade and increase risks of natural systems breaching tipping points.
- 12 I do not agree with Ms O’Sullivan, Mr Tuck, or Ms O’Callahan³ that without a specific parameter that would apply as a limit, there is no valuable use of the term within the context of the RPS provisions, as the setting of environmental limits can be appropriately undertaken in resource management plans. I have provided definitions for environmental limits deriving from the NBE Bill, although I am not wedded to the actual definitions of environmental and resource limits recommended in my EiC.
- 13 Ms O’Sullivan and Mr Tuck highlight that the approach of referencing limits does not take into account the amount to which a limit is exceeded (i.e. no regard to the significance or scale of adverse effects). Ms O’Sullivan’s rationale set out in 6.13 is akin to ‘an overall broad judgement approach’ and risks continuing to fail to protect or maintain natural environment limits, particularly from cumulative adverse effects where often individual effects are small and readily trumped by net benefits of individual proposals, irrespective of cumulative impacts being significant and adverse.
- 14 I acknowledge that in some cases there will be benefits associated with breaching or exceeding limits. Policy IM-P12 identifies circumstances where environmental limits can potentially be breached or exceeded.

Providing for development for the health and wellbeing of people

- 15 Various planners are supporting a new SRMR issue, or amendments to an existing issue, to address infrastructure, use and development of resources⁴. There is also a range of evidence about what constitutes the health and well-being of people and communities. For example:

¹EiC @ pars 53-56

²For example Ms McLeod EiC @ pars 7.21-7.27, Mr Horne EiC @ pars 6.1–6.14, Ms O’Sullivan EiC @ pars 6.9–6.13, Mr Tuck EiC @ pars 5.1-5.5, Ms O’Callahan EiC @ pars 52–62, Ms Ho EiC @ pars 8.33–8.36, Ms Hunter EiC @ pars 8.25–8.31, Mr Ferguson EiC @ pars 39–43, Ms Tait EiC @ pars 8.8-8.10, Ms Ho EiC @ pars 1.3, 8.1–8.4, 8.18–8.20.

³Ms O’Sullivan @ EiC pars 6.9 – 6.13, Mr Tuck EiC @ pars 5.1-5.5, Ms O’Callahan EiC @ pars 52 – 62

⁴ Ms Hunter @ EiC par 7.16 onwards, Ms Ho EiC @ Pars 8.10 – 8.17

- (a) REG companies⁵ identify the link between energy generation and health and well-being. Similarly, the transmission companies⁶ seek amendments to recognise the health, wellbeing and safety needs of electricity supply.
 - (b) Hort NZ suggest the production of food is a second-tier priority under TMOTW⁷.
 - (c) Mr Horne in support of Chorus, Vodafone, Spark recommends a new SRMR issue for the importance of infrastructure⁸.
 - (d) Ms Hunter in support of Oceana Gold suggests insertion of a new LF-LS objective and supporting policies to recognise the role of resource use and development and its contribution to peoples' wellbeing.
 - (e) Ms Tait⁹ in support of Fonterra supports amendments to SRMR-I6, -I10 and -I11 (or the drafting of a new issue) to recognise that the inevitable use of resources is a key function of economic and social wellbeing.
- 16 For reasons set out in my EIC I agree with various planners (for example with Ms Tait) that the SRMR currently provides a one-sided approach to sustainable management not anticipated by the RMA or national policy, and that it should be amended to acknowledge the regional significance of the use and development of resources (within limits).
- 17 I also agree with Ms Hunter¹⁰ that lakes (including those resulting from dam construction) provide a range of benefits including recreation, which is directly related to human health.
- 18 I support amendments to the RPS that recognise and provide for development, including for example the new objective endorsed by Ms McLeod¹¹ in relation to the national grid, except that this provision for the national grid should occur subject to environmental limits, with clear policy direction about reconciling the internal policy conflict(s).

Managing effects of infrastructure on the environment

- 19 Numerous versions of an effects management hierarchy are supported by the planners engaged by the different infrastructure providers, including exemptions from having to be subject to environmental limits¹².

