

Before the Independent Hearing Panel

Under the Resource Management Act 1991

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

Legal Submissions on behalf of Otago and Central South Island Fish and Game Councils (#0321) on Topics: Significant Resource Management Issues for the Region (SRMR), Integrated Management (IM) Urban Form and Development (UFD), Energy Transport and Infrastructure (EIT), Ecosystems and Biodiversity (ECO)

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Submitter's solicitors:
Maree Baker-Galloway | Rosie Hill
Anderson Lloyd
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348
p + 64 3 450 0700
maree.baker-galloway@al.nz | rosie.hill@al.nz

**anderson
lloyd.**

Introduction

- 1 Fish and Game will appear twice before the Panel. This first appearance will address the panel on the relevant Topics heard to date by the Panel, namely:
 - (a) Significant Resource Management Issues for the Region (SRMR),
 - (b) Integrated Management (IM)
 - (c) Urban Form and Development (UFD),
 - (d) Energy Transport and Infrastructure (EIT),
 - (e) Ecosystems and Biodiversity (ECO)
- 2 Fish and Game will return to address the panel on the Land and Freshwater chapter and related provisions, including APP1, in respect of which it has an interest.
- 3 The touchstones of Fish and Game's case in respect of the pORPS are;
 - (a) The pORPS needs to put the health of the natural environment first;
 - (b) The National Policy Statement for Freshwater Management (**NPSFM**) and Te Mana o te Wai (**TMOTW**) require that there be no degradation of water quality;
 - (c) Putting the natural environment first includes the importance to peoples' health and wellbeing derived from recreational use and enjoyment in the natural environment/outdoors;
 - (d) Included in the above is the importance of protecting the habitat of trout and salmon;
 - (e) At the pORPS level there needs to be clear direction that environmental limits should be set that will protect, or restore, ecosystem health, and that all resource use is subject to those limits.
- 4 In Fish and Game's view, priority placed on the health and well-being of a water body in accordance with TMOTW creates an additional check that helps combat unaddressed cumulative effects.
- 5 Fish & Game submits that the PORPS 2021 should adopt concepts of TMOTW for the whole environment because of the Integrated Management framework. As TMOTW is/will be embedded in the freshwater framework due to the NPSFM, the integrated management chapter must therefore

bring this through into the entire RPS framework given ORC's approach¹. This can be done by:

- (a) creating a clear and directive hierarchy, with the natural environment as the priority;
- (b) imbuing the anthropogenic concepts of health, well-being and resilience upon the natural environment. As stated in Fish and Game's Submission:

7. This imbues both water bodies and freshwater ecosystems with the characteristics of being healthy and well or, conversely, unhealthy and un-well. Section 1.3 of the NPS-FM 2020 states the mauri of the wai should be protected and that all New Zealanders bear a responsibility to care for freshwater.⁴ From a European cultural perspective,⁵ anthropomorphising components of the environment can sometimes seem unnatural; however, it has benefits for natural resource management. Decision making under the RMA is often compartmentalised, such that adverse effects on components of the environment (i.e., ecology, amenity, economic) are typically discussed individually with the assumption that protecting the sum of all parts will protect the whole. However, this protection has clearly not happened, as evidenced by environmental degradation that has occurred while the RMA has been in force.⁶

and

- (c) ensuring all actions support the health, well-being and resilience of the natural environment.

6 These submissions gather Fish and Game's relief into the following overarching themes:

- (a) To protect and restore water bodies and freshwater ecosystems;
- (b) Freshwater ecosystems often include trout and salmon (and other introduced species) interacting as part of a functional unit;²
- (c) The habitat of trout and salmon is to be protected insofar as this is consistent with protecting the habitat of indigenous freshwater species;
- (d) The protection and restoration of the health of water bodies and freshwater ecosystems as the first priority in accordance with

¹ Rebuttal Evidence of Ben Farrell, 14 December 2022, [23] onwards

² Note the definition of "ecosystem" in the Southland Land and Water Plan being considered by Her Honour Judge Borthwick's division is *A dynamic complex of plant, animal and micro-organism communities and their non-living environment, interacting as a functional unit.*¹²³ United Nations Convention on Biological Diversity, 1992

TMOTW requires a range of actions and a holistic approach to all causes of degradation;

- (e) Included within the ranges of actions required to protect and restore the health and wellbeing of freshwater ecosystems is that all activities to be managed within limits³;
- (f) The positive health and wellbeing effects of outdoor recreation, including in and around water bodies, should be recognised and valued;
- (g) Precautionary approach;
- (h) Cumulative effects;
- (i) Definitions of key terms

7 In terms of TMOTW, it is submitted the finding and explanation below from Judge Borthwick's division⁴, is of assistance:

[30] While expressed differently in earlier iterations of the NPS-FM, the centrality of Te Mana o te Wai to freshwater management is a constant.

[31] The NPS-FM 2014 (amended 2017) was closely considered by the Environment Court in *Aratiatia Livestock Ltd v Southland Regional Council* on appeal from decisions on the proposed Southland Land and Water Plan. The court's observations in *Aratiatia Livestock Ltd* remain relevant and bear repeating here:

(a) Te Mana o te Wai is not a Māori centric but a water centric approach;

(b) while expressed in te reo Māori, Te Mana o te Wai benefits all New Zealanders;

(c) Te Mana o te Wai is a concept that requires natural and physical

resources be managed in a way that recognises that by protecting the health of freshwater, the health and well-being of the wider environment is also protected. This concept entails a fundamental shift in

³ Note the focus on limits is not intended to detract from, or reduce the importance of the positive obligation to provide for the health and wellbeing of water bodies taking a holistic (rather than compartmentalised) approach

⁴ Otago Regional Council (**Plan Change 7 Decision**) Dec No. [2021] NZEnvC 164

societal perspectives on sustainable management of fresh water.

