

Before a Hearings Panel
Appointed by the Otago Regional Council

under: the Resource Management Act 1991

in the matter of: submissions and further submissions on the Proposed
Otago Regional Policy Statement (non-freshwater parts)

and: **Sanford Limited**

Submitter #122

Statement of Rebuttal Evidence of Adrian Low

Dated: 14 December 2022

Reference: JM Appleyard (jo.appleyard@chapmantripp.com)
ARC Hawkins (annabel.hawkins@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 3 365 4587

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch



STATEMENT OF REBUTTAL EVIDENCE OF ADRIAN LOW

INTRODUCTION

- 1 My full name is Adrian Low.
- 2 I prepared a statement of expert planning evidence dated 23 November 2022 (*Evidence in Chief*) on behalf of Sanford Limited in respect of its submissions and further submissions on the Proposed Otago Regional Policy Statement (*Proposed RPS*).
- 3 My qualifications and experience are set out in paragraphs 2 – 6 of my Evidence in Chief.
- 4 I repeat the confirmation given at paragraph 7 of my Evidence in Chief that I have read the Code of Conduct for Expert Witnesses and agree to comply with it.

SCOPE OF REBUTTAL EVIDENCE

- 5 The purpose of this Rebuttal Evidence is to respond to matters raised in the planning evidence of other witnesses which provide evidence on Policy CE-P11 Aquaculture. Specifically:
 - 5.1 Mr Brass on behalf of the Director General of Conservation (*D-G*); and
 - 5.2 Mr Bathgate on behalf of:
 - (a) Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (whom Mr Bathgate collectively refers to as Kāi Tahu ki Otago);
 - (b) Waihōpai Rūnaka, Te Rūnanga Ōraka Aparima and Te Rūnanga o Awarua (whom Mr Bathgate collectively refers to as Ngāi Tahu ki Murihiku); and
 - (c) Te Rūnanga o Ngāi Tahu.

MR BRASS

- 6 At paragraphs 88 – 93 of his evidence Mr Brass states the following in respect of Policy CE-P11:

88. The D-G's submission raised concern that this policy does not add anything to NZCPS 2010 Policy 8, and that given likely interest in aquaculture in Otago within the life of the RPS, the policy needs to provide more

direction on what places may be appropriate or inappropriate for aquaculture.

89. *The s42A Report has partly addressed this, by adding consideration of biosecurity risks and cultural values.*

90. *While I fully support the relevance of biosecurity risks and cultural values, I am concerned that the s42A version of the Policy is now somewhat unbalanced and could potentially be misconstrued. It still largely repeats NZCPS 2010 Policy 8, and adds only two relevant matters for determining which places may be appropriate or inappropriate for aquaculture. This could be taken as indicating that those two matters are the only relevant considerations, or have some priority over other considerations which are not specified in the Policy.*

- 7 I agree with Mr Brass that including the two additional considerations in Policy CE-P11 proposed by the Reporting Officer could be construed as meaning they should be afforded priority when determining the appropriate locations and limits for aquaculture in Otago. However, I do not agree with Mr Brass's proposed relief to address this submission point.
- 8 The RPS contains a broad suite of provisions which specify objectives and policies for managing the effects of activities on other important values attributed to the coastal environment, including indigenous biodiversity,¹ cultural values (including customary fisheries, mātaītai reserves and taiāpure),² natural character,³ natural features and landscapes,⁴ surf breaks⁵ and public access.⁶ Under the notified wording of Policy CE-P11, the direction in these provisions would all be considered when assessing the appropriate location and limits for aquaculture in Otago. Be that when the Regional Coastal Plan is being prepared or amended to identify areas appropriate for aquaculture in accordance with Method CE-M3(7), or before that process is complete, when an individual consent application is being considered. The policy is not drafted in a manner which circumvents this wider consideration in any way.

¹ Including Policy CE-P5; and all objectives and policies of the ECO chapter except ECO-P3, ECO-P4, ECO-P5 and ECO-P6.

² Including Objective CE-O1, Objective CE-O4, Policy CE-P3 and Policy CE-P13.