⁵Ms Hunter @ pars 11.9-11.11, Ms Styles (Manawa Energy Ltd) @ Pars 5.7, 10.15,

⁶Ms McLeod (Transpower) @ Paras 7.13 – 7.15, Ms Justice (Aurora Energy) @ Pg 47, para 8.1 – 8.3

⁷Roberts EIC @ par 4 and 95-97

⁸EIC @ par 4.20

⁹EIC @ par 7.10

¹⁰EIC @ par 7.11

¹¹EIC @ pars 8.55 – 8.58

¹²For example Ms Justice EIC @ par 7.16 onwards, Ms Hunter EIC @ par 8.11-8.15, Ms Foran EIC @ pars 31 – 37, Ms Styles EIC @ pars 5.4-5.12, 5.8, Ms McLeod EIC pars 8.23-8.37, Ms Justice EIC p49 and pars 9.1 – 9.5, Ms Craw EIC @ para 7.1 – 7.14, Ms Dempster EIC @ par 9.1 – 9.4, 10.1 – 10.8, para 11.1 – 11.3, 13.1 – 13.5, Ms O'Sullivan EIC @ par 6.2 – 6.8, 10.4.1, 10.12 – 10.20, Appendix A, Mr Horne EIC @ pars 4.16 – 4.18

- 20 I tend to agree with Ms McIntyre¹³ that infrastructure should not be granted a broad exemption from the PORPS requirements relating to management of adverse effects.

Managing effects on infrastructure

- 21 Infrastructure providers are seeking various iterations of provisions that seek to protect existing infrastructure¹⁴. For reasons set out in my EiC it is not appropriate to provide outright/unqualified protection of REG. Such an approach would not be consistent with giving effect to the NPS Freshwater Management.

Alignment with NBEA

- 22 I agree with Mr Horne¹⁵ that it is actually “good planning” to use terms that both give effect to the RMA but that are also consistent with the NBEA terminology.

Te mana o te wai

- 23 I do not agree with Ms Tait’s rationale¹⁶ that LF-WAI-P4 should be deleted. Rather, I agree with the s42A Report that this policy, and giving effect to TMOTW, is fundamental to the RPS framework. The approach suggested by Ms Tait (and Fonterra) to leave TMOTW to the NPSFM fails to acknowledge that the RPS must implement TMOTW. Section 3.2(3) of the NPSFM clearly directs that a RPS must include an objective that describes how the management of freshwater in the region will give effect to Te Mana o te Wai, and clause (4) directs that TMOTW inform the interpretation of the provisions required by this National Policy Statement to be included in regional policy statements (as well as regional and district plans).
- 24 In principle, I support the inclusion of a new method in the LF-WAI chapter to set out a practical approach to implementing TMOTW. Part of the practical approach to implementing TMOTW will require education/upskilling of practitioners and people who use or affect water to better understand what this concept means.
- 25 Parties are taking a range of policy positions as to what the second tier in TMOTW (NPS-FM) means. As I understand Fish and Game’s position on the merits, is that people’s direct contact with freshwater for recreation should fall under this tier 2/Objective 2.1 (1) (a) NPS-FM for two main reasons; firstly, primary contact with water should not put at risk people’s physical health due to water quality; and secondly, active and passive recreation associated with water is good for peoples’ health and wellbeing.

¹³EiC @ pars 118 – 122

¹⁴For example Ms Hunter EiC @ pars 8.11 & 8.15

¹⁵EiC @ par 6.9

¹⁶EiC @ par 10.5

- 26 Other parties take a policy position that as a matter of principle, in terms of degrees of separation from water, is quite different to that of Fish and Game.
- 27 For example, whilst the production of food is obviously important for human health, that relationship between the water itself and people's health is indirect: See Ms Roberts [Par 96(f)] that food production is part of the 2nd tier in TMOTW:
- (a) While vegetables and fruit are essential human health needs, and water is required to produce vegetables and fruit, as there is no direct contact with or link between the human use of water and the growing of fruit and vegetables in relation to any particular waterbody I do not consider this is the logical place within the framework to locate horticultural use of water.
 - (b) Hort NZs interpretation of TMOTW suggests that the use of water to produce food for the local market is more important (from a human health perspective) to the export market. This rationale is also problematic. The concept of TMOTW does not distinguish between different market sectors.
 - (c) Logically, if Hort NZs position is agreed then the 'door is open' for any human health need that has an indirect link to water to be considered a second tier priority. Taken to the extreme this could include the need to take water from a waterbody to produce milk or wine (for example as some people will say milk and wine are essential for human health).
 - (d) I see a similar illogicality with the suggestion the generation of electricity comes within tier 2.
- 28 Mr Hodgson (Hort NZ) supports a new definition of "essential human health"¹⁷. While I support his intent to clarify what is and what is not applicable to the tier two priority, the definition remains ambiguous and reference to essential human health is not consistent with nor implements the broader policy directive of "human health".¹⁸ As an example, the definition put forward by Mr Hodgson does not appear to capture the psychological health benefits of people's direct contact and interaction with a waterbody, including recreation and harvesting food.
- 29 Notwithstanding the above, I acknowledge that determining what is and what is not a tier 2 priority is a matter of statutory interpretation.

