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**OPENING STATEMENT OF FELICITY ANN BOYD:  
LF – Land and freshwater**

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- 1 This statement provides an update on my understanding of the key issues in contention across the proposed Otago Regional Policy Statement 2021 (pORPS) since I prepared my section 42A report<sup>1</sup> and supplementary evidence<sup>2</sup> on this topic.
  
- 2 Parts of the LF chapter are relevant to this hearing and others are part of the Freshwater Planning Instrument (FPI) part of the pORPS which is progressing through the freshwater planning process. This statement addresses:
  - 2.1 Links with the FPI part of the pORPS,
  - 2.2 Revised recommendations on non-FPI provisions, and
  - 2.3 Additional evidence filed on mineral extraction and the NPSFM amendments.

**Links with the FPI part of the pORPS**

- 3 While this statement of evidence relates to the non-FPI components of the LF chapter, there are many links with the FPI parts of the LF chapter which are being managed through a separate process. An overview of the FPI process to date is set out below, alongside the relationship between the non-FPI and FPI provisions in the LF chapter, and how this is to be managed.

Planning process to date

- 4 The FPI part of the pORPS was notified on 30 September 2022, with submissions to be received by 29 November 2022. Further submissions were able to be lodged until 16 February 2023. All of the submissions and

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<sup>1</sup> Chapter 9: LF – Land and freshwater (4 May 2022 (Updated 7 October 2022))

<sup>2</sup> Brief of supplementary evidence of Felicity Ann Boyd: LF – Land and freshwater (11 October 2022); Brief of second supplementary evidence of Felicity Ann Boyd: LF – Land and freshwater (Highly productive land) (21 October 2022); Brief of supplementary evidence of Felicity Ann Boyd: LF – Land and freshwater (LF-WAI-P3) (21 October 2022); Second brief of supplementary evidence of Felicity Ann Boyd: Introduction and general themes & LF (Mineral extraction) (24 February 2023); and Fourth brief of supplementary evidence of Felicity Ann Boyd: LF (NPSFM amendments) (24 February 2023)

further submissions are now available on ORC's website.<sup>3</sup> Some of those submissions are 'resubmitted' (i.e. they are the same submissions made when the pORPS was notified in full in June 2021) while others have been revised. In comparison to the non-FPI part, there are far fewer submitters on the FPI – 47 in total. I have attached a summary of the submitters as **Appendix 1**.

- 5 Freshwater hearing panels comprise five members: two are freshwater commissioners appointed by the Chief Freshwater Commissioner, two are nominated by the relevant regional council, and one person with an understanding of tikanga Māori and mātauranga Māori is nominated by local tangata whenua. On 22 February, for consistency with the non-FPI process, ORC agreed to nominate Commissioners Sullivan and Cubitt.<sup>4</sup> I understand Kāi Tahu has similarly nominated Commissioner Kirikiri.
- 6 On 31 March, ORC provided the documents set out in clause 37 of Schedule 1 of the RMA to the Chief Freshwater Commissioner. At the time of writing, a hearing panel has not been appointed and no timetabling instructions have been issued.

#### Implications of FPI recommendations on non-FPI provisions

- 7 Due to the later notification of the FPI, the non-FPI part of the pORPS has progressed ahead in terms of the Schedule 1 process. However, both parts will need to come together at the conclusion of their respective processes to form a cohesive and consistent operative policy statement.
- 8 I am the primary author of the FPI s42A report, along with Mr James Adams for RMIA and Ms Jacqui Todd for SRMR. Although no timetabling instructions have been issued for the FPI, I considered it necessary to progress the s42A report on its provisions in order to provide the most informed and integrated advice to the non-FPI hearing panel. That report is in its final stages of development and will be publicly available shortly. The panel and all parties involved in the non-FPI hearing will be advised as soon as that occurs.

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<sup>3</sup> <https://www.orc.govt.nz/plans-policies-reports/regional-plans-and-policies/otago-regional-policy-statements/freshwater-planning-instrument-parts-of-proposed-otago-regional-policy-statement-porps-2021>

<sup>4</sup> See item 8.2 on the agenda for the 22 February 2023 Council meeting, available from the Council's website: <https://www.orc.govt.nz/media/13842/agenda-council-20230222.pdf>

- 9 There are many interactions between the two parts – some are minor (for example, using consistent terminology) and some are more significant. This statement highlights the recommendations in that report that I consider to be most relevant and significant for the non-FPI parts of the LF chapter, including the implications on the non-FPI process and the panel’s recommendations. These implications have not been discussed in the non-FPI s42A report because it was prepared prior to the notification of the FPI.
- 10 The focus of this discussion is primarily on the objectives and policies in each section of the LF chapter. I note that where changes are required, these may also extend to the methods, explanations, principal reasons and anticipated environmental results but I have generally not canvassed those consequential amendments in detail here.
- 11 In the s42A report for the FPI, I have used blue shading to identify FPI provisions and yellow shading to identify non-FPI provisions. I have used the same key in this statement.

#### LF-WAI

- 12 LF-WAI-O1 is an FPI provision, as is LF-WAI-P1. Policies LF-WAI-P2, LF-WAI-P3 and LF-WAI-P4 are non-FPI provisions. Policies set out the course of action to achieve an objective, therefore it is important that any amendments to the objective, or part of the suite of policies, are considered in light of their impacts on the policies.
- 13 LF-WAI-O1 describes how the management of freshwater in Otago will give effect to Te Mana o te Wai<sup>5</sup> and in the FPI s42A report I have recommended several changes, generally for clarification. While all of the LF-WAI policies provide direction on how to achieve LF-WAI-O1, LF-WAI-P1 is most closely linked to the objective as it expresses the prioritisation for decision-making in accordance with Te Mana o te Wai. I consider that LF-WAI-P2 and LF-WAI-P3 provide direction around concepts that support Te Mana o te Wai but relate more to *how* management should occur to achieve LF-WAI-O1 rather than *what* that management is.
- 14 I consider that my recommended changes to LF-WAI-O1 are unlikely to affect the content of LF-WAI-P2 and LF-WAI-P3. LF-WAI-P4 is a procedural policy and describes the relationship between the LF-WAI

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<sup>5</sup> In accordance with clause 3.2(3) of the National Policy Statement for Freshwater Management 2020

section and the remainder of the LF chapter. Given the nature of this policy, I consider that the direction it provides will not be affected by the changes to LF-WAI-O1.

- 15 In the FPI s42A report, I have recommended several changes to LF-WAI-P1 to clarify the hierarchy of priorities. Several submitters have sought to explicitly include or exclude particular activities from either the second or third priorities (for example, food production and hydro-electricity generation) which I have generally not recommended accepting, retaining the focus on ingestion and immersion in the second priority. While I do not consider this requires any amendments to non-FPI provisions, interpretation of the hierarchy of obligations will inform the application of most of the LF chapter provisions and is a matter the panel should be aware of.

#### LF-VM and LF-FW

- 16 In the original submissions made on the pORPS after its notification in June 2021 many submitters raised concerns with inconsistency in the content of the freshwater visions in LF-VM. Several sought a region-wide vision to address this. The same concerns have been raised in the FPI submissions, including concerns about the relationship between the objectives in LF-VM,<sup>6</sup> including FMU visions, and the objectives in LF-FW<sup>7</sup> which apply on a region-wide basis.
- 17 I agree that there is unhelpful inconsistency across the visions and that it is unclear how the visions in LF-VM and the objectives in LF-FW interact. I have noted that it was intended that LF-VM and LF-FW be read together,<sup>8</sup> with the objectives mostly sitting in LF-VM and the policies to achieve them in LF-FW. I agree with submitters that this is unhelpful and unclear. I have recommended significant changes to address this:

- 17.1 Introducing a new region-wide objective for freshwater (LF-FW-O1A) that incorporates common themes across the visions and the LF-FW objectives,

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<sup>6</sup> LF-VM-O2, LF-VM-O3, LF-VM-O4, LF-VM-O5, LF-VM-O6, LF-VM-O7

<sup>7</sup> LF-FW-O8, LF-FW-O9, LF-FW-O10

<sup>8</sup> See para 1 of LF-FW-E3 which states that "This section of the LF chapter outlines how the Council will manage fresh water within the region. To give effect to Te Mana o te Wai, the freshwater visions and the policies set out the actions required in the development of regional plan provisions to implement the NPSFM."

- 17.2 Making consequential amendments to the freshwater visions in LF-VM to remove duplication with LF-FW-O1A and instead cross-reference to that objective,
- 17.3 Combining the LF-VM and LF-FW sections into one LF-FW section, such that all of the objectives from those sections sit together followed by all of the policies together, and then the methods.
- 18 There is no issue of scope within the FPI submissions – addressing inconsistency and combining common objectives is clearly sought by a number of submitters. However, in order to fully implement this recommendation, changes will also need to be made through the non-FPI process. The only LF-VM objective in the non-FPI part is LF-VM-O7 which I have recommended deleting.<sup>9</sup> In terms of the LF-FW objectives, I have recommended:
- 18.1 Deleting LF-FW-O8 and LF-FW-O10 on the basis that their content has been incorporated into new LF-FW-O1A or is unnecessary due to amendments I have recommended elsewhere.
- 18.2 Retaining LF-FW-O9 because there is less clear duplication between this objective and others.
- 19 In his non-FPI evidence in chief, Dr Mike Freeman, for OWRUG, Federated Farmers and DairyNZ seeks to delete LF-FW-O10 in its entirety, on the basis that it repeats section 6(a) of the RMA.<sup>10</sup> I have reviewed the submissions of the submitters he appears for and none seek the provision's deletion so I do not consider there is scope for Dr Freeman's request.
- 20 However, I consider the deletion would be an amendment of minor effect in accordance with clause 16(2) of Schedule 1 because the content of the objective is retained and in the same form (i.e. an objective that applies regionally) elsewhere. I recommend this amendment to avoid duplication between the FPI and non-FPI parts.
- 21 I have included a table showing the notified structure compared to my recommended structure as **Appendix 2** to this statement. Despite recommending their move, I have retained the existing numbering of the

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<sup>9</sup> Brief of supplementary evidence of Felicity Ann Boyd (LF – Land and freshwater) dated 11 October 2022, para 13.

<sup>10</sup> Statement of evidence of Michael Conrad Freeman for OWRUG, Federated Farmers and DairyNZ dated 23 November 2022 at page 26

provisions in these sections in order to make it easier for parties to reference their submissions and the s42A reports. In my experience, retaining original numbering despite looking 'out of order' greatly assists in reducing confusion amongst parties about the provisions being discussed (for example, 'new' objective 1 vs 'old' objective 1). Revised numbering can be recommended as a minor amendment under clause 16(2) of Schedule 1 in the final suite of reply reports.

- 22 I consider that the impacts on the non-FPI provisions as a result of my recommendations are minimal. Simply moving provisions does not alter their intent and I consider that amendment could be made in accordance with clause 16(2) of Schedule 1. Where provisions have been combined (notably the explanations and principal reasons), I have recommended retaining the content of the provisions (with, in some cases, minor amendments in response to submissions) and just locating their content under one heading in a logical order. Again I consider this is an amendment of minor effect.
- 23 In the remainder of the LF-FW section, LF-FW-O8, LF-FW-O9, LF-FW-P7, LF-FW-P9, LF-FW-P10 and LF-FW-P15 are FPI provisions. The provisions relating to natural character, wetland identification and outstanding water bodies are non-FPI provisions.<sup>11</sup> The majority of the explanatory provisions are also in the FPI, with only LF-FW-M5, LF-FW-M9, LF-FW-M10 and selected paragraphs of LF-FW-E3 being non-FPI provisions.
- 24 In addition to deleting LF-FW-O8 and LF-FW-O10, I have recommended changes to LF-FW-P7 and LF-FW-P15, including splitting LF-FW-P15 into two policies (15 and new 15A) to more clearly set out the expectations for different types of discharges. These policies are relatively narrow in their focus and have little interaction with each other or with the other policies in the LF-FW section. I do not consider my recommendations will require any amendment to non-FPI provisions.
- 25 LF-FW-O9, LF-FW-P8, LF-FW-P9, and LF-FW-P10, supported by the definition of 'natural wetland', are a suite of provisions addressing natural wetlands. I discussed this suite and their interactions in detail in my supplementary evidence on the amendments to the NPSFM.<sup>12</sup> I have

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<sup>11</sup> LF-FW-O10, LF-FW-P8, LF-FW-P11, LF-FW-P12, LF-FW-P13 and LF-FW-P14

<sup>12</sup> Fourth brief of supplementary evidence of Felicity Ann Boyd – LF (NPSFM amendments), dated 24 February 2023, paras 19 to 54.

recommended amendments to the FPI provisions as a result of submissions, however I do not consider these to significantly alter the application of any of the provisions. Given LF-FW-P8 is a procedural policy that implements the NPSFM, I consider the changes to the FPI natural wetland provisions do not necessitate changes to LF-FW-P8.

