

**BEFORE COMMISSIONERS APPOINTED  
BY THE OTAGO REGIONAL COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the Proposed Otago Regional Policy Statement 2021 (Non-freshwater parts)

**AND**

**IN THE MATTER** of the First Schedule to the Act

**AND**

**IN THE MATTER** of a submission under clause 6 of the First Schedule

**BY** **BEEF + LAMB NEW ZEALAND LIMITED and DEER  
INDUSTRY NEW ZEALAND  
Submitters**

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**LEGAL SUBMISSIONS**

**4 May 2023**

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## MAY IT PLEASE THE PANEL

1. These are the legal submissions of Beef + Lamb New Zealand Limited (B+LNZ) and Deer Industry New Zealand (DINZ) addressing the provisions of the LF-Land and freshwater chapter (LF chapter) of the Proposed Otago Regional Policy Statement (PORPS).

### Introduction

2. In these submissions we rely on the duties and powers of the Otago Regional Council (ORC) set out in sections 59, 60, 61 and 62 of the Resource Management Act 1991 (the RMA).
3. We submit that additional strong directive process policies need to be included in the LF chapter to give effect to the provisions of the National Policy Statement for Freshwater Management 2020 (NPSFM) and the National Policy Statement for Highly Productive Land 2022 (NPSHPL).
4. These submissions build on our legal submissions made in February 2023 on the IM-Integrated management chapter.
5. We submit that the Panel has jurisdiction to adopt the approach we advanced in paragraph 4 (e) of our legal submissions on the provisions of the IM-Integrated management chapter, and that the High Court's judgment in *Otago Regional Council v Royal Forest and Bird Protection Soc of New Zealand Inc*<sup>1</sup> (High Court judgment) does not preclude that.
6. B+LNZ and DINZ submitted at paragraph 4(e) as follows: 'That to facilitate uniformity in the region's integrated resource management regulatory framework, the panel should adjourn its final hearings to ensure that there is contextual and practicable convergence and alignment of the Freshwater Planning Instrument (FWPI) provisions in the PORPS.'
7. We have been asked by the panel to address this submission in the context of the High Court's judgment.

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<sup>1</sup> *Otago Regional Council v Royal Forest and Bird Protection Soc of New Zealand Inc* (High Court judgment) [2022] NZHC 1777, [2022] NZRMA 565.

8. As a matter of natural justice, we also seek leave to call an expert planning witness at the conclusion of the hearing to address how to achieve the integrated management purpose of the PORPS pursuant to section 59 of the RMA, and to evaluate the proposed amendments pursuant to section 32AA of the RMA.
9. Today, we are calling two witnesses, Dr Jane Chrystal and Mr Thomas Orchiston.

### **Background to submissions**

10. The LF chapter addresses a significant resource management issue for the region, namely the use of the land and freshwater resources of rural Otago for primary production, including the production of food and fibre from dry stock farming. This significant resource management issue warrants a policy framework in a dedicated rural chapter in the same way that other significant resource management issues are addressed in domain chapters.<sup>2</sup> Failing that, some extra process policies need to be included in the LF chapter.
11. The focus of the LF chapter is on giving effect to the NPSFM and NPSHPL in the context of integrated land and freshwater management, planning, and decision-making. The NPSFM identifies freshwater management units (FMUs). The NPSHPL refers to a different spatial management unit using the land-use classification (LUC) system. The policy direction in the LF chapter also informs the development of land and freshwater plans and decision-making, and the integrated management of these natural resources at a catchment and sub-catchment level.

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<sup>2</sup> We adopt the legal submissions of counsel for OWRUG at [125-128].