¹⁷"Essential human health: means the physiological needs of humans, it includes safe drinking water and sanitation, nutritious food, adequate shelter and warmth."

¹⁸EiC @ par 39 onwards

Reference to 'where possible'

30 I share Ms Styles¹⁹ concern that the word 'possible' used throughout the PORPS is too strong. However, I do not agree with Ms Styles that reference to 'demonstrably practicable' (as recommended in the Council's supplementary evidence) is not appropriate. McIntyre discusses the difference between 'demonstrably practicable' and 'possible' in the context of EIT-INF-P13²⁰, referencing Mr Langman's evidence for ORC. While I do not agree the term 'demonstrably practicable' 'sets a higher bar than possible', I remain supportive of 'demonstrably practicable' over 'possible' and 'practicable' because:

- (a) Possible is unworkable (as identified by others and in my EiC)
- (b) Whereas "demonstrably practicable" places an obligation on the developer to clearly demonstrate why it is not practicable to avoid or mitigate adverse effects.

Natural Features & Landscapes

31 As set out in my EiC the NFL provisions are not appropriate. I agree with the evidence of:

- (a) Mr Devlin in respect of NFL-O1 and NFLP2 to enable development in outstanding and highly valued natural features and landscapes, while providing for the limbs of NFL-O1 including promoting restoration and recognition of restoration in NFL-P2²¹.
- (b) Mr Brown²² that reference to 'restore' is applicable only in places where values have been reduced or lost.
- (c) Styles et al that seek to add "from inappropriate subdivision, use and development" from NFL-O1 and NFL-P2.

32 I do not agree with Mr Ferguson²³ that 'restoration' is necessarily (or at least clearly) encompassed within 'protection'. Focusing on protection reinforces maintenance of the status quo and does not give sufficient recognition to natural landscape values that have been reduced or lost over time.

33 For reasons set out in my EiC I do not agree with the amendments recommended to NFLP2 by Mr Bathgate²⁴ or Mr Brass²⁵. In short it is not appropriate to simply to avoid adverse effects on natural features or landscapes, irrespective of their significance.

¹⁹EiC @ pars 6.10 – 6.13

²⁰EiC par 124

²¹EiC @ pars 35 and 49 respectively

²²EiC @ pars 2.1 – 2.3

²³EiC @ pars 10 – 29

²⁴EiC @ pars 137 – 139]

²⁵EiC @ pars 225 – 226, 232 – 236

Carbon Farming (Exotic Forests)

- 34 I agree with the evidence of Ms Cook and Ms Bartlett that there are some significant resource management issues associated with the planting and of exotic forests.

Pest Species - new policy and definition

- 35 Mr Brass²⁶ proposes a new policy *LF-LS-PX Pest Species* based on the evidence of McKinlay²⁷. I agree with Mr Brass and the reasons he gives that this new policy is appropriate.

SPECIFIC PROVISIONS

IM-O3

- 36 I agree with Ms Taylor²⁸ about the appropriateness of the change to IM-O3 set out in the s42A to change 'preserve' to 'support and restore'.

IM-P1 and IM-P2

- 37 For reasons set out above, and in my EiC, I generally concur with Mr Brass²⁹ about the need for integrated decision-making approach including prioritisation.
- 38 I do not agree with Ms Hunter and Ms Styles et al that a new limb should be included to exempt REG or other RSI. The NPSREG (and Part 2) do not warrant provision for REG in a way that trumps other environmental considerations, including in respect of freshwater allocation and prioritisation ahead of the FMU process being completed in accordance with the NPSFM 2020.

IM-P10

- 39 I agree with Ms Styles et al that REG should be recognised and provided for in this policy to appropriately acknowledge that providing for REG is part of achieving national climate change obligations.

IM-P12

- 40 For reasons set out above and in my EiC the Styles et al relief to delete the minimise approach (reducing to the smallest amount reasonably practicable) is not appropriate. Simply 'avoiding, remedying or mitigating effects' will not result in the long term sustainable management of natural resources and will not suitably address cumulative adverse effects.