- 26 Three of the methods in the LF-FW section are in the FPI: LF-FW-M6 (regional plan), LF-FW-M7 (district plans), and LF-FW-M8 (action plans). They may require consequential amendment as a result of recommendations on the non-FPI provisions, however given the FPI is on a slower track I consider this can be addressed through the s42A and hearing process.

### LF-LS

- 27 In the LF-LS section, the majority of provisions are in the non-FPI part of the pORPS, including all of the objectives. The only FPI provisions are two policies (LF-LS-P18 and LF-LS-P21) one method (LF-LS-M11) and one anticipated environmental result (LF-LS-AER14).
- 28 I have recommended changes to LF-LS-P18 so that the order of clauses (1) to (3) more clearly outlines the required approach for minimising soil erosion. I have also recommended changes to LF-LS-P21 to clarify the intent of the policy and to include direction on the management of riparian margins. In both cases, I consider that the proposed changes do not change the effectiveness of the policies in achieving the objectives of the LF-LS section, including non-FPI s42A recommendations to those objectives.
- 29 I have recommended minor changes to LF-LS-M11 that do not materially change its content. As with LF-FW, LF-LS-M11 is the only method in the LF-LS section providing direction for regional plan content, and as such provides direction on how the full suite of LF-LS policies will be implemented in regional plan (which are primarily non-FPI provisions). Therefore, despite being an FPI provision, LF-LS-M11 will need to reflect any amendments to the non-FPI LF-LS provisions where they relate to regional plan actions.

### Other matters

30 There are a range of more general matters that span the two processes. For example:

30.1 In the non-FPI process, I have made recommendations to correct the spelling of a number of te reo Māori place names. In preparing the FPI s42A, I have identified more incorrect names and for consistency those recommendations should be carried over to the non-FPI parts (which I intend to do, to the extent possible, in my reply report).

30.2 During the course of the non-FPI hearing, some submitters have queried the deadlines in methods for preparing or amending plans. I expect this will be resolved in the non-FPI part, but any recommended amendments will then need to be made in the FPI part so that all methods are addressed consistently.

31 I will raise these matters in the non-FPI reply reports to the extent I am able, however it is likely that additional matters may come to light once evidence has been received and/or the submissions on the FPI are heard.

### Procedural implications

32 The timing of the two processes poses difficulties for aligning recommendations on the LF chapter. Reply reports for the non-FPI part of the pORPS are due in May 2023, however at that point there will have been no evidence filed by submitters on the FPI in response to my s42A recommendations and no hearing. As a result, I will not be in a position to make final recommendations on all of the non-FPI provisions in the LF chapter in May 2023.

33 To assist the panel, I propose to identify in my reply report for the LF chapter which recommendations are unlikely to be affected by the FPI and which have the potential to be, in the event that the panel chooses to issue partial or interim recommendations on the non-FPI parts.

### **Revised recommendations on non-FPI provisions in the LF chapter**

34 There have now been six weeks of hearings and a series of supplementary statements prepared on behalf of some submitters. In response, some of the recommendations I made in my s42A report(s) and/or supplementary



statements of evidence are likely to change. I am reluctant to commit to 'final' recommendations in advance of this hearing and the preparation of reply reports, however I consider that hearing where my recommendations may be likely to change will assist the panel and submitters.

- 35 **Appendix 3** contains updated versions of the provisions I discuss in this part of my statement showing my updated recommendations.

### Te Mana o te Wai

- 36 The definition of Te Mana o te Wai copies clause 1.3 of the NPSFM 2020 in its entirety, given this clause describes the fundamental concept of Te Mana o te Wai. I have not previously recommended any changes to the definition in the s42A report or supplementary evidence.

- 37 Susannah Tait for Fonterra<sup>13</sup> seeks that the definition is deleted and replaced with the following text:

*Te Mana o te Wai is the concept described in clause 1.3 of the National Policy Statement for Freshwater Management 2020 (NPSFM 2020) and given effect to in accordance with the NPSFM 2020*

- 38 I agree with Ms Tait that clause 1.3 is not framed as a definition, and rather describes the concept of Te Mana o te Wai, the principles informing its implementation, and the hierarchy of obligations. I do not consider that the words after "NPSFM 2020" are necessary as they address implementation of the concept, rather than the concept itself. I recommend deleting the current definition of Te Mana o te Wai and replacing it with the following:

*is the concept described in clause 1.3 of the National Policy Statement for Freshwater Management 2020*<sup>14</sup>

### LF-WAI-P2 – Mana whakahaere

- 39 Federated Farmers seeks the following amendment to clause (2) of this policy:<sup>15</sup>

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<sup>13</sup> Statement of evidence of Susannah Vrena Tait for Fonterra dated 23 November 2022 at [6.20] to [6.22]

<sup>14</sup> FPI00213.010 Fonterra

<sup>15</sup> 00239.071 Federated Farmers

(2) sustaining the ~~environmental, social, cultural and economic~~ relationships of Kāi Tahu with water bodies

- 40 In my s42A report,<sup>16</sup> I recommended accepting the relief sought as I considered it would retain the intentionally broad scope of clause (2) without precluding consideration of particular types of relationships in future planning processes.
- 41 Ms Sandra McIntyre for Kāi Tahu ki Otago seeks that the notified wording of clause (2) is reinstated.<sup>17</sup> Ms McIntyre considers that the notified wording reflects the breadth and depth of relationships, and that without clear direction, Kāi Tahu relationships have been interpreted very narrowly in resource management decision-making in Otago.
- 42 With this additional information, I now consider the notified wording should be retained and rescind my previous recommendation.
- 43 Dr Mike Freeman for OWRUG, Federated Farmers, and DairyNZ also seeks a number of changes to this policy.<sup>18</sup> I do not agree that using the terms “practical” (in the chapeau) and “active” (in clause (1)) will result in Kāi Tahu being identified as an affected party on all resource consents that relate to water. I note that “active involvement” is the requirement in clause 5.3(1) of the NPSFM. I do not recommend any further amendments.

### LF-WAI-P3

- 44 In her evidence in chief, Ms McIntyre for Kāi Tahu ki Otago seeks the following amendment to this policy:<sup>19</sup>

Manage the use of freshwater and land, ~~in accordance with tikanga and kawa~~, using an integrated approach, consistent with tikaka and kawa, that:

- 45 The effect of this amendment is that it is the integrated approach that is consistent with tikaka and kawa, rather than the management of the use of freshwater and land. I consider this amendment clarifies the role of tikaka

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<sup>16</sup> Chapter 9: LF – Land and freshwater (4 May 2022, updated 7 October 2022), at [162]

<sup>17</sup> Statement of evidence of Sandra Jean McIntyre for Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku and Te Rūnanga o Ngāi Tahu dated 23 November 2022 at [100]

<sup>18</sup> Statement of evidence of Michael Conrad Freeman for OWRUG, Federated Farmers and DairyNZ dated 23 November 2022 at page 24

<sup>19</sup> Statement of evidence of Sandra Jean McIntyre for Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku and Te Rūnanga o Ngāi Tahu dated 23 November 2022 at [101]

and kawa, which was an issue raised by a number of other submitters. In my view, the wording proposed would be clarified further by including “that is” in front of “consistent”. I therefore recommend the following amendment to the chapeau:

Manage the use of freshwater and land, ~~in accordance with tikanga and kawa~~, using an integrated approach that is consistent with tikanga and kawa,<sup>20</sup> that:

46 Ms Tait for Fonterra seeks to amend the wording of clause (4) as follows:<sup>21</sup>

(4) manages the effects of the use and development of land and freshwater to maintain or enhance the health and well-being of freshwater

47 She considers it is an incomplete picture not to acknowledge that the use of land and freshwater is necessary to maintain and enhance the health and well-being of freshwater. This policy sets out the principles for an integrated approach to managing the use of freshwater and land. It is not a *management policy*, per se, it is instead a *policy about management*. Managing the impacts of land use on water has been a historic downfall of Otago’s regional planning framework and I consider this policy is clearly highlighting that particular link and its importance for taking an integrated approach to management. I continue to maintain my previous recommendations.

48 Ms Tait also seeks that LF-WAI-P3 refer to IM-P6, to better contextualise the concept of the precautionary approach, and align with the drafting of other provisions that reference the precautionary approach.<sup>22</sup> Although not stated in her evidence, I assume the reference to IM-P6 would be included in clause (8) of LF-WAI-P3 in a manner consistent with CE-M3, CE-M4 and ECO-P3.

49 No submitters sought this change, although several submitters did seek to clarify what applying a precautionary approach may include.<sup>23</sup> I consider that including a cross-reference to IM-P6 would provide some additional guidance on the concept of the precautionary approach and be consistent

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<sup>20</sup> 00235.080 OWRUG, FS00226.362 Kāi Tahu ki Otago, FS00234.164 Te Rūnanga o Ngāi Tahu

<sup>21</sup> Statement of evidence of Susannah Vrena Tait for Fonterra dated 23 November 2022 at [10.1] to [10.3]

<sup>22</sup> Statement of evidence of Susannah Vrena Tait for Fonterra dated 23 November 2022 at [6.6]

<sup>23</sup> 00022.016 Graymont, 00409.005 Ballance

with other parts of the pORPS. I recommend amending LF-WAI-P3(8) to reference IM-P6.

- 50 Dr Freeman for OWRUG, Federated Farmers and DairyNZ seeks to delete the policy in its entirety on the basis that it does not add anything to the existing planning framework.<sup>24</sup> Dr Freeman considers that the policy effectively repeats policies that are already detailed in the MW and IM sections and does not specify any courses of action.
- 51 I consider LF-WAI-P3 gives clear direction on how integrated management of land and freshwater is to be achieved. I acknowledge that the philosophy of ki uta ki tai is described in the MW chapter and IM-O2 but consider that LF-WAI-P3 provides greater detail on what this looks like in relation to freshwater management and provides direction on specific characteristics are to be sustained, restored, or effects managed. I continue to recommend retaining LF-WAI-P3, subject to the amendments set out above.

#### LF-WAI-P4

- 52 Ms Tait for Fonterra seeks that LF-WAI-P4 is deleted in its entirety.<sup>25</sup> Ms Tait disagrees with the discussion on the s42A report that the policy is instrumental to the architecture of the LF chapter and considers that LF-WAI-P4 seeks to extend the statutory/regulatory weight of LF-WAI-O1 and the preceding LF-WAI policies. She considers that s104 of the RMA and IM-P1 of the pORPS provide the necessary framework for considering applications.
- 53 Dr Freeman, for OWRUG, Federated Farmers and DairyNZ seeks to delete the current wording of LF-WAI-P4, and replace it with the following:<sup>26</sup>

When giving effect to Te Mana o te Wai facilitate the transition of natural and physical resource use to minimise the impact on the social, economic and cultural well-being of people and communities.