Freshwater provisions

- 8 There are specific issues in respect to trout and salmon habitat and water bodies generally that are principally addressed in the Land and Freshwater chapter being considered by this Panel (not the Freshwater Commission).
- 9 Fish and Game will address the Panel on the Land and Freshwater chapter, along with the following linked provisions in the rest of the pORPS, at the May hearing:
 - (a) SRMR-I7, APP1, APP3,
 - (b) And the provisions that Fish and Game originally sought to add to the ECO chapter, that specifically addressed species interaction (new ECO-O4, new ECO-P11, new ECO-M9, ECO-PR1)
- 10 At the May appearance, Fish and Game will also address Ms Boyd's⁵ recommendation to include a new method to implement LF-FW-P7 (2A) in respect of species interaction, however I note that LF-FW-P7 is not a provision being considered by this Panel, and that the method recommended by Ms Boyd is not included within the section 42A draft amended pORPS.

Protect and restore health of water bodies and freshwater ecosystems as a priority and positive obligation

- 11 An overarching theme and objective of Fish and Game is that the pORPS should provide clear and unambiguous direction that the health of freshwater ecosystems and water bodies should be protected, and if degraded, restored.
- 12 There are specific sub-issues under this heading that will be addressed separately in the Land and Freshwater chapter hearing. However the overarching direction is set in the SRMR, IM and ECO chapters. And consistent references to this objective are also required in the EIT chapter. Fish and Game's relief under this heading is in respect of the following provisions: IM-O1, IM-O3 (s42A recommendations supported), IM-P2 (support amalgamation with IM-P1), IM-P5, IM-P13, IM-P14,

⁵ Brief of Supplementary Evidence of Felicity Ann Boyd – Introduction and General Themes, dated 11 October 2022 at para 26 onwards

- 13 Mr Couper's evidence provides an overview of the general state of Otago's aquatic ecosystems, looking at four components – water quality, water quantity, species present and their interactions, and the physical alteration of water bodies. Mr Couper states that these components can be thought of as the foundations of stream health and the state of them can indicate anthropogenic degradation of the waterways.⁶
- 14 In terms of water quality, Mr Couper found strong evidence of degradation in multiple waterways.⁷ The Environment Court in the Plan Change 7 Decision described the state and trends of water quality in *Annexure 4: Water Quality* to the Decision. The Court recorded⁸:

Otago Region as a whole

[37] There are 46 sites at rivers across the region where attributes do not meet the NPS-FM bottom line for *E.coli*, 40 sites which do not meet the NPS-FM bottom line for suspended fine sediment and 14 sites where DRP is in band “D”. In addition, there are 25 sites (for TN) and 23 sites (for DRP) which are elevated above the 20% exceedance criteria in the MfE guidance criteria for managing NPSFM periphyton attribute states in rivers.

[38] The 20 year trends across the region are predominantly degrading for all variables apart from ammoniacal nitrogen, while the predominant trend in the 10 year trend period varies depending on the water quality attribute.

...

[48] What can be seen from the summaries we have provided for the water quality in each of the FMUs/rohe and for the Otago region as a whole, is that while there are attributes which are positive in some waterways in some of the FMUs/rohe, the negatives are more numerous than the positives.

- 15 In terms of water quantity, Mr Couper's evidence describes how large abstraction regimes have significantly altered the ecological values and health of a number of waterways throughout the region.⁹ Mr Couper

⁶ Statement of Evidence of Jayde Malthus Couper on behalf of Otago Fish and Game Council dated 28 November 2022, para 9

⁷ Ibid, para 32 onwards

⁸ Plan Change 7 Decision, page 10 and 13 of Annexure 4

⁹ Ibid, para 58 onwards

highlights extracts from the recent Plan Change 7 decision on the Otago Water Plan that I also wish to bring to your attention.

- 16 In its 2021 decision on Plan Change 7, limiting terms for surface water abstraction consents on an interim basis, the Environment Court commented on the scale of abstraction in Otago.^{10, 11}

“Over the next five years a significant proportion of permits authorising the take and use of water in Otago will expire. Included among these are hundreds of deemed permits, many of which originated during Otago’s goldrush. They authorise the taking of water in quantities large enough to sluice a goldfield and few, if any, conditions are attached as to the use of water.”

...

“The region has been subdivided into nine FMUs/rohe based on major and minor catchment boundaries. The largest of these is the Clutha/Mata-Au FMU which covers 67% of the region with 88% of its mean flows coming from major sources in the Southern Alps. The mean flows in the five rohe which make up this FMU (as percentages of the total) are Upper Lakes 72%, Dunstan 15%, Roxburgh 4%, Manuherekia 3% and Lower Clutha 6%.

The significantly drier Roxburgh and Manuherekia rohe have a combined area about the same as the Upper Lakes rohe but with a combined mean flow of about one-tenth of the mean flow of the Upper Lakes rohe.

Water use across the region as indicated from the ORC consents database has a total maximum rate of 155 m³/s from 1638 consents. This total includes 309 deemed permits totalling 41.3 m³/s mostly concentrated in the Dunstan, Manuherekia and Roxburgh rohe and Taieri FMU.”

- 17 Other key issues identified by this decision are:

¹⁰ Plan Change 7 Decision [1]

¹¹ Plan Change 7 Decision, Annexure 5, [2-4]

“... the levels of allocation for some freshwater bodies in the region are high in comparison with the current primary allocation limits...”¹²;

“... both water demand and water availability would be impacted by climate change...”¹³; and

“... there are a range of issues affecting the current coverage and continuity of flow recording in the region”¹⁴

- 18 In respect of anthropogenic physical alterations of water bodies, Mr Couper describes the scale of these from para [72] onwards.
- 19 The degree of degradation generally of many of Otago's water bodies is not disputed.
- 20 Therefore, from Fish and Game's perspective it is important that there not only be a consistent reference to "protection", but that there also be a consistent reference to the requirement to "restore". Given the state of Otago's water bodies, there needs to be a very clear positive obligation to provide for their health. To this end Fish and Game have promoted a new definition of the term "restore", so that it can be applied with certainty and consistency:

Restore means to return to a state of good health, well-being and resilience.