12. The B+LNZ and DINZ evidence will address the critical importance of the ORC actively engaging with the farming groups at a catchment and sub-catchment level when giving effect to the strong process policy directions in the NPSFM and NPSHPL. Farmers are involved throughout Otago in numerous lake and river catchment groups to identify values, develop a vision and outcomes, and implement voluntary and self-regulatory initiatives to promote the sustainable use of land and freshwater utilised for primary production.<sup>3</sup> The community's views are central to implementing the provisions of the NPSFM and NPSHPL. These need to inform the regulatory planning and decision-making decisions of the ORC that must address integrated management of land and freshwater resources.
13. Integrated catchment and sub-catchment management plans should include adaptive management processes to address uncertainty, complexity and constantly changing information that characterises sustainable resource management.<sup>4</sup> Adaptive management is a policy directed process that involves establishing standards, targets, limits, and outcomes, and implementing monitoring and review processes. It can address ecological integrity (including biodiversity), climate impacts, and health, economic, social, and cultural benefits from the use of natural resources. Adaptive management is an effective precautionary risk management approach.<sup>5</sup>
14. B+LNZ and DINZ witnesses will confirm that highly productive land for dry stock farming includes all land classified LUC 1 to 7. Without the ability to utilise LUC 4-7 land for breeding, dry stock farmers cannot fully utilise the LUC 1-3 land for finishing lambs.<sup>6</sup>

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<sup>3</sup> See supplementary evidence of Mr Thomas Orchiston.

<sup>4</sup> B+LNZ and DINZ's principal submission (0237) dated 3 September 2021 at [27(vi)].

<sup>5</sup> See IM-Integrated management chapter submissions 3 February 2023 [32].

<sup>6</sup> See supplementary evidence of Dr Jane Chrystal.

15. The Supreme Court held in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*<sup>7</sup> that a requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which has a higher level of abstraction. It also held that a policy cannot be a rule as defined in the RMA, but it may nevertheless have the effect of what in ordinary speech would be a rule. In this respect the court referred to and applied a regional policy statement case, *Auckland Regional Council v North Shore City Council*.<sup>8</sup> It considered that a policy may be expressed in such directive terms that a decision-maker has no option but to implement it. The directive policy language in the NPSFM and NPSHPL utilises the word “must”. It is important that the PORPS replicates these strong directions in its policies.
16. Therefore, it is necessary to strengthen the policy framework contained in the LF chapter by amending it to give effect to the strong process policy directions in the NPSFM and NPSHPL. The amendments sought by B+LNZ and DINZ, build on those proffered to the panel at the February hearing of submissions on the IM-Integrated management chapter.

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<sup>7</sup> [2014] NZSC 38, [112-116] [129].

<sup>8</sup> [1995] 3 NZLR 18 (CA).

## Relevant directive provisions in the NPSFM

### Subpart 1 Approaches to implementing the National Policy Statement

#### 3.2 Te Mana o te Wai

(1) Every regional council must engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region.

(2) Every regional council must give effect to Te Mana o te Wai, and in doing so must:

...

(b) engage with communities and tangata whenua to identify long-term visions, environmental outcomes, and other elements of the NOF; and

...

(e) adopt an integrated approach, ki uta ki tai, to the management of freshwater (see clause 3.5) (Emphasis added).

### 3.3 Long-term visions for freshwater

- (1) Every regional council must develop long-term visions for freshwater in its region and include those long-term visions as objectives in its regional policy statement.
- (2) Long-term visions:
  - (a) may be set at FMU, part of an FMU, or catchment level; and
  - (b) must set goals that are ambitious but reasonable (that is, difficult to achieve but not impossible); and
  - (c) identify a timeframe to achieve those goals that is both ambitious and reasonable (for example, 30 years after the commencement date).
- (3) Every long-term vision must:
  - (a) Be developed through engagement with communities and tangata whenua about their long-term wishes for the water bodies and freshwater ecosystems in the region; and
  - (b) Be informed by an understanding of the history of, and environmental pressures on, the FMU, part of the FMU, or catchment; and
  - (c) Express what communities and tangata whenua want the FMU, part of the FMU, or catchment to be like in the future.
- (4) Every regional council must assess whether each FMU, part of and FMU, or catchment (as relevant) can provide for its long-term vision, or whether improvement to the health and well-being of water bodies and freshwater ecosystems is required to achieve the vision.  
(Emphasis added).

### 3.5 Integrated Management

- (1) Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must:
  - (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and
  - (b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and
  - (c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and
  - (d) encourage the co-ordination and sequencing of regional or urban growth.
- (2) Every regional council must make or change its regional policy statement to the extent needed to provide for the integrated management of the effects of:
  - (a) the use and development of land on freshwater; and
  - (b) the use and development of land and freshwater on receiving environments.
- (3) In order to give effect to this National Policy Statement, local authorities that share jurisdiction over a catchment must co-operate in the integrated management of the effects of land use and development on freshwater.
- (4) Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments. (Emphasis added).