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<sup>24</sup> Statement of evidence of Michael Conrad Freeman for OWRUG, Federated Farmers dated 23 November 2022 at page 25

<sup>25</sup> Statement of evidence of Susannah Vrena Tait for Fonterra dated 23 November 2022 at [10.4] to [10.6]

<sup>26</sup> Statement of evidence of Michael Conrad Freeman for OWRUG, Federated Farms and DairyNZ dated 23 November 2022 at page 26

- 54 Dr Freeman considers that LF-WAI-P4 appears to establish an alternative framework for developing plans and the resource consent process and considers that this is not consistent with the current planning framework.
- 55 I have addressed these points previously in my section 42A report and I maintain that position.<sup>27</sup> In short, I consider this policy is consistent with Policy 1 of the NPSFM (which requires that freshwater is managed in a way that gives effect to Te Mana o te Wai) and with clause 3.2(4)(b) of the NPSFM (which requires that Te Mana o te Wai informs the interpretation of the provisions required to be included in regional policy statements and regional and district plans). I continue to disagree that “having regard to” NPSs and RPSs under s104 allows decision-makers to ‘override’ stronger direction in those documents.

#### LF-WAI-E1

- 56 Ms McIntyre for Kāi Tahu ki Otago requests several changes to the explanation to replace the term “implementing” with “giving effect to”, deleting the bracketed definitions of te reo terms, and replacing the term “limits” with “environmental limits”.<sup>28</sup>
- 57 I consider that the terms “implement” and “give effect to” have similar meanings, and the outcome of either is likely to be similar. However, for the purpose of consistency both within the pORPS, and between the pORPS and the NPSFM, I agree that the term “giving effect to” is preferable and that this is an amendment of minor affect in accordance with clause 16(2) of Schedule 1.
- 58 Ms McIntyre has not sought to delete bracketed English translations of te reo Māori terms elsewhere in the pORPS and I was unclear from reading her evidence why she seeks that amendment in this provision. I am conscious there is a need to ensure the pORPS can be understood by readers, while at the same time respecting Kāi Tahu culture and language. Ms McIntyre may wish to clarify this at the hearing.
- 59 In my supplementary evidence,<sup>29</sup> I discuss the use of the terms “limit” and “environmental limit”, and conclude that in the LF chapter, “limit” has the

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<sup>27</sup> Chapter 9: LF – Land and freshwater (4 May 2022, updated 7 October 2022), at [256].

<sup>28</sup> Statement of evidence of Sandra Jean McIntyre on behalf of Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku, and Te Rūnanga o Ngāi Tahu (23 November 2022), Appendix 1, p. 28

<sup>29</sup> Brief of supplementary evidence of Felicity Ann Boyd – Introduction and General themes, dated 11 October 2022, at [12] to [25].

meaning defined in the NPSFM, and in LF-WAI-E1 should include the qualifier “(in relation to water)”. I note that this qualifier was not included in the tracked changes version of the pORPS. I recommend including this clarification as recommended in the supplementary evidence.

### LF-FW-P13

- 60 I am aware that there is concern among some parties about the approach to managing indigenous biodiversity in the ECO chapter, and in particular the requirements of ECO-P3, ECO-P6, APP2, APP3, and APP4 which some consider to be unnecessarily stringent.
- 61 LF-FW-P13 relies on the effects management hierarchy in the ECO chapter to manage adverse effects on indigenous biodiversity and the effects management hierarchy in the NPSFM to manage other adverse effects. Mr Steve Tuck for Silver Fern Farms<sup>30</sup> and Ms Claire Hunter for Oceana Gold (NZ) Limited (OGL)<sup>31</sup> disagree with these provisions being referenced in LF-FW-P13 for the same reasons as they oppose the ECO provisions themselves.
- 62 The decision to cross-reference the ECO chapter was a deliberate choice because, at the time, the NPSFM effects management hierarchy did not contain any particular limitations on offsetting or compensation and therefore I considered it to be less stringent than the ECO effects management hierarchy. Given the number of threatened freshwater species in Otago, and the fact that many of them are found only or predominantly in Otago, I did not consider that was appropriate.
- 63 The NPSFM hierarchy was amended in December 2022 and the appendices setting out principles for offsetting and compensation included. I am no longer certain that this hierarchy is more stringent than the ECO chapter. I am aware that some submitters on the ECO chapter now seek to align the two hierarchies. This is a matter that Ms Hardiman and I will need to discuss as we prepare our reply reports, I note it here simply to confirm that I am cognisant of the ECO discussions and that it is a ‘live issue’ that spans both chapters.

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<sup>30</sup> Statement of evidence of Steve Tuck for Silver Fern Farms dated 23 November 2022 at [7.3] to [7.6]

<sup>31</sup> Statement of evidence of Claire Elizabeth Hunter for Contact dated 23 November 2022 at [10.2] to [10.4]

64 Contact seeks the deletion of clause (4) of this policy. In my s42A report, I recommended rejecting this submission point.<sup>32</sup> However, I have revisited that recommendation in light of the recommendations I have made in the FPI s42A report and particularly the implications arising from introducing a new objective LF-FW-O1A. I now recommend amending clause (4) for consistency with LF-FW-O1A as follows:

(4) ~~wherever possible~~ to the greatest extent practicable,<sup>33</sup> sustaining the form and function of a water body that reflects its natural behaviours,

65 I consider this also addresses the relief sought by Mr Ben Farrell for Fish and Game, Wayfare, and Trojan in his evidence on this clause.<sup>34</sup>

66 Ms Tait for Fonterra requests changes to clause (3) to more correctly reflect the NOF process set out in the NPSFM, with two options for proposed wording provided.<sup>35</sup> She contends that the term ‘water quality standards’ is not used in the NPSFM. As part of a broader suite of deletions, Dr Freeman for OWRUG, Federated Farmers, and DairyNZ seeks to delete this clause.<sup>36</sup>

67 I acknowledge Ms Tait’s concerns and while I do not necessarily agree with her reasons, I note that LF-FW-P7 already describes the need to set environmental outcomes, attribute states, and limits in order to maintain or improve the health and well-being of water bodies. In my s42A report on the FPI, I have recommended amending this policy to include reference to environmental flow and level regimes as well as environmental outcomes, attribute states, and limits, which I consider incorporates the matters set out in LF-FW-P13(3). I therefore agree with Dr Freeman that this clause can be deleted.

68 In my s42A report I recommended an amendment to clause (7) so that it reads “preventing permanent modification that would reduce the braided character of a river.” Mr Farrell seeks additional amendments to provide an exception for preventing permanent modification, where the modification is

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<sup>32</sup> Chapter 9: LF – Land and freshwater (4 May 2022, updated 7 October 2022), at [1113].

<sup>33</sup> c

<sup>34</sup> Statement of evidence of Ben Farrell for Otago and Central Otago Fish and Game Councils, Real Group and NZ Ski dated 23 November 2022 at [87] to [88]

<sup>35</sup> Statement of evidence of Susannah Vrena Tait for Fonterra dated 23 November 2022 at [10.7] to [10.10]

<sup>36</sup> Statement of evidence of Michael Conrad Freeman for OWRUG, Federated Farmers and DairyNZ dated 23 November 2022 at pages 28 to 29

necessary to avoid or mitigate risk to people's health and safety. Ms McIntyre seeks to move "permanent" to later in the clause so that it would read "preventing modification that would permanently reduce the braided character of a river." She considers this attaches the concept of permanence to the effects rather than the activity.

69 In my s42A report I noted the internationally rare nature of braided rivers and the importance of the habitats they provide to a range of indigenous species, particularly birds.<sup>37</sup> I maintain that position, but acknowledge that the wording proposed by Ms McIntyre more clearly articulates the way this clause is intended to be applied. I therefore recommend making the amendment she has requested.

70 Ms McIntyre for Kāi Tahu ki Otago has proposed amendments to clause (9) as follows (shown in red):<sup>38</sup>

(9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity, and reduce sedimentation of water bodies and support natural flow behaviour.

71 This responds to a lack of clarity I identified in the Kāi Tahu ki Otago relief sought on this provision (which referred to "catchment processes").<sup>39</sup>

72 Dr Freeman has also sought an amendment to this clause (also shown in red):<sup>40</sup>

(9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity, and reduce sedimentation of contaminant loss to water bodies.

73 I am not opposed to the amendment sought by Ms McIntyre but I do not fully understand the connection between the *values* of riparian margins and how those support natural flow behaviour. She may wish to clarify.

74 I agree that Dr Freeman's amendment is more technically correct and captures the range of contaminants that may be 'caught' by riparian margins. I recommend accepting this amendment.

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<sup>37</sup> Chapter 9: LF – Land and freshwater (4 May 2022, updated 7 October 2022), at [1118].

<sup>38</sup> Statement of evidence of Sandra Jean McIntyre for Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku and Te Rūnanga o Ngāi Tahu dated 23 November 2022, Appendix 1, p.30

<sup>39</sup> Chapter 9: LF – Land and freshwater (4 May 2022, updated 7 October 2022), at [1121].

<sup>40</sup> Statement of evidence of Michael Conrad Freeman for OWRUG, Federated Farmers and DairyNZ dated 23 November 2022 at pages 28 to 29



- 75 Ms Megan Justice for Aurora Energy, Network Waitaki and PowerNet requests the addition of a new clause to exclude infrastructure from **LF-WAI-P13**, and instead consider the effects of the activity in accordance with **EIT-EN-PXX** which is part of the stand-alone new chapter proposed by Ms Justice and others.<sup>41</sup> Ms Hunter for Contact requests a similar amendment to this provision as well as LF-FW-P13A for the same reason.<sup>42</sup>
- 76 I will need to consider these amendments as part of the suite of reply reports given that they relate to relief sought in a chapter that I am not the reporting officer for. At this stage, I do not recommend any further amendments.
- 77 Mr Farrell and Dr Freeman seek a number of other amendments to this policy. Subject to this hearing, I maintain the position set out in my s42A report in relation to those points.

#### LF-FW-P13A

- 78 Mr Farrell for Fish and Game, Wayfare and Trojan Holdings requests that in **LF-FW-P13A**, references to “natural wetlands” should be amended to “wetlands”, in order to provide some level of protection for all wetlands in the region.<sup>43</sup> Mr Farrell acknowledges that this approach is more stringent than the direction in the NPSFM.
- 79 I have addressed the scope of this policy and the definitions of “wetland”, “natural wetland”, and “natural inland wetland” at length in my supplementary evidence on the amendments to the NPSFM.<sup>44</sup> I do not recommend any further amendments.

#### LF-FW-P14

- 80 Ms Hunter for Contact requests some additional wording in the chapeau of **LF-FW-P14**, such that actions are only promoted “where appropriate and it is practicable to do so”.<sup>45</sup> Similarly, Ms Stephanie Styles for Manawa

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<sup>41</sup> Statement of evidence of Megan Justice for Aurora Energy, Network Waitaki and PowerNet dated 23 November 2022 at [11.4] to [11.5] and pages 51 to 52

<sup>42</sup> Statement of evidence of Claire Elizabeth Hunter for Contact dated 23 November 2022 at [9.6] to [9.12]

<sup>43</sup> Statement of evidence of Ben Farrell for Otago and Central Otago Fish and Game Councils, Real Group and NZ Ski dated 23 November 2022 at [89]

<sup>44</sup> Fourth brief of supplementary evidence of Felicity Ann Boyd – LF (NPSFM amendments) dated 24 February 2023, at [19] to [54].

<sup>45</sup> Statement of evidence of Claire Elizabeth Hunter for Contact dated 23 November 2022 at [9.13] to [9.15]

requests the addition of “where practicable”.<sup>46</sup> Conversely to Ms Hunter and Ms Styles, Mr Farrell for Fish and Game, Wayfare and Trojan seeks to replace “promote” with “require”.<sup>47</sup>

81 I continue to consider that “promote” is not a directive requirement, and further softening of the language is not warranted.<sup>48</sup> I also consider that it will not be appropriate to require restoration in every case and so strengthening the direction would not be appropriate.