A consistent directive to protect as well as "restore" is also consistent with the approach outlined by the Environment Court in the first decision in respect of the Southland Land and Water Plan in respect of TMOTW.¹⁵

[59] As a matter of national significance, the health and wellbeing of water are to be placed at the forefront of discussion and decision-making. Only then can we provide for hauora by managing natural resources in accordance with ki uta ki tai. This is our second key understanding.

...

¹² Plan Change 7 Decision, Annexure 5, [6]

¹³ Plan Change 7 Decision, Annexure 5, [8]

¹⁴ Plan Change 7 Decision, Annexure 5, [9]

¹⁵ *Aratiatia Livestock Ltd v Southland Regional Council* [2019] NZEnvC 208

[61] In directive language the NPS-FM "requires that in using water you must also provide for" the health of the environment, the health of the waterbody and the health of the people. We interpret the direction "you must also provide for" [our emphasis] as applying to local authorities in their capacity to make policy statements and plans and consequently, consent authorities whose permission is needed in order to carry out an activity for which consent is required and ultimately, every user of water.

[62] We interpret 'also' as meaning 'in addition', thus in using water you must in addition provide for the health of the environment, of the waterbody and of the people. Subject to what the parties may say about how the Treaty principles are taken into account in this plan, this direction appears in line with the Treaty principle of active protection and would impose a positive obligation on all persons exercising functions and powers under the Act to ensure that when using water people also provide for health. This may have been what Nga Runanga's planning witness was meaning when she referred to the Treaty principles. This direction juxtaposes with the usual line of inquiry as to how health will be impacted by a change in water quality (i.e. the effects of the activity on the environment). The NPS-FM makes clear that providing for the health and wellbeing of waterbodies is at the forefront of all discussions and decisions about fresh water. This is our third key understanding.

- 21 Appropriate use of the directive to "restore" will also help better give effect to Policy 13 of the NPS-FM:

The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.

- 22 Relevant also to this theme is Fish and Game's relief which seeks that the term "minimise" be defined, so that it is applied consistently throughout.

Minimise means to reduce, to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning.

Habitat of trout and salmon to be protected

- 23 There are overarching provisions in the ECO and IM chapters, in respect of which Fish and Game submitted it is necessary to add reference to the term "ecosystem" generally, and habitat of trout and salmon specifically.

24 Fish and Game is still pursuing changes to IM-M2, ECO-01, ECO-P10, ECO-M4, ECO-M5, ECO-M8, ECO-AER1, ECO-AER2 on basis that pursuing ecosystem health overall (at least in freshwater context re trout and salmon) need not be inconsistent with indigenous biodiversity objectives, given policies 9 and 10 of the NPSFM and definition of ecosystem health does not exclude an ecosystem that provides healthy habitat for trout and salmon.

25 This is consistent with both the section 7 requirement to have particular regard to the protection of the habitat of trout and salmon, and the NPSFM directive in policies 9 and 10:

Policy 9: The habitats of indigenous freshwater species are protected.

Policy 10: The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.

In the words of Sir Geoffrey Palmer KC16:3

The specific recognition of trout and salmon habitats in the RMA reflects both their historical recreational importance and their role as an important indicator species for the health of our rivers, lakes and streams as a means of assessing ecosystem health.

26 The reason for this is that trout and salmon have a higher ecological requirement for freshwater quality and quantity than most indigenous freshwater species. As set out in the evidence of Mr Couper from [122] onwards, a river that provides good habitat for trout will also ensure good habitat quality for other species.

27 Mr Paragreen's evidence in chief from [82] onwards discusses the need for clarity about what exactly "ecosystem health" means – a concept that comes through particularly in the IM chapter.

28 The High Court in *Otago Fish and Game Council v Otago Regional Council* [2021] NZHC 3258 is of assistance - at the highest level section 5 requires that the life supporting capacity of water and ecosystems be safeguarded. At question 4 the High Court considered the question *does "safeguarding the life supporting capacity of ... water ... and ecosystems" in s 5 of the RMA rightly include the sustainable management of trout and their habitat?*

¹⁶ Sir Geoffrey Palmer KC *Protecting New Zealand's Environment: An Analysis of the Government's Freshwater Management and Resource Management Act 1991 Reforms* (Wellington, September 2013) at [138].

- 29 The finding on this question is of assistance, in that the High Court confirmed the sustainable management of trout comes within the safeguarding of life supporting capacity purpose of s 5 (and that the Environment Court applied that):

[176] Fish & Game has not established there was an error of law in the Environment Court's interpretation and application of s 5 of the RMA. Question 4 will nevertheless be answered "Yes", not because the Court made an error of law but because (as the Environment Court itself recognised) **the sustainable management of trout in their habitat come within the safeguarding purpose of s 5.**

- 30 A disciplined step through the NPS-FM also supports the directive that including trout and salmon habitat protection in the concept of ecosystem health, is appropriate and consistent with implementing both Part II of the Act and the NPS-FM. As noted above, upfront there is the policy 10 qualified directive to protect the habitat of trout and salmon – as part of achieving the one Objective of the NPS-FM, and its three priorities. Then clause 3.5 requires an integrated management approach, including at (b) recognising interactions between ecosystems. It would be inconsistent with this approach to attempt to silo or separate out management of indigenous ecosystems, from the broader ecosystems that include introduced species, with which there is interaction and integration.
- 31 Clause 3.9 requires that for each FMU, both the compulsory values and other values that apply to an FMU, be identified. The description of the compulsory value "ecosystem health" in Appendix 1A takes the same approach as Policies 9 and 10 effectively- in that a healthy freshwater ecosystem should have the 5 biophysical components providing for trout and salmon habitat, as long as that is consistent with protecting the habitat of indigenous species:

In a healthy freshwater ecosystem, all 5 biophysical components are suitable to sustain the indigenous aquatic life expected in the absence of human disturbance or alteration (**before providing for other values**).