## Subpart 2 National Objectives Framework

### 3.7 NOF process

- (1) At each step of the NOF process, every regional council must:
  - (a) engage with communities and tangata whenua; and
  - (b) apply the hierarchy of obligations set out in clause 1.3(5), as required by clause 3.2(2)(c).

...

### 3.15 Preparing action plans.

- (1) Action plans prepared for the purpose of this National Policy Statement may:
  - (a) be prepared for whole FMUs, parts of FMUs, or multiple FMUs; and
  - (b) set out a phased approach to achieving environmental outcomes; and
  - (c) be 'prepared' by adding to, amending, or replacing an existing action plan.
- (2) An action plan may describe both regulatory measures (such as proposals to amend regional policy statements and plans, and actions taken under the Biodiversity Act 1993 or other legislation) and non-regulatory measures (such as work plans and partnership arrangements with tangata whenua and community groups).

...

- (4) Action Plans:
  - (a) must be published as soon as practicable; and
  - (b) may be published either by appending them to a regional plan or by publishing them separately.
- (5) Before preparing an action plan or amending an action plan other than in a minor way, the regional council must consult with communities and tangata whenua. (Emphasis added).

## Changes sought to the LF chapter to give effect to the NPSFM

17. Include a new directive process policy as new LF-Wai-P4 as follows:

LF-WAI-P4- Integrated catchment and sub-catchment adaptive management

The Regional Council must:

- (1) actively engage with a catchment community group in:
  - (a) the development of limits and standards in land and freshwater planning instruments and in monitoring and review processes; and
  - (b) the development and implementation of an adaptive integrated catchment and sub-catchment plan; and
  - (c) the development of any regulatory and non-regulatory action plans for the adaptive management of land and freshwater resources.

18. Reframe method LF-VM-M3- Community involvement as a directive process policy:

LF-VM-P7- Community involvement

Otago Regional Council must ~~work~~ actively engage with communities to achieve the objectives and policies in this chapter, including by:

- (1) engaging with communities to identify *environmental outcomes* for Otago's *FMUs, catchments and sub-catchments*, and rohe and methods to achieve those outcomes,
- (2) encouraging community stewardship of *water* resources and programmes to address *freshwater* issues at a local catchment level,
- (3) supporting community initiatives that contribute to maintaining or improving the health and well-being of *water bodies*, and
- (4) supporting industry-led guidelines, codes of practice and environmental accords where these would contribute to achieving the objectives of this RPS.

## The relevant directive provisions in the NPSHPL

### Part 1: Preliminary provisions

#### 1.3 Interpretation

**highly productive land** means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land)

### Part 3: Implementation

#### 3.2 Integrated management

- (1) Regional councils and territorial authorities must identify highly productive land, and manage the effects of subdivision, use, and development of highly productive land, in an integrated way, which means:
  - (a) Considering how land-based primary production, including supporting activities, interact with freshwater management at a catchment level; and
  - (b) providing co-ordinated management and control of the subdivision, use, and development on highly productive land across administrative boundaries within and between regions; and
  - (c) taking a long-term, strategic approach to protecting and managing highly productive land for future generations. (Emphasis added).

#### 3.4 Mapping highly productive land

...

- (3) Regional councils may map land that is in a general rural zone or a rural production zone, but is not LUC 1, 2, or 3 land, as highly productive land if the land is, or has the potential to be (based on current uses of similar land in the region), highly productive for land-based primary production in that region, having regard to the soil type, physical characteristics of the land and soil, and climate of the area. (Emphasis added).

...

### **3.5 Identifying highly productive land in regional policy statements and district plans**

- (1) As soon as practicable, and no later than 3 years after the commencement date, every regional council must, using a process in Schedule 1 of the Act, notify in a proposed regional policy statement, by way of maps, all the land in its region that is required by clause 3.4 to be mapped as highly productive land. (Emphasis added).
- (2) The identification of highly productive land in a regional policy statement may be sequenced over the 3 years following the commencement date. (Emphasis added)

...