82 Dr Freeman for OWRUG, Federated Farmers and DairyNZ seeks that:<sup>49</sup>

82.1 The term “instream values” is either defined or deleted.

82.2 In clause (1), the term “reflect the natural behaviours” is replaced by the term “consistent with the natural character”.

82.3 The term “water pathways” is deleted from clause (5).

83 Ms Hunter for Contact also requests that the clause (5) be amended to refer to “connectivity”, rather than “natural connectivity”.<sup>50</sup>

84 I consider that the concept of instream values is commonly understood and do not consider it needs definition. In my view, clause (1) is consistent with the terminology I have recommended including in new objective LF-FW-O1A which this policy assist with achieving.

85 I agree “water pathways” is open to interpretation and could be deleted without altering the application of clause (5). I disagree with Ms Hunter’s proposed deletion of “natural connectivity”, as water bodies can be connected through artificial means which is unlikely to contribute to restoring degraded or lost natural character.

86 Dr Marine Richardson for DOC seeks an amendment to clause (3) as follows:<sup>51</sup>

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<sup>46</sup> Statement of evidence of Stephanie Amanda Louise Styles for Manawa Energy dated 23 November 2022 at page 29

<sup>47</sup> Statement of evidence of Ben Farrell for Otago and Central Otago Fish and Game Councils, Real Group and NZ Ski dated 23 November 2022 at [90]

<sup>48</sup> Chapter 9: LF – Land and freshwater (4 May 2022, updated 7 October 2022), at [1145] to [1147].

<sup>49</sup> Statement of evidence of Michael Conrad Freeman for OWRUG, Federated Farmers and DairyNZ dated 23 November 2022 at page 30

<sup>50</sup> Statement of evidence of Claire Elizabeth Hunter for Contact dated 23 November 2022 at [9.13] to [9.15]

<sup>51</sup> Statement of evidence of Dr Marine Raphaële Amélie Richardson for the Director-General of Conservation dated 23 November 2022, at [130] to [131]

- (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 incursions from undesirable species where necessary and appropriate predation where necessary.

87 I consider this wording is more clear than that recommended in the s42A report and more accurately addresses the issues with the interactions between exotic and indigenous species (which are more than only predation). To further improve clarity, I recommend including the “where necessary” requirement be included at the start of the amended phrase, rather than at the end. I consider this amended wording retains the intent of that sought by Ngāi Tahu ki Murihiku in their submissions but clarifies its application.<sup>52</sup> The amendments I recommend are:

- (3) increase the presence, *resilience*, and abundance of indigenous flora and fauna, including by providing for fish passage within *river* systems and, where necessary and appropriate, creating fish barriers to prevent incursions from undesirable species predation where necessary.

#### LF-FW-M8A

88 In my supplementary evidence I recommended a new method (LF-FW-M8A) to address the interaction between indigenous species and trout and salmon.<sup>53</sup> Dr Richardson for DOC seeks a number of general amendments to the method which have been translated into specific amendments to the method in the evidence of Mr Murray Brass for DOC. Mr Brass notes that this is a complex topic and that he is open to other wording which may be suggested.

89 I have discussed this method with ORC’s freshwater ecologists and they agree with Dr Richardson’s evidence. I understand that the term “habitat” is not defined in statute and there can be debate amongst ecologists about the extent to which it refers to abiotic and/or biotic factors. I recommend further amendments to this method to ensure that there is a common starting point for implementing the method.

90 Although Policies 9 and 10 in the NPSFM focus on *habitats*, I understand that it is often the interactions between species that are most problematic,

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<sup>52</sup> 00223.088 Ngāi Tahu ki Murihiku

<sup>53</sup> Brief of supplementary evidence of Felicity Ann Boyd – Introduction and general themes, dated 11 October 2022, at [26] to [35].

rather than between their habitats. I agree with Dr Richardson's suggestion, as drafted by Mr Brass. I recommend the following additional amendments to LF-FW-M8A (shown in red):

...

(2) Otago Regional Council will work with the Department of Conservation, the relevant Fish and Game Council and Kāi Tahu to:

(aa) identify the physical habitats and biological conditions required to provide for the protection of indigenous species,

(a) identify areas where the protection of the habitat of trout and salmon, including fish passage, will be consistent with the protection of the habitat of indigenous species,

(b) identify areas where the protection of the habitat of trout and salmon will ~~not~~ be ~~in~~consistent with the protection of habitat of indigenous species,

...

(c) ...

...

(iii) identify appropriate management actions that will achieve the objectives determined in (ii) ~~and account for habitat needs, including measures to manage the adverse effects of trout and salmon on indigenous biodiversity where appropriate,~~

(iv) consider the use of a range of tools, such as those available within the Conservation Act 1987 and the Freshwater Fisheries Regulations 1983, where appropriate.

91 I agree with Mr Brass that this topic is complex and I appreciate my amendments are coming 'late in the day'. Fish and Game has sought to include LF-FW-M8A in the FPI part of the pORPS. At this stage I have recommended not accepting that submission as it is being addressed in the non-FPI part, however if there are unresolved issues about the drafting of the method it may be preferable to progress it through the FPI process instead, where there is more time available.

#### APP1

92 In my s42A report I recommended replacing the criteria in APP1 with updated criteria included in the hearing panel's recommendation report on the Hawkes Bay Regional Council's Plan Change 7, as sought by

Manawa.<sup>54</sup> Around the time I made that recommendation, ORC commissioned a group of experts to identify Otago's outstanding water bodies using the notified APP1 criteria (excluding cultural and spiritual values which were to be identified separately). In the last week, the final drafts of those reports have been provided to ORC.

- 93 Given the identification work is well-progressed, I am not sure there is much benefit in revising the criteria in APP1. I have not been able to discuss this matter with ORC prior to this hearing and therefore am reluctant to revise my recommendations at this stage. However, it may assist the panel and submitters to know this context and that I am considering rescinding my recommendation.
- 94 On a related note, in LF-FW-E3 Ms McIntyre for Kāi Tahu ki Otago seeks the deletion of cultural and spiritual values from the types of values that may be considered outstanding in accordance with APP1.<sup>55</sup> Even if I recommend rescinding my previous recommendation to replace the APP1 criteria, given the submissions by Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku about the issues with this particular value, I will retain my recommendation to delete this part of the criteria. I consider the change sought by Ms McIntyre is consistent with that and is a necessary consequential amendment either way.

#### LF-LS – New provisions sought

- 95 The scope of the LF-LS section has been subject to some debate and a number of submitters seek either new objectives and/or new policies to address additional matters related to land. I acknowledge this section has a relatively limited scope and I am not fundamentally opposed to broadening it. I do have concerns about the extent to which the provisions sought potentially duplicate direction elsewhere in the pORPS and whether the new provisions are appropriately supported within the policy framework of the chapter (for example, if a new objective is included, does the suite of policies and methods collectively work to achieve that new objective?).
- 96 I have grouped this section into the three 'themes' of new provisions sought: rural land, resource use and mineral extraction, and land environments.

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<sup>54</sup> Chapter 9: LF – Land and freshwater (4 May 2022, updated 7 October 2022), at [825] to [841].

<sup>55</sup> Statement of evidence of Sandra Jean McIntyre for Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku and Te Rūnanga o Ngāi Tahu dated 23 November 2022 at [103] to [105]

### *Rural land*

97 Mr Tim Ensor for Fulton Hogan requests the addition of the following new objective:<sup>56</sup>

The availability of rural land for primary production is maintained now and for future generations.

98 I consider this has effectively been included in recommended objective **LF-LS-O11A**. Mr Ensor also requests the addition of a new policy relating to the prioritisation of primary production on rural land, ahead of urban land uses.<sup>57</sup> I do not consider this policy is necessary as this direction is already included in the UFD chapter.

### *Resource use and mineral extraction*

99 In her evidence, Ms Hunter for OGL proposed a new objective **LF-LS-O13** to recognise the role of resource use and development in Otago.<sup>58</sup> I responded to this proposal in my supplementary evidence.<sup>59</sup> I note that my concerns about this objective have not been addressed any further by Ms Hunter in her latest statement of evidence.

100 However, in his legal submissions on the ECO chapter,<sup>60</sup> Mr Stephen Christensen stated that OGL is not opposed to including such an objective elsewhere in the pORPS. The same issue I raised in my evidence (i.e. that the scope of the objective is broader than the scope of the chapter) arises in most other chapters of the pORPS because of the topic-based structure mandated by the National Planning Standards. A broad objective of this type would be best located in an overarching chapter such as IM – Integrated management. **IM-O1** (as I recommend it be amended, shown without tracked changes) already states:

The management of natural and physical resources by and for the people of Otago, in partnership with Kāi Tahu achieves a healthy, and resilient, and natural environment, including the ecosystem services it provides, and supports the well-being of present and future generations (mō tātou, ā, mō kā uri ā muri ake nei).

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<sup>56</sup> Statement of evidence of Timothy Alistair Deans Ensor for Fulton Hoagn dated 23 November 2022 at [12] to [21]

<sup>57</sup> Statement of evidence of Timothy Alistair Deans Ensor for Fulton Hogan dated 23 November 2022 at [19] to [21]

<sup>58</sup> Statement of evidence by Claire Elizabeth Hunter on behalf of Oceana Gold (New Zealand) Limited dated 23 November 2022, Appendix B.

<sup>59</sup> Second brief of supplementary evidence of Felicity Ann Boyd – Introduction and general themes and LF (mineral extraction) dated 24 February 2023, at [19] to [21].

<sup>60</sup> Opening submissions on behalf of Oceana Gold (New Zealand) Limited dated 17 April 2023

101 This encapsulates the core philosophy of the pORPS: that a healthy environment is the foundation for the well-being of present and future generations. Additionally, IM-O3 states (as I recommend it be amended):

Otago's communities provide for their social, economic, and cultural well-being in ways that support or restore environmental integrity, form, function, and resilience so that the life-supporting capacities of air, water, soil, and ecosystems are safeguarded for future generations.

102 I continue to disagree with Ms Hunter and Mr Christensen about the need for an objective recognising resource use.

#### *Land environments*

103 Mr Brass for DOC seeks the addition of two new objectives in the LF-LS section:<sup>61</sup>

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

*Land use activities in Otago are managed in a way which recognises and protects terrestrial, freshwater, and coastal values which land use activities could affect either directly or indirectly.*

104 These objectives were also sought in DOC's submission.<sup>62</sup> I did not recommend including these objectives in my s42A report as I considered the ECO chapter manages ecosystems and indigenous biodiversity, and that it was not clear what the terrestrial, freshwater or coastal values sought to be protected by the second objective were.<sup>63</sup> Mr Brass acknowledges the s42A recommendation, but considers that the other relevant provisions in the pORPS do not directly relate to the management of land.

105 I still consider the second objective is unclear and that the values referred to are addressed and managed either elsewhere in the LF chapter or in other chapters of the pORPS, such as ECO and CE. I am less opposed to the first objective sought, although I do consider it has the potential to overlap with the ECO chapter somewhat. One of my concerns with introducing a new objective is the extent to which that objective can be achieved by the rest of the policy framework. On this point, I note Mr Brass

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<sup>61</sup> Statement of evidence of Murray John Brass for the Director-General of Conservation dated 23 November 2022 at [101] to [103]

<sup>62</sup> 00137.076 DOC, 00137.078 DOC

<sup>63</sup> Chapter 9: LF – Land and freshwater (4 May 2022, updated 7 October 2022), at [1460] to [1462]

and Ernslaw One also seek new policies in the LF-LS section which affects my consideration of the proposed objective.