²⁶EiC @ par 105
²⁷EiC @ pars 171-178
²⁸EiC @ pars 4.4 – 4.9
²⁹EiC @ pars 46-56

IM-P5 & IM-P13 – Cumulative Effects

- 41 For reasons set out in my EiC, and consistent with the evidence of Ms McIntyre³⁰ and Mr Brass, I do not agree with Ms McLeod that a precautionary approach adds very little to achieve integrated management. However, as set out in my EiC, I am comfortable with the directive in IMP13 being relocated to IMP5(4) as recommended in the s42A Report.

IM-P14

- 42 For reasons set out in my EIC I concur with Ms McIntyre [par 85] that the setting of limits should be directed at a policy level to being “wherever practicable”. I am not aware of any actual evidence highlighting how it will be impractical to set limits.

LF-FW-P14 and LF-FW-M8A

- 43 I concur with the amendments recommended by Mr Brass, Ngai tahu ki Murihiku, and Earnslaw One (including based on the evidence of Dr Richardson and Mr McKinley) relating to fish passage and pest species.
- 44 Bathgate³¹ and Brass³² discuss that it is appropriate to take into account Te Mana o te Taiao – the Aotearoa New Zealand Biodiversity Strategy 2020. That strategy supports a planning framework for introduced species that is very similar to what Fish and Game is seeking in respect of Trout & Salmon.
- 45 I do not agree with Styles et al that there should be a ‘where practicable’ clause to limb (3). While I acknowledge that Ms Style and Ms Hunter³³ et al express concerns that it will be difficult to restore natural character in all instances, such as in the Clutha due to dams, I do not agree with the inclusion of ‘where appropriate and it is practicable to do so’ to LF-FW-P14. This could effectively render the directive impotent or meaningless. It is appropriate that the RPS provide a direction that the natural form and function of all waterbodies should be restored to some extent. The extent to how much restoration occurs along the continuum of naturalness will be a matter of circumstance and will presumably be elaborated on in terms of implementing the freshwater provisions (namely LF-WAI-O1, LF-WAI-P1, and the LF-VM visions and management).

LF-WAI-P3(5)

- 46 Jones³⁴ is concerned the use of ‘sustainable’ in LF-WAI-P3(5) is unclear and suggests instead being specific that extraction limits and freshwater quality is not adversely affected. I support the amendment recommended by Ms Jones, for the reasons she provides.

³⁰EiC @ par 80(b) and (c), EiC @ pars 57 – 59, EiC @ pars 7.28 – 7.33

³¹[Para 89]

³²EiC @ par 118-121

³³EiC @ par 9.14

³⁴EiC @ par 4.7 – 4.12

LF-LS

- 47 Brass³⁵ is recommending two new objectives. I have no issues with these objectives being introduced except there is potential of ambiguity whether reference to ecosystems is intended to capture all ecosystems or be limited to indigenous ecosystems. If the following objective is to be introduced then it should be worded as follows (to clarify that reference to ecosystems is not limited to indigenous ecosystems):

Otago's land environments support healthy habitats for
ecosystems and indigenous species ~~and ecosystems~~.

LF-LS-M12(1)(b)

- 48 I agree with the reasons provided by Ms Jones³⁶ that 'minimising' the removal of tall tussock grasslands is more appropriate than 'avoiding' the removal of tall tussock grassland.

ECO Objectives

- 49 Ms Hunter is recommending a new objective to protect and manage indigenous biodiversity in a way that provides for peoples' wellbeing. I have no objection to this objective, acknowledging it is to be read alongside (and will not trump) the other ECO objectives.

EIT-EN-O1

- 50 Ms Styles³⁷ is recommending adding 'the health and well-being' to the start of this Objective. I support this amendment.

EIT-EN-O2, EIT-EN-P1, EIT-EN-P2, EIT-EN-P3

- 51 Ms Styles³⁸ et al is recommending a suite of amendments to this objective and its supporting policies EIT-EN-P1, EIT-EN-P2, EIT-EN-P3. Most of the amendments are appropriate and could be incorporated into the provisions alongside the amendments recommended in my EiC.
- 52 An exception to the amendments being appropriate are the suite of amendments that introduce directives to maintain or protect generation or operational capacity. For reasons set out in my EiC I do not agree it is appropriate for the RPS to provide blanket protection over existing REG.