### **Changes sought to the LF chapter to give effect to the NPSHPL**

19. Include new directive process policy provision for addressing community engagement as new LF-LS-P20 as follows:

#### **LF-LS-P20- Mapping of Highly Productive Land and community engagement**

- (1) If the regional council were to map highly productive land in accordance with clause 3.4(3) of the National Policy Statement for Highly Productive Land 2022, it must actively engage with the farming community and landowners.

20. Reframe LF-LS-M12- *District plans* as a directive policy as follows:

**LF-LS-P24- *District plans***

*Territorial authorities* must prepare or amend and maintain their *district plans* no later than 31 December 2026 to:

- (1) Manage *land* use change by:
  - (a) controlling the establishment of new or any spatial extension of existing *plantation forestry activities* where necessary to give effect to an objective developed under the NPSFM, and
  - (b) minimising the removal of tall tussock grasslands, and
  - (c) avoiding the loss of highly productive land that is used for or has the potential for dry stock farming.
- (2) provide for and encourage the creation and enhancement of vegetated riparian margins and constructed *wetlands*, and maintain these where they already exist, and
- (3) facilitate public access to *lakes* and *rivers* by:
  - (a) requiring the establishment of *esplanade reserves* and *esplanade strips*, and
  - (b) promoting the use of legal *roads*, including paper *roads*, that connect with *esplanade reserves* and *esplanade strips*.

## Jurisdiction to adjourn completion of hearing until after Freshwater Panel reports to the ORC

21. We submit that the High Court's judgment in ***Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc*** does not prevent the panel from adjourning its final decisions until after the Freshwater Hearings Panel has completed its report. Pursuant to the RMA the panel has the power to adjourn its final decision.
22. Our submissions are relevant whether or not the panel and the Freshwater Panel are constituted with the same membership.
23. The dual planning process established by section 80A and part 4 of Schedule 1 requires that those parts of a planning document that relate to freshwater are to be subject to the new streamlined freshwater planning process, while the remainder is to be dealt with under the normal planning processes under part 1 of Schedule 1.<sup>9</sup>
24. The following issues arise:
  - (a) Is there anything in the High Court's judgment that would prevent the panel from adjourning its final decisions until such time that the Council has received the Freshwater Hearings Panel's report?
  - (b) If no, does the panel have the power to adjourn its final decisions?

### *The High Court judgment*

25. This case concerned an application by the ORC for declarations involving the interpretation of the "freshwater planning instrument" provisions in section 80A of the RMA. The central issue was whether the Council was correct in determining that the whole of the PORPS was a freshwater planning instrument and therefore subject to the streamlined planning process for freshwater planning instruments. The Council argued that the *whole* PORPS was a freshwater planning instrument based on an "integrated" approach to resource

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<sup>9</sup> RMA, s 80A.

management, including recognition of the concepts of Te Mana o te Wai and ki uta ki tai. It submitted that effective decision-making under an integrated approach could not be segregated into two different planning processes.<sup>10</sup>

26. The High Court disagreed. It concluded that “Parliament was neither intending nor contemplating that the whole of a regional policy statement which dealt with matters other than freshwater management would be subject to the freshwater planning process”.<sup>11</sup> Rather, issues relating to freshwater were to be identified as discrete matters.<sup>12</sup> The Court said that it did not consider the Council’s function of achieving integrated management of natural and physical resources, and the requirement to recognise and give effect to Te Mana o te Wai and ki uta ki tai, required it to treat the whole of the PORPS as a freshwater planning instrument. The Court said that in reaching this determination, it was not seeking to minimise the importance of integrated management or Te Mana o te Wai.<sup>13</sup> The Court continued:

[160] A regional council, in preparing regional policy statements, and their hearing panels in reviewing statements, or freshwater hearings panels, will all have to give effect to the principles of Te Mana o te Wai and of Te Tiriti o Waitangi in their consideration of all matters they are separately dealing with.

[161] It will only be those parts of a proposed regional policy statement that relate to freshwater that can be part of a freshwater planning instrument. All other parts of a regional policy statement will remain subject to the normal planning process set out in pt 1 of sch 1, of the RMA.

27. The Court thus concluded that the Council had erred in its decision-making, and it remitted the matter back to the Council for it to determine which parts of the PORPS related to freshwater under a correct interpretation of the law.<sup>14</sup>

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<sup>10</sup> High Court judgment, at [60] and [154].