- 106 Expanding on the content of DOC's submission, and the evidence of Mr Bruce McKinlay regarding wilding conifers, Mr Brass seeks a new policy related to pest species:<sup>64</sup>

**LF-LS-PX Pest species**

Reduce the impact of pest species (including wilding conifers and other pest species on land) on indigenous biodiversity, economic activities, landscapes and wahi tūpuna by:

- (1) avoiding the planting and replanting of plantation forests and permanent forests with wilding conifer species listed in APP5:
  - (a) in accordance with ECO-P9 and NFL-P5, and
  - (b) in locations where they would adversely affect economic activities or wāhi tupuna, and
- (2) control of other pest species on land, and
- (3) supporting initiatives to control existing wilding conifers and pests and limit their further spread.

- 107 Similarly, Ms Lynette Baish for Ernslaw One also seeks a new policy, focused specifically on wilding conifers:<sup>65</sup>

**LF-LS-P23 Management of conifers**

The planting and establishment of conifer species, including for the purpose of forestry, landscape/amenity planting, erosion control and shelter-belt planting, is managed by:

- (1) Requiring any proposal for the planting of new or any spatial extension of existing conifers listed in APP5 to identify the risk, and minimise the potential spread of wildings, including:
  - a) The location and its potential for wilding spread;
  - b) The surrounding land uses and whether these would reduce the potential for wilding spread;
  - c) The outcome of a risk assessment based on a recognised methodology;
  - d) A management plan appropriate for the risk identified.
- (2) Controlling the establishment of new or any spatial extension of existing plantation forestry activities or permanent forestry activities where identified as necessary to give effect to a

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<sup>64</sup> Statement of evidence of Murray John Brass for the Director-General of Conservation dated 23 November 2022 at [104] to [105]

<sup>65</sup> Statement of evidence of Lynette Baish for Ernslaw One dated 23 November 2022 at [60] to [61]



freshwater objective developed under the NPS-FM, and in alignment with LS-LF-M11(2).

- 108 Mr McKinlay addresses wilding conifers in his evidence and I take the point that the impacts of wilding conifers are broader than on only indigenous biodiversity (addressed by ECO-P9) and natural features and landscapes (addressed by NFL-P5). As notified, those policies were limited to managing the planting of plantation forestry and were therefore drafted to be consistent with the limited exemptions provided in Regulation 6 of the NESPF for greater stringency. I note that in relation to both of those policies, submitters have sought to expand their scope so they apply to permanent forests as well. I am aware that QLDC has also sought to apply ECO-P9 to broader areas at risk from wilding conifer spread.
- 109 The policy proposed by Mr Brass is broad but contains little direction for managing pest species other than wilding conifers. I am concerned about the potential for duplication with the Biosecurity Act 1993, under which ORC's regional pest management plan is prepared. To me, wilding conifers are a different type of pest as a large part of their impact arises from land being used in particular ways that can be controlled under the RMA unlike, for example, the introduction of mammalian pests.
- 110 I prefer the drafting of Ms Baish's policy which focuses on wilding conifers but have concerns that some of its content may impose greater restrictions on afforestation of plantation forestry than is allowable under regulation 6 of the NESPF.
- 111 At this stage, I am minded to incorporate a policy like that suggested by Ms Baish but more clearly separating the additional controls on plantation forestry (which need to be consistent with regulation 6 of the NESPF) from controls on other activities such as permanent forestry and shelter-belts (where there is more flexibility in approach).
- 112 In light of that, I consider there is merit in Mr Brass's proposal to include an additional objective on land environments supporting healthy habitats for indigenous species and ecosystems. The current suite of three objectives in the LF-LS chapter (as I recommend it be amended) does not provide a particularly clear link to a policy on wilding conifers.
- 113 I am not certain whether there needs to be a standalone new objective or whether the content proposed by Mr Brass could be incorporated into one

of the other objectives. I am also still concerned about the potential for duplication with the ECO chapter, although I agree with Mr Brass and Mr McKinlay that wilding conifers impact more than just indigenous biodiversity and therefore the LF-LS chapter is more appropriate for such a policy.

114 I have not put forward drafting for any new provisions in this statement because I consider it would be more helpful to hear, first, from the relevant submitters and their response to my discussion here.

#### LF-LS-O11A

115 In his evidence in chief, Mr James Taylor for Dunedin City Council (DCC) requests a change to LF-LS-O11A to protect highly productive land “from inappropriate development”, rather than the current wording which requires that highly productive land is “maintained now and future generations”.<sup>66</sup> LF-LS-O11A implements the sole objective of the National Policy Statement for Highly Productive Land 2022 (NPSHPL), which states:

*Highly productive land is protected for use in land-based primary production, both now and for future generations.*

116 The wording sought by Mr Taylor aligns with Policy 8 of the National Policy Statement, which states:

*Highly productive land is protected from inappropriate use and development.*

117 I consider LF-LS-O11A gives effect to the objective of the NPSHPL and that direction on inappropriate use and development of highly productive land is provided in LF-LS-P19, with cross references to UFD-P4, UFD-P7 and UFD-P8. I do not consider any amendments are necessary.

118 Ms Lynette Wharfe for Horticulture NZ seeks that highly productive land is “protected”, rather than “maintained”.<sup>67</sup> As set out above, “protect” is consistent with the objective of the NPSHPL. Although I consider it would be preferable to adopt the same wording as the NPSHPL, I do not consider there is scope to make this amendment.

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<sup>66</sup> Statement of evidence of James Taylor for Dunedin City Council dated 23 November 2022 at [53] to [55]

<sup>67</sup> Statement of evidence of Lynette Wharfe for Horticulture NZ dated 23 November 2022 at [133] to [143]

## LF-LS-P19

- 119 In her evidence in chief, Ms Tait for Fonterra notes her support for LF-LS-P19, provided the amendments sought by Fonterra to UFD-O4 and UFD-P7 are adopted.<sup>68</sup> Similarly, Mr Tuck for Silver Fern Farms notes his support of the recommended changes to LF-LS-P19(3) regarding the management of urban development, provided the s42A recommended amendments to UFD-P4, UFD-P7 and UFD-P8 are adopted.<sup>69</sup> Similarly, Ms Wharfe for Horticulture NZ seeks an amendment to clause (3) to refer to “restricting”, rather than “managing” development in urban areas which relates to the UFD policies.<sup>70</sup>
- 120 On 30 March, in accordance with Minute 7, Ms White circulated a redrafted UFD chapter responding to submissions, evidence, and discussions at the hearing on that chapter. A number of responses to that evidence were received from parties on 21 April. I understand Ms White is still considering those responses. I consider it will be necessary for Ms White and I to prepare our reply reports and final recommendations, then discuss the links between our chapters and reconsider the submission points above. At this stage, I do not recommend any further amendments.

## LF-LS-M12

- 121 Mr Farrell for Fish and Game, Wayfare and Trojan Holdings seeks a change to clause (3)(b) to include a reference to other means of public access rights, alongside legal roads and paper roads.<sup>71</sup> The other means of public access are described by Mr Farrell as including private easements and covenants ensuring public access. The same change was sought by the represented parties in their submissions.<sup>72</sup> I recommend accepting this change and amending LF-LS-M12(3)(b) to include reference to other means of public access rights (shown in red):

(3) facilitate public access to and along<sup>73</sup> lakes and rivers by:

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<sup>68</sup> Statement of evidence of Susannah Vrena Tait for Fonterra dated 23 November 2022 at [10.11] to [10.14]

<sup>69</sup> Statement of evidence of Steve Tuck for Silver Fern Farms dated 23 November 2022 at [7.2]

<sup>70</sup> Statement of evidence of Lynette Wharfe for Horticulture NZ dated 23 November 2022 at [152] to [182]

<sup>71</sup> Statement of evidence of Ben Farrell for Otago and Central Otago Fish and Game Councils, Real Group and NZ Ski dated 23 November 2022 at [95]

<sup>72</sup> 00206.042 Trojan, 00411.054 Wayfare, 00231.067 Fish and Game

<sup>73</sup> 00206.042 Trojan, 00411.054 Wayfare, 00231.067 Fish and Game

- (a) requiring the establishment of esplanade reserves and esplanade strips, and
- (b) promoting the use of legal roads, including paper roads, and any other means of public access rights,<sup>74</sup> that connect with esplanade reserves and esplanade strips, and

#### LF-LS-E4

122 Ms McIntyre for Kāi Tahu ki Otago seeks several changes to this provision to improve clarity and consistency with the provisions the explanation relates to:<sup>75</sup>

Paragraph 2:

~~Managing soil resources, in particular, cannot be undertaken in isolation.~~ The policies require managing the use and development of land and fresh water to maintain soil values, recognising that soil can be valued for more than its productive use and those values should be maintained. Soil erosion is problematic ~~for~~ and has adverse impacts on both soil and water health. The policies provide direction ~~on~~ for managing erosion resulting from land use activities to, ~~primarily, retain~~ ensure soil is retained and to prevent its discharge to water

Paragraph 4, 2nd sentence:

... This is recognised in the policies which seek to promote changes in land use or management that improve efficient and sustainable use of water, resilience to climate change and the health and quality of soil ...

123 Similar changes were sought in the Kāi Tahu ki Otago submission.<sup>76</sup>

124 I agree with Ms McIntyre's amendments and consider they are consistent with my recommendations on LF-FW-P7 and LF-LS-M11.

#### **Additional evidence**

125 On 27 January 2023, the Panel issued Minute 5 with directions for additional evidence on mineral extraction activities and the December 2022 amendments to the NPSFM.<sup>77</sup>

126 In relation to mineral extraction, the following statements of evidence were prepared by section 42A report authors and lodged on 24 February 2023:

<sup>74</sup> 00206.042 Trojan, 00411.054 Wayfare, 00231.067 Fish and Game

<sup>75</sup> Statement of evidence of Sandra Jean McIntyre for Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku and Te Rūnanga o Ngāi Tahu dated 23 November 2022 at [109(d)]

<sup>76</sup> 00226.212 Kāi Tahu ki Otago

<sup>77</sup> Minute 5 of the Hearing Panel.

- 126.1 Second brief of supplementary evidence of Felicity Ann Boyd: Introduction and general themes & LF (Mineral extraction)
- 126.2 Second brief of supplementary evidence of Jacqueline Ann Todd: SRMR (Mineral extraction)
- 126.3 Second brief of supplementary evidence of Hannah Louise Goslin: Air (Mineral extraction)
- 126.4 Second brief of supplementary evidence of Melanie Kate Hardiman: ECO (Mineral extraction)
- 126.5 Second brief of supplementary evidence of Andrew MacLennan: HAZ & NFL (Mineral extraction)
- 126.6 Second brief of supplementary evidence of Angela Marie Fenemor: HCV (Mineral extraction)
- 126.7 Third brief of supplementary evidence of Elizabeth Jane White: UFD (Mineral extraction).
- 127 Oceana Gold (NZ) Limited (OGL) was provided an opportunity to respond to these statements. Supplementary evidence was filed by Ms Hunter for OGL on 31 March.
- 128 I have gone back and forth with Ms Hunter and OGL for some time now, including in my original s42A report, through pre-hearing discussions, supplementary evidence on the outcomes of those discussions (including OGL's separately communicated proposal for amendments), and now an additional round of supplementary evidence from both myself (and other reporting officers) and Ms Hunter. I am of the view that we have 'met in the middle' as much as we are going to.
- 129 Ms Hunter and I remain in disagreement about the extent to which the pORPS currently recognises mineral and aggregate resources and whether that is sufficient recognition. We also disagree about whether an additional policy setting out a specific management framework for mineral and aggregate extraction is necessary, although we agree that if any such policy is included, it should be limited to regionally or nationally significant activities. Finally, there are unresolved issues relating to the interaction between the effects management hierarchies in the LF and ECO chapters. I have discussed this earlier in this statement.