EIT-EN-P4

- 53 I have no objection to Ms Styles et al amendments to this policy that add REG development alongside investigation activities.
- 54 I note my assumption that the term 'prioritise' in this policy is relative to prioritising between different REG activities/opportunities, not prioritising

³⁵EiC @ pars 101-103

³⁶EiC @ pars 6.1 – 6.3

³⁷

³⁸EiC @ pp 37-40

REG over clauses a-f. If the intention is to prioritise REG over clauses a-f then I do not support any reference to prioritise in this policy, because to do so would frustrate the appropriate intent of the RPS to not prioritise REG over other matters such as the health and well-being of the natural environment and intention to give effect to the principles of te Tiriti o Waitangi.

EIT-EN-P6 and new EIT-EN Policy

- 55 I do not agree with Styles et al that the management of effects of REG should only be subject to this policy, or that REG should not be subject to environmental limits (which is the effect of the amendments recommended by Styles et al to this policy).
- 56 I do not agree with the rationale of providing a new policy 'in order to ensure that the Energy chapter is appropriately self-contained'. As identified above such an approach frustrates the intended architecture of the RPS and does not support integrated management of the Regions resources, particularly as Policy IM-P12 already provides direction for decision-makers on applications proposing to contravene environmental limits.
- 57 Notwithstanding this, I have no objection (in principle) to the RPS containing a policy that seeks to reconcile the tensions between the need to provide for REG within environmental limits, except:
- (a) The policy should not apply an exemption to limits on freshwater ahead of the FMU process being completed (as doing so would undermine the process set out in the NPSFM20).
 - (b) Irrespective of the benefits of REG, it would be inappropriate to ignore the RPS objectives around tangata whenua, particularly Objective MW-O1 in respect of the Principles of Te Tiriti o Waitangi.
 - (c) A significant benefit of REG is typically benefits provided to local communities. It is therefore appropriate to ensure that any REG activity that might exceed environmental limits is required to provide local benefits.
- 58 If a new policy is to be introduced, then I recommend it be amended as follows:

EIT – EN – P10 Climate Change Mitigation

Except for limits on freshwater quality and quantity, Where a proposed renewable electricity generation activity provides, or will provide, enduring regionally or nationally significant mitigation of climate change impacts, with commensurate benefits for the well-being of people and local communities and the wider environment, decision makers may, at their discretion, allow non-compliance with an environmental bottom line

set in any policy or method of this RPS or in a Land and Water Plan, only if they are satisfied that:

(1) the activity is designed and carried out to avoid, remedy or mitigate adverse effects as far as is practicable having regard to ~~consistent with~~ its purpose and functional needs,

(2) the activity is consistent with other regional and national climate change mitigation activities, and

(3) where adverse effects on the environment cannot be avoided, remedied, or mitigated, decision makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected, and

(4) the activity gives effect to the principles of Te Tiriti o Waitangi.

EIT-EN-M1 and EIT-EN-M2

59 As discussed above I do not support direction of 'protection of operational capacity, as recommended by Styles et al.

60 I do not agree it is appropriate to amend clause 5 as recommended by Styles et al. As identified in my EiC there is no blanket policy directive (including in the NPSREG) to 'avoid' establishment or operation of activities that may result in reverse sensitivity effects or compromise the operation or maintenance of renewable electricity generation activities or adversely affect the efficient functioning of renewable electricity generation infrastructure (including impacts on generation capacity).

EIT-INF-O4

61 I agree with Mr Brass³⁹(par 197-203) to the extent that, if reference to environmental limits is removed from this Objective, then it will be appropriate to amend the objective to clarify that infrastructure is subject to other provisions in the RPS, not just the EIT-INF provisions.

EIT-INF-P11 & EIT-INF-P11

62 I generally agree with Mr Barr in respect of terminology used in EIT-INF-P13 and EIT-INF-P11⁴⁰.

APP1

63 I agree with Mr Coombs⁴¹ that APP1 is really a list of potential values as opposed to criteria for determining what is and what is not an Outstanding Waterbody, and that some of the values are complicated and competing.