- 32 Value 5 "Fishing" explicitly requires that when setting attributes for this value, the attributes *will need to be specific to fish species such as salmon, trout, tuna, lamprey or whitebait.*
- 33 Therefore the manner in which all of the provisions interact mean there is no exclusion of trout and salmon from the NPS-FM concept of ecosystem health.

- 34 The Environment Court's assessment of how to approach ecosystem health in the *Aratiatia* decision, is also of assistance on this point, when the Court relied on the experts' advice as set out below¹⁷:

[104] It is the experts' view that water quality and ecology must be considered using both a whole-of-catchment and site-specific approach. This involves consideration of historic and current land use, the quality and quantity of groundwater and all freshwater bodies and the sea on an integrated basis. As all waterbodies are interconnected, not adopting a holistic whole of catchment approach risks drawing incorrect conclusions.

- 35 As set out in the evidence of Mr Couper from [127] onwards, pure "indigenous ecosystems" in the Otago region are 'incredibly rare and geographically limited if not non-existent". In that regard, it makes no sense for the focus of the ECO chapter to be solely on indigenous ecosystems – but a strict reading of the provisions at present directs a focus only on the rare few ecosystems that are fully indigenous, with no recognition for the bulk that include introduced species. Many valued introduced species are fully embedded into the ecosystems of the Otago region.
- 36 Therefore high level changes are required to some provisions to acknowledge that introduced species do form part of the ecosystems (and ecosystem health) in Otago (whether it be terrestrial or aquatic). Fish and Game sought changes to SRMR-I2, ECO-O1, ECO-P10, ECO-M4, ECO-M5, ECO-M8, ECO-AER1, ECO-AER2 in this regard.
- 37 In respect of SRMR-I2 Fish and Game support the changes made in the s 42A report version.
- 38 In Mr Paragreen's evidence in chief for Fish and Game from [78] onwards he confirmed that rather than amending some of the provisions in the ECO chapter to address trout and salmon habitat, fish passage and species interaction (in addition to the above provisions), that instead those provisions and the giving effect to of the NPS-FM, can be addressed in the Land and Freshwater chapter. The provisions on which Fish and Game submitted in the ECO chapter that will now be pursued in terms of relief in the Land and Freshwater chapter are: new ECO-O4, new ECO-P11, new ECO-M9, ECO-PR1,

¹⁷ *Aratiatia Livestock Ltd v Southland Regional Council* [2019] NZEnvC 208

The protection and restoration of ecosystems requires all activities to be managed within limits

- 39 One of the essential mechanisms in respect of which there needs to be clear direction in the pORPS, is the requirement to set limits (in a manner that does not detract from the positive obligation to act in a holistic manner to protect and restore ecosystem health). In Fish and Game's view in order to protect and restore natural ecosystems at and to a healthy state it is fundamental that any use of natural resources is constrained by limits. Reference to using resources subject to biophysical limits is an important paradigm shift that should be brought through consistently in the pORPS. Fish and Game's focus is biophysical limits. Fish and Game agrees that other natural features (such as natural character and landscape) are important to the quality of experiences in the outdoors and also need to be appropriately managed. Management of these natural features is important, however does not fit neatly into the quantifiable and objective manner in which setting (biophysical) limits does such as water quality and quantity, and providing for habitat— hence the distinction between biophysical limits and other environmental constraints or controls.
- 40 On this point, Fish and Game's submission originally sought the definition and use of the term "environmental limits".
- 41 In addition to Fish and Game's original relief above, Mr Farrell's suggestion that the defined term "biophysical limit" might alternatively be used throughout the pORPS in the provisions intended to prevent degradation of ecological health¹⁸ and to protect human health – biophysical limits in this sense would be appropriate for air, indigenous biodiversity, coastal water, estuaries, freshwater and soil.
- 42 It is noted Ms Boyd has reviewed her position¹⁹, and recommended that definition of limits in the pORPS is still proposed to only use the defined term in a freshwater context, as per the NPSFM. While this is obviously acceptable in terms of Fish and Game's statutory role and interests, to be of assistance we still query whether the concept should be applied more broadly and consistently, across the ECO chapter, and the use and development chapters, where the concept of using natural resources within

¹⁸ Note Mr Farrell's definition of 'biophysical limit' referenced "ecological integrity". However it is more appropriate to reference "ecological health" given the NPSFM definition of the same.

¹⁹ Brief of Supplementary Evidence of Felicity Ann Boyd – Introduction and General Themes, dated 11 October 2022

limits should sensibly be applied across the board, if the Panel is minded to apply this consistently to both terrestrial and aquatic ecosystems.

- 43 Regardless of whether the term is the NPSFM definition of limit, "environmental limit" or "biophysical limits", Fish and Game consider there should be clear and unambiguous direction throughout the pORPS provisions that consistently require that such limits be set as part of the suite of mechanisms to give effect to TMOTW, the protection and restoration of the health of water bodies and their freshwater ecosystems, including the habitat of both indigenous species, and trout and salmon. In this regard, a suite of changes is sought to provisions in the IM, EIT and ECO chapters (and the Land and Freshwater chapter which will be addressed at the later hearing). Fish and Game consider there should not be an exemption from complying with limits, even for REG, subject to the exceptional circumstances provided for in IM-P12:

(a) IM-P1, IM-P2 (support amalgamation with IM-P1), IM-P4, IM-P12, IM-M1, EIT-EN-O2, EIT-EN-P1, EIT-EN-P3, EIT-EN-M1,]

- 44 It is submitted that it would be preferable for the pORPS to make this clear and consistent direction that the use of resources is subject to environmental or biophysical limits in a manner consistent with ki uta ki tai – i.e. not just in respect of freshwater, but across the natural environment/ecosystems generally. It will then be up to the relevant regional and district plans to implement that direction, and set and enforce those limits. Ultimately however, Fish and Game's statutory interest is primarily in relation to freshwater habitats and implementation of the NPS-FM.
- 45 In respect of IM-P1 specifically, Mr Farrell has recommended drafting that is intended to assist with the question of addressing internal policy conflicts, including as between national policy statements. It is considered that the section 42A version weakens what was previously clearer in IM-P1 and P2.