130 In accordance with Minute 5, I also prepared a statement of evidence on the NPSFM amendments.<sup>78</sup> All parties were provided an opportunity to respond to this evidence by 31 March 2023. No evidence was received, other than the statement from Ms Hunter which briefly traversed part of my NPSFM evidence.



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Felicity Ann Boyd

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27 April 2023

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<sup>78</sup> Fourth brief of supplementary evidence of Felicity Ann Boyd: LF (NPSFM amendments) dated 24 February 2023.

## Appendix 1: Submitters (pORPS 2021 vs FPI 2022)

|                             |   |
|-----------------------------|---|
| <b>Black bold</b>           | Submitter on the pORPS 2021 <u>and</u> FPI 2022                                   |
| <del>Black strike-out</del> | Submitter on the pORPS 2021 but <u>not</u> FPI 2022                               |
| <b>Blue</b>                 | Further submitter on the pORPS 2021 <u>and</u> original submitter on FPI 2022     |
| <del>Blue</del>             | Further submitter on the pORPS 2021 but <u>not</u> original submitter on FPI 2022 |
| <b>Green</b>                | Submitter on the FPI 2022 but <u>not</u> pORPS 2021                               |

|   |  |
|---|--|
| AgResearch  | <b>Meridian</b>  |
| <del>Alluvium and Stoney Creek Mining</del>       | <b>Minister for the Environment</b>  |
| Angus et al                                       | Ministry of Education  |
| Aurora Energy                                     | <b>Moutere Station</b>   |
| AWA   | Mt Cardrona Station  |
| <b>Ballance</b>                                   | Network Waitaki  |
| Barratt, Andy                                     | <a href="#">Ngāi Tahu Forestry</a>   |
| <b>Beef + Lamb &amp; DINZ</b>                     | <b>Ngāi Tahu ki Murihiku</b>   |
| <del>Blackthorn Lodge Glenorchy</del>             | <a href="#">NZ Carbon Farming</a>  |
| <del>Broad, Susan &amp; Donald</del>              | NZ Cherry Corp   |
| Calder Stewart                                    | <a href="#">NZ Defence Force</a>   |
| <del>Central Otago District Council</del>         | NZ Infrastructure Commission   |
| <b>Central Otago Winegrowers Association</b>      | NZ Pork Industry Board   |
| City Forests                                      | <b>Oceana Gold</b>   |
| COES  | <a href="#">Otago Forestry Companies (Port Blakely, Calder Stewart, City Forests, Ernslaw One, Wenita)</a> |
| <b>Contact Energy</b>                             | <a href="#">Otago Regional Council</a>   |
| <a href="#">DairyNZ</a>                           | <b>OWRUG</b>   |
| <del>Danelle, Jones</del>                         | Queenstown Airport   |
| <del>Danny Walker et al</del>                     | <b>Queenstown-Lakes District Council</b>   |
| <b>DOC</b>  | <a href="#">Parcell, Edgar</a>   |
| <b>Dunedin City Council</b>                       | <a href="#">PF Olsen</a>   |
| <del>Environment Canterbury</del>                 | <del>Pomahaka Water Care Group</del>   |
| <b>Ernslaw One (now Otago Forestry Companies)</b> | <del>Portees, Sonya</del>  |
| <b>Federated Farmers</b>                          | PowerNet   |
| <del>Fire and Emergency NZ</del>                  | <b>Ravensdown</b>  |
| <b>Fish and Game</b>                              | <b>Rayonier Matariki</b>   |
| Fonterra  | Reid, Pete   |
| <b>Forest and Bird</b>                            | <del>Rural Contractors NZ</del>  |
| <b>Fuel Companies (Z, BP, Mobil)</b>              | <a href="#">Sanford Ltd</a>  |

|   |  |
|---|--|
| <b>Fulton Hogan</b>                                   | Shaping Our Future   |
| Girling, Kit  | Sharpe, Kelly  |
| Graymont  | Sharpe, Toby   |
| <b>Greenpeace Aotearoa</b>                            | <b>Silver Fern Farms</b>   |
| Griffin, J F T  | Skinner, Evelyn  |
| Gunn, Wendy   | Stewart, Lynne   |
| Hamilton Runs   | <b>Strath Clyde Water Ltd, McArthur Ridge Investment Group Ltd &amp; Mt Dustan Estates Ltd</b> |
| Harbour Fish, Southern Fantastic & Fantastic Holdings | Terry Dwayne   |
| Herlihy, Gavan James                                  | <b>Te Rūnanga o Ngāi Tahu</b>  |
| Highton, John   | Thomson, Chris   |
| Hopkins, Jim  | Thomson, Dawn  |
| <b>Horticulture NZ</b>                                | Tedi, Emese Erika  |
| Howson, Andrew Richard                                | Toitū te Whenua  |
| Infinity Investment Group                             | <b>Transpower</b>  |
| <b>Kāi Tahu ki Otago</b>                              | <b>Trojan Holdings / NZSki</b>   |
| Kenderdine, Duncan                                    | <b>Trustpower / Manawa</b>   |
| LAC Properties  | Universal Developments Hawea   |
| Lane Hocking  | Upper Clutha Angling Club  |
| Lauder Creek Farming                                  | WAI Wānaka   |
| <b>Manuherehia Catchment Group</b>                    | Waitaki DC   |
| Mark Kramer   | Waitaki Irrigators Collective  |
| Maryhill  | <b>Waka Kotahi</b>   |
| Matakanui Gold  | <b>Waterfall Park</b>  |
| Matthew Sole  | <b>Wayfare Group / Realnz</b>  |
| <b>McArthur Ridge Vineyard Ltd</b>                    | <b>Wise Response</b>   |
| McCall, Lloyd   | Yellow-eyed Penguin Trust  |



## Appendix 2: Recommended structure for LF-VM and LF-FW

| Notified structure                               | Proposed structure                               |
|--|--|
| <b>LF-VM – Visions and management</b>            | <b>LF-FW – Freshwater</b>                        |
| LF-VM-O2 – Clutha Mata-au FMU vision             | LF-FW-O1A – Region-wide vision                   |
| LF-VM-O3 – North Otago FMU vision                | LF-VM-O2 – Clutha Mata-au FMU vision             |
| LF-VM-O4 – Taiari FMU vision                     | LF-VM-O3 – North Otago FMU vision                |
| LF-VM-O5 – Dunedin & Coast FMU vision            | LF-VM-O4 – Taiari FMU vision                     |
| LF-VM-O6 – Catlins FMU vision                    | LF-VM-O5 – Dunedin & Coast FMU vision            |
| LF-VM-O7 – Integrated management                 | LF-VM-O6 – Catlins FMU vision                    |
| LF-VM-P5 – Freshwater Management Units and rohe  | LF-FW-O9 – Natural wetlands                      |
| LF-VM-P6 – Relationship between FMUs and rohe    | LF-FW-O10 – Natural character                    |
| LF-VM-M3 – Community involvement                 | LF-VM-P5 – Freshwater Management Units and rohe  |
| LF-VM-M4 – Other methods                         | LF-VM-P6 – Relationship between FMUs and rohe    |
| LF-VM-E2   | LF-FW-P7 – Fresh water                           |
| LF-VM-PR2  | LF-FW-P8 – Identifying natural wetlands          |
| LF-VM-AER3                                       | LF-FW-P9 – Protecting natural wetlands           |
| <b>LF-FW – Fresh water</b>                       | LF-FW-P10 – Restoring natural wetlands           |
| LF-FW-O8 – Fresh water                           | LF-FW-P11 – Identifying outstanding water bodies |
| LF-FW-O9 – Natural wetlands                      | LF-FW-P12 – Protecting outstanding water bodies  |
| LF-FW-O10 – Natural character                    | LF-FW-P13 – Preserving natural character         |
| LF-FW-P7 – Fresh water                           | LF-FW-P14 – Restoring natural character          |
| LF-FW-P8 – Identifying natural wetlands          | LF-FW-P15 – Stormwater and wastewater discharges |
| LF-FW-P9 – Protecting natural wetlands           | LF-VM-M3 – Community involvement                 |
| LF-FW-P10 – Restoring natural wetlands           | LF-FW-M5 – Outstanding water bodies              |
| LF-FW-P11 – Identifying outstanding water bodies | LF-FW-M6 – Regional plans                        |
| LF-FW-P12 – Protecting outstanding water bodies  | LF-FW-M7 – District plans                        |
| LF-FW-P13 – Preserving natural character         | LF-FW-M8 – Action plans                          |
| LF-FW-P14 – Restoring natural character          | LF-FW-M9 – Monitoring                            |
| LF-FW-P15 – Stormwater and wastewater discharges | LF-FW-M10 – Other methods                        |
| LF-FW-M5 – Outstanding water bodies              | LF-FW-E3 ( <i>combined with LF-VM-E2</i> )       |
| LF-FW-M6 – Regional plans                        | LF-FW-PR3 ( <i>combined with LF-VM-PR2</i> )     |
| LF-FW-M7 – District plans                        | LF-VM-AER3                                       |
| LF-FW-M8 – Action plans                          | LF-FW-AER4                                       |
| LF-FW-M9 – Monitoring                            | LF-FW-AER5                                       |
| LF-FW-M10 – Other methods                        | LF-FW-AER6                                       |
| LF-FW-E3 (paras 1, 3 & 4 / paras 2 & 5)          | LF-FW-AER7                                       |
| LF-FW-PR3  | LF-FW-AER8                                       |
| LF-FW-AER4                                       | LF-FW-AER9                                       |
| LF-FW-AER5                                       | LF-FW-AER10                                      |
| LF-FW-AER6                                       | LF-FW-AER11                                      |
| LF-FW-AER7                                       |  |
| LF-FW-AER8                                       |  |
| LF-FW-AER9                                       |  |
| LF-FW-AER10                                      |  |
| LF-FW-AER11                                      |  |

### Appendix 3: Recommended amendments to provisions

| Provision                      | Text  |
|--------------------------------|---|
| <p><b>Te Mana o te Wai</b></p> | <p><del>has the same meaning as is the concept described</del> in clause 1.3 of the National Policy Statement for Freshwater Management 2020, <del>(as set out in the box below)</del><sup>79</sup></p> <p><i>Concept</i></p> <p><del>(1) Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.</del></p> <p><del>(2) Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement.</del></p> <p><i>Framework</i></p> <p><del>(3) Te Mana o te Wai encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this National Policy Statement and its implementation.</del></p> <p><del>(4) The 6 principles are:</del></p> <ul style="list-style-type: none"> <li><del>(a) <i>Mana whakahaere</i>: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater</del></li> <li><del>(b) <i>Kaitiakitanga</i>: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations</del></li> <li><del>(c) <i>Manaakitanga</i>: the process by which tangata whenua show respect, generosity, and care for freshwater and for others</del></li> <li><del>(d) <i>Governance</i>: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future</del></li> <li><del>(e) <i>Stewardship</i>: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations</del></li> <li><del>(f) <i>Care and respect</i>: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.</del></li> </ul> <p><del>(5) There is a hierarchy of obligations in Te Mana o te Wai that prioritises:</del></p> <ul style="list-style-type: none"> <li><del>(a) first, the health and well-being of water bodies and freshwater ecosystems</del></li> <li><del>(b) second, the health needs of people (such as drinking water)</del></li> </ul> |