³⁹

⁴⁰EiC @ pars 5.12 – 5.33, and pars 5.12 – 5.33

⁴¹EiC @ par 10.1 onwards

- 64 Mr Brass recommends changes to APP1, including the removal of clause c in respect of angling amenity, without providing any rationale for this deletion. This clause should not be deleted without any rationale being provided. Amendments have been proposed to clause (c) in Mr Coupers' EIC for Fish and Game.
- 65 In response to Ms Hunter⁴² I consider that it is appropriate that modified lakes can still be considered outstanding in respect of some attributes, for example recreation. It is logical that if a waterbody is outstanding because of its recreation values then those outstanding recreation values should be protected. There is no need for other (non-outstanding values) to be protected.
- 66 Under the NPS-FM an outstanding water body is 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**. There is no prerequisite that a water body needs to be in a natural state or have outstanding natural values to be considered outstanding. For example, if a modified water body affords recreational opportunities, such as the habitat and fishing afforded by Lake Dunstan, or the recreational use of the artificial wave constructed on the Hawea River, that are highly valued by user groups, then it is reasonable for these waterbodies to qualify as outstanding.
- 67 Dr Keesing⁴³ seeks deletion of "habitat for trout and salmon" as an outstanding ecological value and proposes it instead just be considered under the recreational criteria. On my assessment of the NPS-FM directives in respect of identification and protection of the significant values of outstanding water bodies (policy 8) along with the protection of the habitat of trout and salmon (policy 10), there is no policy support for Dr Keesing's suggestion. The management of species interaction (being his concern) is dealt with in other parts of the RPS, not in the context of identification of outstanding values.
- 68
- 69 There are a range of views on the introduction of the much more detailed APP1 that has come through from the section 42A report. It is apparent that the transferability from the Hawkes Bay to Otago is not a good fit for some of the criteria and values. Others are completely missing whereas they would have been captured by the more generic notified version (for example commercial and non-commercial motorised boating on lakes for example, sailing, windsurfing etc).

APP6

⁴²EiC @ par 9.5

⁴³EiC @ par 17.16

- 70 Mr Place comments on APP6 opining among other things that it is too conservative, including when compared to (for example) the Australian Geomechanics Society Practice Note Guidelines for Landslide Risk Management 2007 (AGS) methodology. While helpful in respect of providing guidance, the Australian Geomechanics Society Practice Note Guidelines for Landslide Risk Management 2007 (AGS) methodology, should not provide any authoritative direction until it is transparently tested with affected stakeholders.
- 71 It is not appropriate to limit consideration of natural hazard risk to 'technical experts' (assuming Mr Place is excluding planning experts in this reference) and affected stakeholders from determining tolerability. To do so is ignorant of real world (practical) scenarios and real costs on people and communities. I've found, in practice, Councils (territorial and regional) lose sight of actual costs and risks compared with theoretical costs and risks, and therefore I consider it important to ensure that community views and tolerance for risk (including associated costs) is provided for.
- 72 By way of an extreme (yet true) example of inappropriate and costly approaches to natural hazard risk, I was involved in a resource consent application where (ORC) tried (through submissions, evidence and an appeal to the environment court) to prevent a hotel on a site zoned for a hotel because, among other natural hazard risks, the site could be affected by an 80m high tsunami. Similarly, in another application I have been involved in, QLDC declined a resource consent application for a large storage shed in a rural zone because of rockfall risk, even though the storage shed provided a safer environment than the status quo and the theoretical risk was insignificant compared to the actual risk the affected person faced on a day-to-day basis (an outdoor adventure company. In both examples above the consents were eventually approved (by the Court on appeal), at costs of hundreds of thousands of dollars to each applicant.
- 73 Aside from risks associated with major earthquakes and coastal Tsunamis, there are few pressing natural hazard risks at a community scale that justify costly regulation (i.e. regulation that directly intervenes with property rights and requires people to spend lots of money to pay for their own technical advice to participate in resource management processes) without or ahead of meaningful engagement with affected communities to determine risk tolerability.
- 74 Identifying and managing natural hazard risk is critically important for implementing the purpose of the Act, and this often (but not always) requires solid 'technical' findings. However, identifying and managing natural hazard risk should also be done in a way that is:

- (a) Moderated through meaningful engagement with the affected stakeholder/community.
- (b) Not too conservative where the actual financial costs of being conservative are relatively high compared to the theoretical costs of a natural hazard event occurring.
- (c) Inclusive of a collaborative approach to working with affected stakeholders and communities, not creating or relying on arbitrary or untested methodologies tailored to the local context.

75 I maintain that APP6 be amended to ensure that it does not carry any legal weight or priority nor set unreasonably low thresholds for determining what is a significant natural hazard risk without fair and transparent community input into the formulation of the risk determinants and what the community is willing to tolerate.



Ben Farrell

14 December 2022