³ Including Objective CE-O3 and Policy CE-P4.

⁴ Including Objective CE-O3 and Policy CE-P6.

⁵ Including Objective CE-O1 and Policy CE-P7.

⁶ Including Objective CE-O2, Objective CE-O5, Policy CE-P9 and Public CE-P10.

- 9 For those reasons, in my view the notified version of Policy CE-P11 should be retained as follows (changes to the version of Policy CE-P11 recommended by the Reporting Officers' shown in redline):

CE-P11 – Aquaculture

Provide for the development and operation of aquaculture activities within appropriate locations and limits, taking into account:

~~(1A) risks to biosecurity from disease or introduced pest species;~~

~~(1B) the effects of aquaculture on cultural values, including effects on mahika kai and kaimoana practices, and customary fisheries, including mātaihai reserves and taiāpure;~~

- (1) the need for high quality water required for an aquaculture activity,
- (2) the need for land-based facilities and infrastructure required to support the operation of aquaculture activities, and
- (3) the potential social, economic and cultural benefits associated with the operation and development of aquaculture activities.

MR BATHGATE

- 10 At paragraph 72 Mr Bathgate addresses the direction Policy CE-P11 to '*Provide for the development and operation of aquaculture activities within appropriate locations and limits...*'

The chapeau wording of CE-P11 is presumptive of aquaculture, with little guidance as to what the 'appropriate locations and limits' for aquaculture are - although some guidance is provided by the additions of clauses (1A) and (1B) in response to the Kāi Tahu ki Otago submission.⁶² I consider that starting CE-P11 with the wording 'Only allow' and further amending clause (1A) to expand on the types of environmental effects⁶³ provides better policy direction as to what appropriate locations or limits might be and that aquaculture in the Otago region must be assessed against these.

- 11 The chapeau in Policy CE-P11 directly reflects the direction in Policy 8 of the New Zealand Coastal Policy Statement 2010 (NZCPS) that aquaculture be 'provided for'. I disagree with Mr Bathgate that the chapeau in Policy CE-P11 needs to be changed to the more

restrictive 'Only allow' because CE-P11 is 'presumptive of aquaculture'.

- 12 As I set out above, Policy CE-P11 is not drafted such that it should not be read in isolation, and the other RPS provisions which address how effects on other values are to be managed would be relevant when considering where and how aquaculture should be provided for in Otago. Policy CE-P11 does not suggest the requirements of those other provisions, which include many directive policies, be overridden. In my view, this is not a collection of provisions which is 'presumptive of aquaculture' and is an appropriate approach given:
- 12.1 the opportunity offshore aquaculture presents in Otago;
 - 12.2 the explicit direction in the NZCPS that aquaculture be 'provided for'; and
 - 12.3 the absence of any major environmental issues associated with aquaculture in the region which mean its effects on the values covered by the other RPS provisions (biodiversity, cultural values etc) need to be controlled in a more stringent or specific manner than contemplated in those provisions.
- 13 I also foresee implementation issues with Mr Bathgate's proposed use of 'only allow' in this policy. The chapeau 'only allow' is generally used in plans to identify the limited suite of circumstances where an activity does not need to be avoided, but the matters listed in (1A) – (3) of Mr Bathgate's proposed version of Policy CE-P11 are very general, and do not clearly prescribe when aquaculture is to be allowed or not allowed (i.e., avoided).

CONCLUSION

- 14 When identifying appropriate locations and limits for aquaculture, Policy CE-P11 will be read alongside the RPS provisions which prescribe objectives and policies for managing effects on other values. The notified version of CE-P11 does not suggest that the policy should be read in a more confined manner.
- 15 In my view the notified version of Policy CE-P11 should be retained.
- 16 I acknowledge this differs from the conclusion in my Evidence in Chief that the Reporting Officer's version of Policy CE-P11 does not require amendment (i.e., his proposed new clauses 1A and 1B are acceptable inclusions). For the reasons set out above my view has changed after reviewing the evidence of Mr Brass.

Adrian Low
14 December 2022