<sup>79</sup> FPI00213.010 Fonterra

|  |  |
|--|--|
|  | <del>(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future</del>  |
| <b>LF-WAI-P2 – Mana whakahaere</b>                     | Recognise and give practical effect to Kāi Tahu rakatirataka in respect of <i>fresh water</i> by: <ol style="list-style-type: none"> <li>(1) facilitating partnership with, and the active involvement of, <i>mana whenua</i> in <i>freshwater</i> management and decision-making processes,</li> <li>(2) sustaining the <u>environmental, social, cultural and economic</u><sup>80</sup> relationships of Kāi Tahu with <i>water bodies</i>,</li> <li>(3) providing for a range of customary uses, including <del>mahika kai</del> <u><i>mahika kai</i></u>,<sup>81</sup> specific to each <i>water body</i>, and</li> <li>(4) incorporating mātauraka into decision making, management and monitoring processes, and</li> <li>(5) <u>managing wai and its connections with whenua in a holistic and interconnected way – ki uta ki tai.</u><sup>82</sup></li> </ol>  |
| <b>LF-WAI-P3 – Integrated management/ki uta ki tai</b> | Manage the use of <i>freshwater</i> and <i>land</i> , <del>in accordance with tikanga and kawa,</del> using an integrated approach <u>that is consistent with tikaka and kawa,</u> <sup>83</sup> that: <ol style="list-style-type: none"> <li>(1) recognises, <del>and sustains and, where degraded or lost, restores</del><sup>84</sup> the <u>natural</u><sup>85</sup> connections and interactions between <i>water bodies</i> (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),</li> <li>(2) sustains and, <del>wherever possible where degraded or lost,</del> restores the <u>natural</u><sup>86</sup> connections and interactions between <i>land</i> and <i>water</i>, from the mountains to the sea,</li> <li>(3) sustains and, wherever possible, restores the habitats of <del>mahika kai</del> <u><i>mahika kai</i></u><sup>87</sup> and indigenous species, including taoka species associated with the <del>water body</del> <u><i>bodies</i></u>,<sup>88</sup></li> <li>(4) manages the <i>effects</i> of the use and development of <i>land</i> to maintain or enhance the health and well-being of <del>freshwater, and coastal water and associated ecosystems,</del><sup>89</sup></li> <li>(5) encourages the coordination and sequencing of regional or urban growth to ensure it is sustainable,</li> <li>(6) has regard to foreseeable <i>climate change</i> risks <u>and the potential effects of climate change on water bodies,</u><sup>90</sup> and</li> <li>(7) has regard to cumulative <i>effects</i>, and</li> </ol> |

<sup>80</sup> 00239.071 Federated Farmers

<sup>81</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>82</sup> 00234.026 Te Rūnanga o Ngāi Tahu

<sup>83</sup> 00235.080 OWRUG, FS00226.362 Kāi Tahu ki Otago, FS00234.164 Te Rūnanga o Ngāi Tahu

<sup>84</sup> 00234.027 Te Rūnanga o Ngāi Tahu

<sup>85</sup> 00026.161 Moutere Station

<sup>86</sup> 00026.161 Moutere Station

<sup>87</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>88</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>89</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>90</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

|                                |   |
|--------------------------------|---|
|                                | (8) <sup>91</sup> <del>the need to apply</del> <u>applies</u> <sup>92</sup> a precautionary approach where there is limited available information or uncertainty about potential adverse <i>effects</i> <sup>93</sup> <u>in accordance with IM-P6</u> . <sup>94</sup>   |
| <b>LF-WAI-E1 – Explanation</b> | <p>Water is a central element in Kāi Tahu creation traditions. It was present very early in the whakapapa of the world: in the beginning there was total darkness, followed by the emergence of light and a great void of nothingness. In time Maku mated with Mahoronuiatea which resulted in great expanses of water, then Papatūānuku Papatūānuku<sup>95</sup> and Takaroa met and had children after which Takaroa took a long absence. Papatūānuku Papatūānuku<sup>96</sup> met Rakinui and they had many children who conspired to force their parents' coupled bodies apart to let the light in. They were also responsible for creating many of the elements that constitute our world today - the mountains, rivers, forests and seas, and all fish, bird and animal life. To Kāi Tahu, the<sup>97</sup> whakapapa and spiritual source of <i>water</i> and <i>land</i> are connected, and <i>water bodies</i> are the central unifying feature that connects our landscapes together. The spiritual essence of <i>water</i> derives from the atua and the life it exudes is a reflection of the atua.</p> <p>To Kāi Tahu, the<sup>98</sup> whakapapa of <i>mana whenua</i> and water are also integrally connected. There is a close kinship relationship, and <i>mana whenua</i> and the wai (<u>water</u>)<sup>99</sup> cannot be separated. The tūpuna relationship with water, and the different uses made of the <i>water</i>, provide a daily reminder of greater powers – of both the atua (<u>gods</u>)<sup>100</sup> and tūpuna (<u>ancestors</u>).<sup>101</sup> This relationship continues into the present and future and is central to the identity of Kāi Tahu. The mana of wai is sourced from the time of creation and the work of kā Atua, invoking a reciprocal relationship with <i>mana whenua</i> based in kawa, tikaka (<u>customary practices or values</u>)<sup>102</sup> and respect for <i>water's</i> life-giving powers and its sanctity.</p> <p>The kinship connection engenders a range of rights and responsibilities for <i>mana whenua</i>, including rakatirataka rights and the responsibility of kaitiakitaka. Kaitiakitaka encompasses a high duty to uphold and maintain the mauri (<u>life-force</u>)<sup>103</sup> of the wai. If the mauri is degraded it has an impact not only on the mana of the wai but also on the kinship relationship and on <i>mana whenua</i>. The mauri expresses mana and connection, which can only be defined by <i>mana whenua</i>. Recognising rakatirataka enables <i>mana whenua</i> to enjoy their rights over <i>water bodies</i> and fulfil their responsibilities to care for the wai and the communities it sustains.</p> <p>The condition of <i>water</i> is seen as a reflection of the condition of the people - when the wai is healthy, so are the people. Kawa and tikaka have been developed over the generations, based on customs and values associated with the Māori</p> |

<sup>91</sup> 00231.047 Fish and Game

<sup>92</sup> 00231.047 Fish and Game

<sup>93</sup> 00239.072 Federated Farmers; 00022.016 Graymont; 00409.005 Ballance

<sup>94</sup> 00022.016 [Graymont](#); 00409.005 [Ballance](#)

<sup>95</sup> 00226.024 Ngāi Tahu ki Murihiku

<sup>96</sup> 00226.024 Ngāi Tahu ki Murihiku

<sup>97</sup> 00226.165 Kāi Tahu ki Otago

<sup>98</sup> 00226.165 Kāi Tahu ki Otago

<sup>99</sup> 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

<sup>100</sup> 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

<sup>101</sup> 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

<sup>102</sup> 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

<sup>103</sup> 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

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|  | <p>world view that span the generations, recognising and honouring <a href="#">Implementing Giving effect to<sup>104</sup> te mana Te Mana o te wai Wai and upholding upholds</a> the mauri of the wai <u>and</u> is consistent with this value base.<sup>105</sup></p> <p><u>To Kāi Tahu, Each each<sup>106</sup> water body</u> is unique. This is a reflection of its unique whakapapa and characteristics, and it means that each <i>water body</i> has different needs. Management and use must recognise and reflect this.</p> <p><u>The concept of Te Mana o te Wai</u> aligns closely with the Kāi Tahu approach to <i>freshwater</i> management, but it is not confined to Kāi Tahu.<sup>107</sup> <u>Water is valued by the community.</u><sup>108</sup> <u>The life-giving qualities of freshwater support the health and well-being of the whole community and all people have a shared responsibility to respect and care for the health and well-being of freshwater bodies.</u><sup>109</sup> <u>Access to water, within limits (in relation to water),<sup>110</sup> is an important contributor achieving social, cultural and economic well-being within Otago.</u><sup>111</sup></p> |
| <p><b>LF-FW-P13 – Preserving natural character and instream values<sup>112</sup></b></p> | <p>Preserve the natural character <u>and instream values<sup>113</sup></u> of <i>lakes</i> and <i>rivers</i> and <u>the natural character of<sup>114</sup></u> their <i>beds</i> and margins by:</p> <p>(1) avoiding the <i>loss of values</i> or extent of a <i>river</i>, unless:</p> <p>(a) there is a <i>functional need</i> for the activity in that location, and</p> <p>(b) the <i>effects</i> of the activity are managed by applying:</p> <p>(i) for <i>effects</i> on indigenous <i>biodiversity</i>, either ECO-P3 or <u>the effects management hierarchy (in relation to indigenous biodiversity) in<sup>115</sup> ECO-P6</u> (whichever is applicable), and</p> <p>(ii) for other <i>effects</i> (excluding those managed under (1)(b)(i)),<sup>116</sup> <u>the effects management hierarchy (in relation to natural wetlands and rivers) in LF-FW-P13A,<sup>117</sup></u></p> <p>(2) not granting resource consent for activities in (1) unless <del>Otago Regional Council</del> <u>the consent authority<sup>118</sup></u> is satisfied that:</p>  |

<sup>104</sup> [Clause 16\(2\) of Schedule 1 of the RMA](#)

<sup>105</sup> 00235.082 OWRUG

<sup>106</sup> 00226.165 Kāi Tahu ki Otago

<sup>107</sup> 00226.165 Kāi Tahu ki Otago

<sup>108</sup> 00235.082 OWRUG

<sup>109</sup> 00226.165 Kāi Tahu ki Otago

<sup>110</sup> [00231.009 Fish and Game](#)

<sup>111</sup> 00235.082 OWRUG

<sup>112</sup> 00231.058 Fish and Game

<sup>113</sup> 00231.058 Fish and Game

<sup>114</sup> Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00231.058 Fish and Game

<sup>115</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>116</sup> Clause 16(2), Schedule 1, RMA

<sup>117</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>118</sup> 00137.074 DOC

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|  | <p>(a) the application demonstrates how each step of the <i>effects management hierarchies hierarchy (in relation to indigenous biodiversity)</i><sup>119</sup> in (1)(b)(i) and the <i>effects management hierarchy (in relation to natural wetlands and rivers) in (1)(b)(ii)</i><sup>120</sup> will be applied to the <i>loss of values</i> or extent of the <i>river</i>, and</p> <p>(b) any consent is granted subject to conditions that apply the <i>effects management hierarchies hierarchy (in relation to indigenous biodiversity)</i><sup>121</sup> in (1)(b)(i) and the <i>effects management hierarchy (in relation to natural wetlands and rivers) in (1)(b)(ii)</i><sup>122</sup> in respect of any loss of values or extent of the <i>river</i>,<sup>123</sup></p> <p>(c) <u>if aquatic offsetting or aquatic compensation is applied, the applicant has complied with principles 1 to 6 in Appendix 6 and 7 of the NPSFM, and has had regard to the remaining principles in Appendix 6 and 7 of the NPSFM, as appropriate, and</u></p> <p>(d) <u>if aquatic offsetting or aquatic compensation is applied, any consent granted is subject to conditions that will ensure that the offsetting or compensation will be maintained and managed over time to achieve the conservation outcomes,</u><sup>124</sup></p> <p><del>(3) — establishing environmental flow and level regimes and water quality standards that support the health and well-being of the water body,</del><sup>125</sup></p> <p>(4) <u>wherever possible to the greatest extent practicable,</u><sup>126</sup> sustaining the form and function of a <i>water body</i> that reflects its natural behaviours,</p> <p>(5) recognising and implementing the restrictions in Water Conservation Orders,</p> <p>(6) preventing the impounding or control of the level of Lake Wanaka,</p> <p>(7) preventing <u>permanent</u><sup>127</sup> modification that would <u>permanently</u><sup>128</sup> reduce the braided character of a <i>river</i>, and</p> <p>(8) controlling the use of <i>water</i> and <i>land</i> that would adversely affect the natural character of the <i>water body</i>, and</p> <p>(9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity and reduce <u>sedimentation of contaminant loss to</u><sup>129</sup> <u>water bodies.</u><sup>130</sup></p> |
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<sup>119</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>120</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>121</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>122</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>123</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00119.010 Blackthorn, 00206.031 Trojan, 00411.043 Wayfare

<sup>124</sup> 00230.005 Forest and Bird

<sup>125</sup> [00235.096 OWRUG](#)