The positive health and wellbeing effects of outdoor recreation, including in and around water bodies, should be recognised and valued

- 46 In order that the pORPS properly provide for people's health and wellbeing, Fish and Game consider there should be a more explicit positive acknowledgement of the importance and protection of people's ability to access the outdoors for recreation (active and passive) and of course for harvesting food. Specific to Fish and Game's interest is that water bodies that support recreation and amenity values are highly valued natural features – and for this reason, as well as intrinsic/non-anthropocentric

reasons, they should be recognised as important, protected, and where degraded – should be restored.

- 47 The evidence of Mr Couper and Mr Paragreen supports the explicit, positive acknowledgment of the importance of accessing natural places for people's health and wellbeing. Mr Couper from [131] illustrates just how popular and wide spread angling and gamebird hunting in particular is, both nationally and in Otago. Mr Paragreen's evidence from [91] onwards also addresses this point. He explains it is not just ensuring that contact with water does not cause adverse health outcomes – it is also the positive fact that access to and recreation in the outdoors is good for peoples' health and wellbeing. He cites research that shows there is a strong relationship between outdoor recreation and human health.
- 48 At the outset, Fish and Game submit that the positive health and wellbeing benefits people get from accessing the outdoors in Otago should be recognised at the SRMR as it is a positive matter of significance that should always be factored into decision making.
- 49 Following on from Fish and Game's submission that sought a new issue to make the positive recognition, Mr Farrell's evidence in chief suggested drafting that would give effect to this relief, entitled "SRMR-112 – Social, cultural and economic wellbeing of Otago's communities depends on use and development of natural and physical resources". An issue to this effect that explicitly acknowledges the significant positive human health and well-being benefits is still being pursued by Fish and Game.
- 50 For clarity, the JWS 22 March 2023 was specifically addressed to a new issue for Infrastructure specifically, and the 29 March JWS was directed to users of natural resources (primary production, mineral and aggregate extraction, tourism and industrial activities). Neither of these JWS traversed into the new stand alone issue sought by Fish and Game in respect of human health and well-being benefits derived from accessing the outdoors.
- 51 In the UFD chapter, one change is sought to UFD-P7 to require development in rural areas provide for/enable outdoor recreation. Given that the urban focused provisions in the UFD chapter do explicitly provide for recreation in urban areas²⁰, it seems non-sensical not to have a corresponding provision in the rural policy.

²⁰ UFD-P5

- 52 In respect of APP9, Fish and Game support the addition in the 42A report of "recreational values" to the associative attributes criteria for identification of outstanding and highly valued features and landscapes.
- 53 Additional changes are sought to the Land and Freshwater chapter on this theme also, and that will be addressed further with the Panel in May (new LF-WAI-P3 (11), new LF-LS-P20 (5), LF-LS-P22(3), LF-LS-M12)

Precautionary approach

- 54 Fish and Game seek that "precautionary approach be defined²¹:

Precautionary approach means an approach that:

(a) avoids not acting due to uncertainty about the quality of quantity of the information available, and

(b) interprets uncertain information in a way that best supports the health, well-being and resilience of the natural environment

- 55 A definition is particularly necessary if the section 42A recommendation to delete IM-P15 is adopted.

Witnesses

- 56 Nigel Paragreen
- 57 Jayde Couper
- 58 Ben Farrell

Dated this 19th day of April 2023

Maree Baker-Galloway

Maree Baker-Galloway/Laura McLaughlan

Counsel for Otago Fish and Game Council

²¹ Fish and Game would also support the definition as sought by the Waitaki irrigators

Appendix – Relief sought by Otago Fish and Game Council

Fish and Game submission points are as per 3 September 2021 Submission.

Mr Farrell's recommendations tracked against the section 42A Report version

Black text with grey shading: provisions to be addressed at the hearing in May

Part 1 – INTRODUCTION AND GENERAL PROVISIONS

Interpretation

Mr Farrell recommends a new definition be inserted for minimise, as follows:

Minimise means to reduce to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning.

Mr Farrell recommends a new definition be inserted for precautionary approach, as follows:

Precautionary approach means an approach that:

(a) avoids not acting due to uncertainty about the quality of quantity of the information available, and

(b) interprets uncertain information in a way that best supports the health, well-being and resilience of the natural environment

Mr Farrell recommends a new definition be inserted for restore, as follows:

Restore means to return to a state of good health, well-being and resilience.

PART 2 – RESOURCE MANAGEMENT OVERVIEW

SRMR – Significant resource management issues for the region

SRMR-I2 – Climate change is likely to impact our economy and environment

Fish and Game supports the removal of the word 'native' in SRMR-I2 (except where referring to interactions between native and introduced species in the first paragraph of the Environment sub-section) in the s 42A Report.

Fish and Game seek insertion of:

Human adaptation to climate change, such as building or expanding dams or flood protection schemes, may impose

adverse impacts upon ecosystems in addition to those imposed by climate change itself.

SRMR-17 – Rich and varied biodiversity has been lost or degraded due to human activities and the presence of pests and predators

Fish and Game seek:

Insert additional sentence into the Environment section which reads: Human adaptation to climate change, such as building or expanding dams or flood protection schemes, may impose adverse impacts upon ecosystems in addition to, those imposed by climate change itself.

SRMR-112

Mr Farrell recommends a new issue SRMRI12 be inserted, as follows:

SRMR-112 – Social, cultural and economic wellbeing of Otago's communities depends on use and development of natural and physical resources

Statement

The social, cultural and economic health and wellbeing of Otago's people and communities relies on the ability of people being able to access, use and develop the region's natural and physical resources.

Context

The social, cultural and economic wellbeing of Otago's communities depends on use and development of natural and physical resources. Loss or degradation of resources can diminish their intrinsic values and constrains opportunities for use and development now and into the future. Some of Otago's resources are nationally or regionally important for their natural values and economic potential and so warrant careful management.

Sustainable management under the RMA includes enabling social, economic and cultural wellbeing for present and future generations. Resource management decisions need to recognise that individual and community wellbeing depends on use, development and protection of natural and physical resources.