<sup>11</sup> *Ibid*, at [148].

<sup>12</sup> *Ibid*, at [149].

<sup>13</sup> *Ibid*, at [159].

<sup>14</sup> *Ibid*, at [170] and [236].

28. We submit that procedurally there is nothing in the High Court judgment that would prevent the panel from adjourning its final decisions on integrated management until the Council received the recommendations on freshwater from the Freshwater Hearings Panel.
29. The High Court judgment looked purely at process. It considered whether it was open for a regional council to treat parts of a regional policy statement that deal with integrated management of natural resources as a freshwater planning instrument so as to subject it to the freshwater planning process or not? The High Court held that it was not open for a regional council to do so. Only those parts of a proposed regional policy statement that related directly to freshwater could be treated as a freshwater planning instrument.
30. Significantly, the High Court said that its decision did not mean that the fundamental concepts of Te Mana o te Wai, ki uta ki tai, and integrated management can be disregarded at either stage of the dual planning process.<sup>15</sup> The Court said:
- [208] [Such concepts] will be fundamental to regional councils in the formulation of a proposed regional policy statement and to the Environment Court when it might have to consider issues arising out of a regional policy statement on appeal. To the extent those principles are relevant to matters that are not part of the freshwater planning process, those who consider such principles have not been adequately recognised by a regional council will have full rights of appeal to the Environment Court. That Court is a specialist tribunal, well equipped to recognise the importance of integrated management of natural and physical resources and the fundamental concept of Te Mana o te Wai. Submitters would not have such rights of appeal if the matters they are concerned with are to be subject to the freshwater planning process.
31. Thus, the Court recognised the importance of the Environment Court being able to pull together issues relating to Te Mana o te Wai and integrated management of natural resources on a de novo appeal.

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<sup>15</sup> Ibid, at [207].



32. Therefore, we submit that there is nothing in the High Court judgment that would prevent the panel from adjourning or delaying its final hearings on integrated management until such time that the Council receives the report of the Freshwater Hearings Panel.

*Does the panel have the power to adjourn its final decisions until after the Freshwater Panel has reported?*

33. There is no explicit provision in the RMA conferring on the panel a power to adjourn its final decisions. However, the High Court in ***Genesis Power Ltd v Environment Court of New Zealand*** held that section 21 (and section 272) has implicit within it powers of adjournment.<sup>16</sup> Section 21 of the RMA states:

**Section 21 Avoiding unreasonable delay**

Every person who exercises or carries out functions, powers, or duties, or is required to do anything, under this Act for which no time limits are prescribed shall do so as promptly as is reasonable in the circumstances.

34. In addition, the panel has the power in section 39(1) to establish a procedure that is appropriate and fair in the circumstances.<sup>17</sup> Section 39(1) of the RMA states:

**Section 39(1) Hearings to be public and without unnecessary formality**

- (1) Where a local authority, a consent authority, or a person given authority to conduct hearings under any of sections 33, 34, 34A, 117, 149J, 202, or 357C, holds a hearing in relation to—
- (a) a proposed policy statement, a plan, a change, or a variation; or
  - (b) an application for a resource consent; or
  - (c) a review of a resource consent; or
  - (d) an application to change or cancel a condition of a resource consent; or

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<sup>16</sup> *Genesis Power Ltd v Environment Court of New Zealand* [2003] NZAR 371 (HC) at [17].

<sup>17</sup> RMA, s 39(1).

- (e) a matter for which a direction has been made under section 142(2) or 147(1)(a); or
- (f) a requirement for a designation or heritage order; or
- (fa) a requirement to alter a designation or heritage order; or
- (g) an application for a water conservation order,—

the authority shall hold the hearing in public (unless permitted to do otherwise by section 42 (which relates to the protection of sensitive information) or the Local Government Official Information and Meetings Act 1987), and shall establish a procedure that is appropriate and fair in the circumstances.

35. Therefore, we submit that sections 21 and 39 enable the panel to delay the final hearings on submissions on integrated management, should it consider it fair and appropriate to do so in order to achieve promotion of sustainable management of natural and physical resources pursuant to section 5.<sup>18</sup>

36. We submit that there is a reasonable and rational basis for granting an adjournment in the circumstances of this case. It is a well-established principle of interpretation that Parliament should not be taken to have intended an absurd or incongruous result. In ***Frucor Beverages Ltd v Rio Beverages Ltd***, the Court of Appeal approved the following definition of “absurdity”:<sup>19</sup>

[V]irtually any result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief.