<sup>126</sup> [00318.015 Contact](#)

<sup>127</sup> 00206.034 Trojan, 00411.046 Wayfare, 00119.012 Blackthorn Lodge

<sup>128</sup> [00206.034 Trojan, 00411.046 Wayfare, 00119.012 Blackthorn Lodge](#)

<sup>129</sup> [Clause 16\(2\), Schedule 1, RMA](#)

<sup>130</sup> 00226.187 Kāi Tahu ki Otago

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| <p><b>LF-FW-P14 – Restoring natural character and instream values</b><sup>131</sup></p>                                 | <p>Where the natural character or <u>instream values</u><sup>132</sup> of <i>lakes</i> and <i>rivers</i> and <u>or the natural character of</u><sup>133</sup> their margins has been reduced or lost, promote actions that:</p> <ol style="list-style-type: none"> <li>(1) restore a form and function that reflect the natural behaviours of the <i>water body</i>,</li> <li>(2) improve <i>water</i> quality or quantity where it is <i>degraded</i>,</li> <li>(3) increase the presence, <i>resilience</i> and abundance of indigenous flora and fauna, including by providing for fish passage within <i>river</i> systems and, <u>where necessary and appropriate</u>, creating fish barriers to prevent <u>incursions from undesirable species predation where necessary</u>,<sup>134</sup></li> <li>(4) improve <i>water body</i> margins by naturalising bank contours and establishing indigenous vegetation and habitat, and</li> <li>(5) restore <u>water pathways and</u><sup>135</sup> natural connectivity between and within<sup>136</sup> <i>water</i> systems.</li> </ol>   |
| <p><b>LF-FW-M8A – Identifying and managing species interactions between trout and salmon and indigenous species</b></p> | <ol style="list-style-type: none"> <li>(1) When making decisions that might affect the interactions between trout and salmon and indigenous species, local authorities will have particular regard to the recommendations of the Department of Conservation, the Fish and Game Council relevant to the area, Kāi Tahu, and the matters set out in LF-FW-M8A(2)(a) to (c), and</li> <li>(2) Otago Regional Council will work with the Department of Conservation, the relevant Fish and Game Council and Kāi Tahu, to: <ol style="list-style-type: none"> <li>(aa) <u>identify the physical habitats and biological conditions required to provide for the protection of indigenous species.</u></li> <li><del>(a) identify areas where the protection of the habitat of trout and salmon, including fish passage, will be consistent with the protection of the habitat of indigenous species.</del></li> <li>(b) identify areas where the protection of the habitat of trout and salmon will <del>not</del> be inconsistent with the protection of habitat of indigenous species, and</li> <li>(c) for areas identified in (b), develop provisions for any relevant action plans(s) prepared under the NPSFM, including for fish passage, that will at minimum: <ol style="list-style-type: none"> <li>(i) determine information needs to manage the species,</li> <li>(ii) set short-, medium- and long-term objectives,</li> <li>(iii) identify appropriate management actions that will achieve objectives determined in (ii) <u>and account for habitat needs, including measures to manage the adverse effects of trout and salmon on indigenous biodiversity where appropriate</u><sup>137</sup>, and</li> <li>(iv) use tools available within the Conservation Act 1987 and the Freshwater Fisheries Regulations 1983, where appropriate.<sup>138</sup></li> </ol> </li> </ol> </li> </ol> |

<sup>131</sup> 00230.093 Forest and Bird, 00231.059 Fish and Game

<sup>132</sup> 00230.093 Forest and Bird, 00231.059 Fish and Game

<sup>133</sup> Clause 19(1)(b)(i), Schedule 1, RMA - consequential amendment arising from 00230.093 Forest and Bird, 00231.059 Fish and Game

<sup>134</sup> 00223.088 Ngāi Tahu ki Murihiku

<sup>135</sup> [Clause 16\(2\), Schedule 1, RMA](#)

<sup>136</sup> 00509.080 Wise Response

<sup>137</sup> [00231.003 Fish and Game](#)

<sup>138</sup> 00231.003 Fish and Game

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| <p><b>LF-FW-E3 – Explanation</b></p>     | <p>This section of the LF chapter outlines how the Council will manage <i>fresh water</i> within the region. To give effect to <i>Te Mana o te Wai</i>, the <i>freshwater</i> visions, and the policies set out the actions required in the development of <i>regional plan</i> provisions to implement the NPSFM.</p> <p>The outcomes sought for <i>natural wetlands</i> are implemented by requiring identification, protection and restoration. The first two policies reflect the requirements of the NPSFM for identification and protection but apply that direction to all <i>natural wetlands</i>, rather than only inland natural wetlands (those outside the <i>coastal marine area</i>) as the NPSFM directs. This reflects the views of <i>takata whenua</i> and the community that <i>fresh</i> and <i>coastal water</i>, including <i>wetlands</i>, should be managed holistically and in a consistent way. While the NPSFM requires promotion of the restoration of natural inland wetlands, the policies in this section take a stronger stance, requiring improvement where <i>natural wetlands</i> have been <i>degraded</i> or lost. This is because of the importance of restoration to Kāi Tahu and in recognition of the historic loss of <i>wetlands</i> in Otago.</p> <p>The policies respond to the NPSFM by identifying a number of <i>outstanding water bodies</i> in Otago that have previously been identified for their significance through other processes. Additional <i>water bodies</i> can be identified if they are wholly or partly within an outstanding natural feature or landscape or if they meet the criteria in APP1 which lists the types of values which may be considered outstanding: <a href="#">cultural and spiritual</a>,<sup>139</sup> ecology, landscape, natural character, recreation and physical. The significant values of <i>outstanding water bodies</i> are to be identified and protected from adverse <i>effects</i>.</p> <p>Preserving the natural character of <i>lakes</i> and <i>rivers</i>, and their <i>beds</i> and margins, is a matter of national importance under section 6 of the RMA 1991.<sup>140</sup> The policies in this section set out how this is to occur in Otago, reflecting the relevant direction from the NPSFM but also a range of additional matters that are important in Otago, such as recognising existing Water Conservation Orders, the Lake Wanaka Act 1973 and the particular character of braided <i>rivers</i>. Natural character has been reduced or lost in some <i>lakes</i> or <i>rivers</i>, so the policies require promoting actions that will restore or otherwise improve natural character.</p> <p>The impact of <i>discharges</i> of <i>stormwater</i> and <i>wastewater</i> on <i>freshwater bodies</i> is a significant issue for <i>mana whenua</i> and has contributed to <i>water</i> quality issues in some <i>water bodies</i>. The policies set out a range of actions to be implemented in order to improve the quality of these <i>discharges</i> and reduce their adverse <i>effects</i> on receiving environments.</p> |
| <p><b>LF-LS-M12 – District plans</b></p> | <p><i>Territorial authorities</i> must prepare or amend and maintain their <i>district plans</i> no later than 31 December 2026 to:</p> <p>(1) manage <i>land</i> use change by:</p> <p>(a) controlling the establishment of new or any spatial extension of existing <i>plantation forestry activities</i> or <u>permanent forestry activities</u><sup>141</sup> where necessary to give effect to an objective developed under the NPSFM, and</p>   |

<sup>139</sup> Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00311.062 Trustpower

<sup>140</sup> Clause 16(2), Schedule 1, RMA

<sup>141</sup> 00226.209 Kāi Tahu ki Otago,



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|                               | <p>(b) <del>minimising-avoiding</del><sup>142</sup> the removal of <u>montane</u><sup>143</sup> tall tussock grasslands,</p> <p>(2) provide for and <del>encourage</del> <u>promote</u><sup>144</sup> the creation and enhancement of vegetated riparian margins and constructed <i>wetlands</i>, and maintain these where they already exist, <del>and</del></p> <p>(3) facilitate public access to <u>and along</u><sup>145</sup> <i>lakes</i> and <i>rivers</i> by:</p> <p>(a) requiring the establishment of <i>esplanade reserves</i> and <i>esplanade strips</i>, and</p> <p>(b) promoting the use of legal <i>roads</i>, including paper <i>roads</i>, <u>and any other means of public access rights</u>.<sup>146</sup> that connect with <i>esplanade reserves</i> and <i>esplanade strips</i>. <del>and</del></p> <p>(4) <u>maintain the availability and productive capacity of <i>highly productive land</i> in accordance with LF-LS-P19</u>.<sup>147</sup></p>   |
| <b>LF-LS-E4 – Explanation</b> | <p>The policies in this section of the LF chapter seek to maintain the health of Otago’s soils and manage <i>land</i> uses as part of an integrated approach to sustaining soil and <i>water</i> health. The connections and interactions between these resources require a holistic approach to management.</p> <p><del>Managing soil resources, in particular, cannot be undertaken in isolation.</del> The policies require managing the use and development of <i>land</i> and <i>fresh water</i> to maintain soil values, recognising that soil can be valued for more than its productive use and those values should be maintained. Soil erosion is problematic <del>for and has adverse impacts on</del> both soil and <i>water</i> health. The policies provide direction <del>on for</del> managing erosion resulting from <i>land</i> use activities to, <del>primarily, retain</del> <u>ensure</u> soil <u>is retained</u> and <u>to</u> prevent its <i>discharge</i> to <i>water</i>.<sup>148</sup></p> <p><i>Highly productive land</i> is <i>land</i> used for <u>food and fibre production</u> <del>primary production</del><sup>149</sup> that provides economic and employment benefits. Providing for and managing such <i>land</i> types is essential to ensure its sustainability. The policies seek to identify and prioritise <i>land</i> used for productive purposes managing urban encroachment into rural environments where appropriate.</p> <p>Responding to <i>climate change</i> and achieving <i>freshwater</i> visions is likely to require changes in <i>land</i> uses and land management practices in parts of Otago. This is recognised in the policies which seek to promote changes in <i>land</i> use or management that improve efficient <u>and sustainable</u><sup>150</sup> use of <i>water</i>, <i>resilience</i> to <i>climate change</i> <del>and</del>, the health and quality of soil, <u>and water quality</u>.<sup>151</sup> The policies also require reducing <i>discharges</i> to <i>water</i> from the use and development of <i>land</i> and managing <i>land</i> uses that are unsupportive of <i>environmental outcomes</i> for <i>fresh water</i> as identified by each <i>FMU</i>.</p> |

<sup>142</sup> 00230.95 Forest and Bird

<sup>143</sup> Clause 16(2), Schedule 1, RMA

<sup>144</sup> 00509.092 Wise Response

<sup>145</sup> 00206.042 Trojan, 00411.054 Wayfare, 00231.097 Fish and Game

<sup>146</sup> [00206.042 Trojan](#), [00411.054 Wayfare](#), [00231.067 Fish and Game](#)

<sup>147</sup> 00140.023 Waitaki DC

<sup>148</sup> [00226.212 Kāi Tahu ki Otago](#)

<sup>149</sup> 00235.008 OWRUG

<sup>150</sup> [00226.212 Kāi Tahu ki Otago](#)

<sup>151</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00409.015 Ballance

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|  | Maintaining public access to and along <i>lakes</i> and <i>rivers</i> is a matter of national importance under section 6 of the RMA <del>1994</del> . <sup>152</sup> The policies in this section seek to maintain existing <u>public access opportunities</u> <sup>153</sup> and where appropriate promote <u>enhanced</u> <sup>154</sup> public access to and along <i>lakes</i> and <i>rivers</i> . Circumstances which restrict public access are set out where, for example, <del>public</del> <sup>155</sup> health and safety is at <i>risk</i> or valued parts of the <i>environment</i> may be compromised. |
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<sup>152</sup> Clause 16(2), Schedule 1, RMA

<sup>153</sup> 00226.212 Kāi Tahu ki Otago

<sup>154</sup> 00226.212 Kāi Tahu ki Otago

<sup>155</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00239.094 Federated Farmers