Impact snapshot

Environmental

Subdivision, use and development of natural resources can result in appropriate environmental effects including net environmental benefits, particularly where that subdivision, use or development results in enhancement and restoration of degraded parts of the natural environment.

Human use (associative) benefits of from human use of accessing and using natural resources contributes to the significant values of highly valued natural features and natural landscapes, and outstanding waterbodies.

Enabling people to access and use natural resources results in significantly positive human health and well-being benefits.

Social and economic

Enabling people to access and use natural resources is required to support a prosperous regional economy. Limiting people's ability to access and use resources use can limit productive economic opportunities and adversely impact the health and well-being of Otago's people and communities.

IM – Integrated management

IM-O1

Fish and Game seeks IM-O1 be amended, as follows:

The management of *natural and physical resources* in Otago, by and for the people of Otago, including Kāi Tahu, and as expressed in all resource management plans and decision making, achieves, as a priority, a healthy, resilient, and safeguarded natural systems environment, and including the ecosystem services they it offers, and then ensures that actions by humans supports the well-being of the natural environment and present and future generations, *mō tātou, ā, mō kā uri ā muri ake nei.*

IM-O3

Fish and Game supports the amendments to IM-O3 in the s 42A report.

IM-P1&P2

Mr Farrell supports the amalgamation of IM-P2 with IM-P1 in the s 42A report and recommends further amendments, as follows:

IM-P1 – Integrated approach to decision-making and prioritisation

Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to:

(1) place limits on resource use unless exceptional circumstances stated in this RPS apply; and

(2) consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed unless exceptional circumstances stated in this RPS apply, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:

(1) (a) the life-supporting capacity and mauri of the natural environment and the health needs of people, and then

(2) (b) the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

(c) if there are competing directives within the matters in priority (1a) above then priority shall be given to the principles of sustainability, equity, and efficiency ensuring that the principles of the Treaty of Waitangi are given effect:

(d) if there are competing directive within the matters in priority (2b) above then priority shall be given to the principles of sustainability, equity, and efficiency, ensuring that the principles of the Treaty of Waitangi are given effect.

IM-P4

Mr Farrell recommends IM-P4 be amended, as follows:

IM-P4 – Setting a strategic approach to ecosystem services ~~health~~

Healthy and resilient ecosystems and ecosystem services are achieved by developing regional and district plans ~~through a planning framework that:~~

- (1) protects having have particular regard to their the intrinsic values of ecosystems,
- (2) ~~takes taking~~ take a long-term strategic approach that recognises changing environments and ongoing environmental

change, including the impacts of climate change,

- (3) ~~recognises—recognising~~ recognise and ~~provides—providing~~ provide for ecosystem complexity and interconnections, and
- (4) ~~anticipates—anticipating~~ anticipate, or ~~responds—responding~~ respond swiftly to, changes in activities, pressures, environmental state and trends,
- (5) measures cumulative effects on the environment and requires their proactive management, and
- (6) Identifies and implements environmental limits in at least the following matters: (a) air, (b)coastal waters, (c) estuaries, (d) freshwater, (e) wetlands, and (f) soil.
- (7) **Promotes use and development of resources which support the above.**

IM-P5

Mr Farrell recommends IM-P5 be amended, as follows:

In resource management decision-making, manage the use and development ~~Coordinate—the management of~~ *interconnected natural and physical resources* by ~~recognising~~ and providing for:

- (1) situations where the value and function of a natural or physical resource, or the natural environment, extends beyond the immediate, or directly adjacent, area of interest, in time or space,
- (2) the effects of activities on a natural or physical resource, or the natural environment, as a whole when that resource is managed as sub- units, ~~and~~
- (3) the impacts of management of one natural or physical resource on the values of another, or on the environment, and
- (4) the impact of individual and cumulative effects on the form, function, and resilience of Otago’s environment such that the sum of human activity in Otago supports a healthy environment and provides opportunities available for future generations.

IM-P12

Mr Farrell recommends IM-P12 be amended, as follows:

...

(5) the activity will not contravene ~~a bottom line~~ an environmental limit set in a national policy statement or national environmental standard, and

(6) there are no other reasonable alternatives, including changes in the nature or scale of associated activities.

IM-P13

Fish and Game seeks IM-P13 be amended, as follows:

Otago's environmental integrity, form, function, and resilience, and opportunities for future generations, are protected by recognising and specifically managing the cumulative effects of activities on the environment natural and physical resources in plans and explicitly accounting for these effects in other resource management decisions, such that the sum of human activity in Otago supports the health, well-being and resilience of the natural environment.

IM-P14

Mr Farrell recommends IM-P14 be amended, as follows:

IM-P14 – Human impact

When preparing regional plans and district plans, ~~P~~preserve opportunities for future generations by:

- (1) identifying environmental and resource use limits wherever practicable, ~~to both growth and adverse effects of human activities beyond which the environment or resources will be degraded,~~
- (2) requiring that activities are established in places, and carried out in ways, that support the health, well-being and resilience of the environment and are within those environmental and resource use limits and are compatible with the natural capabilities and capacities of the resources they rely on, ~~and~~

- (3) regularly assessing and adjusting environmental and resource use limits and thresholds for activities over time in light of the actual and potential environmental impacts., including those related to climate change, and
- (4) promoting activities that reduce, mitigate, or avoid adverse effects on the environment.

IM-M1

Mr Farrell recommends IM-M1 be amended, as follows:

IM-M1 – Regional plans and district plans

Local authorities must prepare or amend and maintain their *regional plans* and *district plans* to:

...

(6) establish clear environmental thresholds and biophysical limits ~~wherever practicable to support clear thresholds for, and limits on, and~~ manage resource use to conform to these thresholds and limits, ~~clear thresholds for, and limits on, activities that have the potential to adversely affect healthy ecosystem services and intrinsic values, which to support the health, well-being and resilience of the~~ environment.

(7) Include provisions that encourage or require reductions in greenhouse gas emissions and improving energy efficiency.