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<sup>18</sup> RMA, s 5.

<sup>19</sup> ***Frucor Beverages Ltd v Rio Beverages Ltd*** [2001] 2 NZLR 604 (CA) at [28], cited with approval recently by the High Court in ***Re Watercare Services Ltd*** [2018] NZHC 294 at [63]. On using absurdities to justify statutory interpretation, see Francis Bennion ***Bennion on Statutory Interpretation*** (8th ed, Lexis Nexis, London 2020) at 500.

37. The presumption against absurd results means Parliament did not intend unworkable results.<sup>20</sup> We submit that an unworkable and incongruous result could arise if the panel were required to make final decisions on integrated management before the Freshwater Hearings Panel's recommendations on the provisions in the Freshwater Planning Instrument are received by the Council.
38. Section 59 of the RMA states that the purpose of a regional policy statement is to achieve the RMA's purpose by providing an overview of resource management issues and the policies and methods to achieve integrated management of the resources of the whole region. The regional council must prepare and change its regional policy statement in accordance with its functions under section 30(1) of the RMA. A key function is the "establishment, implementation and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region".<sup>21</sup>
39. The regional policy statement has been described as "the heart of resource management within that region".<sup>22</sup> It is a significant document because of its impact on other statutory instruments throughout the region.<sup>23</sup>
40. Clause 50(d)(i) of Schedule 1 requires the Freshwater Hearings Panel, when making recommendations on freshwater, to be sure that if the Council were to accept its recommendations, section 59 of the RMA (amongst others) would be complied with. There is, therefore, a "gap" in the process. The only way the Freshwater Hearings Panel can ensure that it complies with clause 50(d)(i) of Schedule 1 is if this panel adjourns its final hearings until such time as the Freshwater Hearings Panel's report is received.

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<sup>20</sup> *Re Watercare Services Ltd* [2018] NZHC 294 at [64], citing *R v Salmond* [1992] 3 NZLR 8 (CA) at 13. See also *Bennion*, at 501.

<sup>21</sup> RMA, s 30(1)(a).

<sup>22</sup> *Ahureka Trustees (No 2) Ltd v Auckland Council* [2019] NZHC 3142 at [11], citing *North Shore City Council v Auckland Regional Council* [1994] NZRMA 521 (PT) at 528.

<sup>23</sup> Section 67(3)(c) of the RMA provides that a regional plan must give effect to a regional policy statement. Section 75(3)(c) provides that a district plan must give effect to a regional policy statement.

41. Faced with a situation of this type, we submit that a court would try to find a practical and workable interpretation of the two planning processes. As the Court of Appeal said in *R v Salmond*:<sup>24</sup>

[This] Court has emphasised the importance of a practical and realistic interpretation of Acts of Parliament. In cases of ambiguity or hiatus they should be interpreted so as to be made to work. Gaps may be filled to cover problems not foreseen when the legislation was enacted, provided that the policy-making function is not usurped by the Courts. This approach was adopted, for example, in *Northland Milk Vendors Association Inc v Northern Milk Ltd* [1988] 1 NZLR 530.

42. Although Parliament contemplated dual planning processes for the matters that have to be dealt with in a regional policy statement, the matters that relate to freshwater are not standalone or separate from the remainder of the document. There is a clear nexus between the two planning processes in terms of section 59 of the RMA. An adjournment of the final decisions would enable a holistic and workable assessment of integrated management in terms of section 59 of the RMA. It would also promote a fair process in terms of section 39. A failure to allow an adjournment could lead to unworkable and incongruous outcomes that cannot have been intended.

43. Therefore, we submit that it would be a proper use of the power in sections 21 and 39 of the RMA if the panel were to grant an adjournment and defer final decisions on submissions on integrated management until such time as the Freshwater Hearings Panel's report is received.

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**Dr Royden Somerville KC/ Colleen Luisetti**

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<sup>24</sup> *R v Salmond* [1992] 3 NZLR 8 (CA) at [13].