IM-M2

Mr Farrell recommends IM-M2 be amended, as follows:

IM-M2 – Relationships

Local authorities must:

...

(3) consult with Otago's communities to ensure policy frameworks adequately respond to the diverse facets of environmental ecological, social, cultural, and economic well-being.

PART 3 – DOMAINS AND TOPICS

DOMAINS

LF – Land and freshwater

Mr Farrell recommends LF-Wai-P3 be amended, as follows:

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, restores the natural 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 natural 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 bodies*,
- (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,
- (5) requires ~~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, including on their natural
- (7) has regard to cumulative *effects*, and
- (8) ~~the need to apply~~ applies a precautionary approach where there is limited available information or uncertainty about potential adverse *effects*.
- (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

(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 provide for the human health and well-being benefits that people and communities derive from accessing and using water, including outdoor recreation and harvesting natural resources for personal use.

Fish and Game additionally seeks new para 3 (a):

(3a) sustains and restores the habitats of trout and salmon species associated with the water body, insofar as this is consistent with ECO-P11.

Fish and Game seeks amendments to LF-VM-M3:

3) strongly considering supporting community initiatives that contribute to maintaining or improving the health and well-being of water bodies, and

(4) strongly considering supporting industry-led guidelines, codes of practice and environmental accords where these would contribute to achieving the objectives of this RPS.

Ben Farrell recommended changes to FL-PW-P12:

LF-FW-P12 – Protecting Identifying and managing 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.~~

Identify outstanding water bodies and their significant and outstanding values in the relevant regional plans and district plans and protect those outstanding and significant values by avoiding adverse effects on them, except as provided by EIT-INF-P13 and EIT-INF-P13A.

Fish and Game seeks amendments to LF-FW-P13:

LF-FW-P13 – Preserving natural character and instream values

...

for effects on indigenous biodiversity and the habitat of trout and salmon, ECO-P3, ~~or~~ ECO-P6 or ECO-P11 (whichever is applicable), and

...

establishing environmental flow and level regimes and water quality standards that support the health, ~~and~~ well-being and resilience of the water body,

~~wherever possible~~, sustaining the form and function of a water body that reflects its natural behaviours

Ben Farrells recommendation in respect of LF-FW-P13A:

Reference to 'natural wetlands' should be amended to 'wetlands'. While this approach is more stringent than the direction in the NPSFM, the regional council is required under its functions under s.30(ga) to establish, implement, and review of objectives, policies, and methods for maintaining indigenous biological diversity; and the NPSFM allows regional council protections on wetlands to be more stringent than the NPSFM directives and there has been such extensive depletion of Otago's low-lying wetlands that it is appropriate for the RPS to provide some level of protection for all wetlands in the Region

Fish and Game/Ben Farrell seek amendments to LF-FW-P14:

LF-FW-P14 – Restoring natural character and instream values

Where the natural character or instream values of lakes and rivers ~~and~~ or the natural character of their margins has been reduced or lost, ~~promote~~ require 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.

(3a) restore the habitat of trout and salmon, insofar as it is consistent with ECO-P11.

(4) improve water body margins by naturalising bank contours and establishing habitat and indigenous vegetation ~~and habitat~~, and

(5) restore water pathways and natural connectivity between water systems.

LF-LS Chapter

Fish and Game seek amendment to LF-LS-P16:

Recognise that maintaining soil quality and achieving environmental outcomes for freshwater requires the integrated management of land and freshwater resources including the interconnections between soil health, vegetative cover and water quality and quantity.

New LF-LS-P20 (5)

Mr Farrell recommends LF-LS-P20 be amended, as follows:

Promote changes in land use or land management practices that support and improve:

the sustainability and efficiency of water use,

resilience to the impacts of climate change,

the health and quality of soil,

restoration or enhancement of indigenous vegetation, or

amenity and recreation values and the ability of the public to freely access the coastal marine area, lakes and rivers.

Fish and Game seek additions to LF-LS-P20:

(4) habitat, back country areas and indigenous vegetation, or

LF-LS-P22(3)

Fish and Game seeks amendments to subclause (3):

...

(3) encouraging landowners to only avoid restricting public access unless where it is necessary to protect:

...

LF-LS-M12

Mr Farrell recommends the s 42A report version of LF-LS-M12 be adopted, with the following amendments:

Adopt the s42A version except amend clause (3)(b) as sought by Realnz as follows:

facilitate public access to and along lakes and rivers by:

requiring the establishment of esplanade reserves and esplanade strips, and

promoting the use of legal roads, including paper roads, and any other means of public access rights, to that connect with esplanade reserves and esplanade strips.

ECO – Ecosystems and indigenous biodiversity

ECO-O1

Mr Farrell recommends ECO-O1 be amended, as follows:

Otago's ecosystems and indigenous biodiversity is healthy and thriving and any decline in quality, quantity and diversity is halted.

ECO-O4

Fish and Game seek the insertion of a new objective ECO-O4, as follows:

ECO-O4 – Trout and salmon

The habitat of trout and salmon in Otago is protected and restored in a manner that is consistent with the protection of habitat of indigenous freshwater species.

ECO-P10

Fish and Game seeks ECO-P10 be amended, as follows:

Implement an integrated and co-ordinated approach to managing Otago's ecosystems, and indigenous biodiversity and the habitat of trout and salmon that:

...

(4) supports the various statutory and non-statutory approaches adopted to manage indigenous biodiversity and the habitat of trout and salmon,

...

New ECO-P11

Fish and Game seek the insertion of a new policy ECO-P11, as follows:

ECO-P11 – Trout and Salmon

The habitat of trout and salmon will be protected, including fish passage, and restored, insofar as this is consistent with the protection and restoration of habitat for indigenous species, including by:

(1) using the method set out in ECO-M9 to identify water bodies, or parts of water bodies, where the protection and restoration of trout and salmon habitat is and isn't consistent with that of habitat for indigenous species.

(2) in areas identified in (1) as being consistent:

when considering consent applications, applying the biodiversity effects management hierarchy in ECO-P6 (1) – (5) to the habitat of trout and salmon, and

consider the habitat of trout and salmon as part of the health, well-being and resilience of freshwater ecosystems, and

(3) when making decisions affecting areas identified in (1) as not being consistent, have particular regard to the recommendations of the Department of Conservation, the Fish and Game Council relevant to the area, Kāi Tahu, and species interaction management plans developed under ECO-M9.

ECO-M4

Fish and Game seeks ECO-M4 be amended, as follows:

Otago Regional Council must prepare or amend and maintain its regional plans to:

if the requirements of ECO-P3, ~~and~~ ECO-P6 ~~and~~ ECO-P11 can be met, provide for the use of lakes and rivers and their beds, including:

activities undertaken for the purposes of pest control or ~~maintaining~~ protecting or ~~enhancing~~ restoring the habitats of indigenous fauna and trout and salmon, and

...

ECO-M5

Mr Farrell recommends ECO-M5 be amended, as follows:

ECO-M5 – District plans

Territorial authorities must prepare or amend and maintain their district plans to:

...

provide for activities that promote or undertaken ~~for~~ the ~~purpose of restoration~~ ing or enhancement ing of the habitats of indigenous flora and fauna, and...

ECO-M8

Mr Farrell recommends ECO-M8 be amended, as follows:

...

(1) providing information and guidance on the maintenance, restoration and enhancement of ~~indigenous~~ ecosystems, indigenous biodiversity and habitats, taoka and mahika kai species and ecosystems,

...

(7) gathering information on ~~indigenous~~ ecosystems, indigenous biodiversity and habitats, including outside significant natural areas.

New ECO-M9

Fish and Game seek the insertion of a new method ECO-M9, as follows:

ECO-M9 – Identifying and managing species interactions between trout and salmon and indigenous species

Local authorities will engage with the Department of Conservation, the relevant Fish and Game Council and Kāi Tahu, as groups with statutory or cultural obligations to manage indigenous species and trout and salmon, to:

- (1) identify areas where the protection and restoration of trout and salmon habitat is consistent with that of the habitat of indigenous species,
- (2) identify areas where the protection and restoration of trout and salmon habitat is not consistent with that of the habitat of indigenous species, such that it requires management, and
- (3) for areas identified in (2), encourage the joint production a species interaction management plan, which will:
 - a. determine information needs to manage the species,
 - b. determine short, medium and long term objectives,
 - c. determine appropriate management actions that support identified objectives and account for habitat needs, and
- (4) use tools available within the Conservation Act 1987, where appropriate.

ECO-PR1

Fish and Game seeks amendments to PR1 (to be addressed in May).

ECO-AER1

Mr Farrell recommends ECO-AER1 be amended, as follows:

There is no further decline in the quality, quantity or diversity of ecosystems and indigenous biodiversity.

ECO-AER2

The quality, quantity and diversity of ecosystems and indigenous biodiversity within Otago improves over the life of this Regional Policy Statement.

EIT – Energy, infrastructure and transport

EIT-EN-O2

Mr Farrell recommends EN-O2 be amended, as follows:

The total generation capacity of renewable electricity generation activities in Otago:

(1) is maintained or increased and, if practicable ~~maximised, as far as practicable~~ within environmental thresholds and biophysical limits, and

(2) to continue to contributes to meeting New Zealand's national target for renewable electricity generation.

EIT-EN-P1

Mr Farrell recommends EIT-EN-P1 be amended, as follows:

The operation and maintenance of existing renewable electricity generation activities is provided for where it occurs within environmental thresholds and biophysical limits while minimising its adverse effects.

Mr Farrell recommends EIT-EN-P2 be amended as follows:

Recognising renewable electricity generation activities in decision making

Decisions on the allocation and use of natural and physical resources, including the use of fresh water and development of land:

(1) recognise the national, regional and local benefits of existing renewable electricity generation activities,

(2) take into account the benefits of ~~need to~~ at least maintaining current renewable electricity generation capacity, and

(3) recognise that the attainment of increases in renewable electricity generation capacity will require ~~significant~~ development of renewable electricity generation activities.

EIT-EN-P3

Mr Farrell recommends EIT-EN-P3 be amended, as follows:

The overall security of renewable electricity supply is maintained or improved in Otago within environmental thresholds and biophysical limits through appropriate provision for the development or upgrading of renewable electricity generation activities and diversification of the type or location of electricity generation activities.

EIT-EN-M1

Fish and Game seek sub-clause (4) be deleted, as follows:

...

~~(4) provide for the operation and maintenance of existing renewable electricity generation activities, including their natural and physical resource requirements, within the environmental limits, and~~

UFD – Urban form and development

UFD-P7

Mr Farrell recommends UFD-P7 be amended, as follows:

The management of rural areas:

...

(8) enables outdoor recreation (including commercial recreation).

(9) facilitates growth or expansion of existing visitor destination places and activities.

PART 5 – APPENDICES AND MAPS

Appendices

APP1 – Criteria for identifying outstanding water bodies

Further develop table to include criteria.

This appendix must be further developed if decisions are to be made in establishing a waterbody's outstanding-ness as seems to be directed by LF-FW P11 and M5.

The spatial context needs to clearly be set at the regional level.

The current Water Conservation Order for the Kawarau catchment, and all the water bodies it recognises, should be referred to explicitly.

APP3 – Criteria for biodiversity offsetting

Fish and Game seek subclause (2)(b) of APP3 be amended, as follows:

(2) Biodiversity offsetting is available if the following criteria are met:

(b) the offset achieves no net loss and preferably a net gain in indigenous biodiversity and the habitat of trout and salmon where consistent with ECO-P11, as measured by type, amount and condition at both the impact and offset sites using an explicit loss and gain calculation,

APP9 – Identification criteria for outstanding and highly valued natural features, and landscapes (including seascapes)

Otago Fish and Game Council supports the addition in the 42A report of "recreational values" to the associative attributes criteria for identification of outstanding and highly valued features and landscapes.