

Before the Independent Hearing Panel

Under the Resource Management Act 1991

In the matter of submissions on the Proposed Otago Regional Policy Statement 2021

Legal Submissions on behalf of Otago and Central South Island Fish and Game Councils (#0321) on Topics:

8 May 2023

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May it please the Commissioners

- 1 These legal submissions are presented on behalf of the Otago and Central South Island Fish and Game Councils (**Fish and Game**) in relation to the Land and Freshwater chapter and related provisions of the non-freshwater parts of the proposed Otago Regional Policy Statement (**pORPS**), including APP1.
- 2 The key themes of Fish and Game's case in respect of the pORPS are:
 - (a) The pORPS must prioritise health of the natural environment;
 - (b) The National Policy Statement for Freshwater Management (**NPSFM**) and Te Mana o te Wai (**TMOTW**) require that there be no degradation of water quality;
 - (c) Prioritising the natural environment includes the importance to peoples' health and wellbeing derived from recreational use and enjoyment in the natural environment/outdoors;
 - (d) Included in the above, and the concept of ecosystem health, is the importance of protecting the habitat of trout and salmon, subject to the requirement that this is consistent with the protection of the habitats of indigenous species;
 - (e) At the pORPS level there needs to be clear direction that environmental limits should be set that will protect, or restore ecosystem health, and that all resource use is subject to those limits.

Points arising from previous appearance

Updated Appendix of relief

- 3 An updated Appendix is attached setting out the relief sought by Fish and Game using the sources of the original Submission, and Mr Farrell's evidence.

Definition of "minimise"

- 4 The Commissioners' asked for the source of the definition sought by Fish and Game. Mr Farrell advises he used the proposed Wellington Regional Natural Resources Plan as the reference. The definition in that plan is:

Reduce to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning.

Ecosystem health and reference to pre-human state

- 5 At our previous appearance we addressed you on ecosystem health, and how the concept is viewed from Fish and Game's perspective. Mr Paragreen and Couper will address you further on this today.
- 6 I addressed you on the NPS-FM definition of ecosystem health in Appendix 1A of the NPS-FM, illustrating how it sits alongside policies 9 and 10, which incorporate providing for the protection of trout and salmon habitat as part of protecting ecosystem health, as long as protection of the habitat of indigenous species is provided for. The place of introduced species in the concept of ecosystem health is also relevant to the reference point of 'pre-human state' or 'in the absence of human disturbance'.
- 7 The Ministry for the Environment updated its Guidance on the National Objectives Framework of the National Policy Statement for Freshwater Management (**NPS-FM**) (**Guidance**) in April 2023.¹ The Guidance is directed at Councils and seeks to clarify the policy intent of the NPS-FM and set expectations for applying the National Objectives Framework (**NOF**). It has no legal status, however, the Interpretation Act 1999 does not preclude its consideration.² Reference to the Guidance is permissible where the NPS-FM itself is unclear, ambiguous, obscure or leads to absurdity. The helpful extract in respect of health of ecosystems/ecosystem health is set out below:³

Priority 1 – The health and well-being of water bodies and freshwater ecosystems

The first priority has two components:

the health and well-being of water bodies, **and**

the health and well-being of freshwater ecosystems.

Health and well-being of water bodies

The health and well-being of the wai itself as an interconnected whole, with mana of its own, must be provided for as a first priority. This includes

¹ Ministry for the Environment. 2023. Guidance on the National Objectives Framework of the National Policy Statement for Freshwater Management. Wellington: Ministry for the Environment. <<https://environment.govt.nz/assets/publications/NOF-Guidance-ME1753-Final-April2023.pdf>>

² *Canterbury RC v Christchurch CC* (2001) 7 ELRNZ 97(EnvC) at [32]

³ Complete footnote

its metaphysical aspects and its physical being. Providing for this will overlap with providing for a healthy ecosystem, but providing for the mauri of a water body may mean going beyond the concept of ecosystems. For example, providing for a water body to express its natural form and character by moving within its bed, or changing course or connecting with riparian areas, will be a necessary part of providing for the mana of some rivers. Part of this ability to move and express form will be captured by the 'habitat' component of ecosystem health. However, it may encompass wider considerations of the intrinsic value of the river.

Understanding what the holistic health and well-being of a water body means, and how to express it, will come from conversations with tangata whenua when gaining a local understanding of Te Mana o te Wai. Tangata whenua may use integrated concepts like mahinga kai* to indicate the overall health of the water. The description of the mahinga kai value in appendix 1A of the NPS-FM includes "kei te ora te mauri (the mauri of the place is intact)" for this reason.

One way to ensure the health and well-being of water bodies is by applying the NOF. Policy 5 in the NPS-FM requires that this is at least maintained, and, in some circumstances, improved. For more detail, see the section Policy 5 and the direction to 'maintain or improve' in this guidance.

*Mahinga kai generally refers to freshwater species that have traditionally been used as food, tools or other resources. It also refers to the places those species are found and to the act of catching or harvesting them.

Health and well-being of freshwater ecosystems

The definition of healthy freshwater ecosystem in Appendix 1A of the NPS-FM describes some aspects required under this priority: In a healthy freshwater ecosystem, all 5 biophysical components are suitable to sustain the indigenous aquatic life expected in the absence of human disturbance or alteration (before providing for other values).

This indicates a high standard of health is expected – merely 'surviving' will not be enough – **but it does not necessarily mean a water body must be pristine or returned to a pre-human state. For more on the five components, see the ecosystem health factsheet.**

The national bottom lines in appendix 2A of the NPS-FM indicate that a state below them will not achieve a healthy ecosystem. However, although the state of health appropriate to a particular water body, and the time taken to achieve it, is a choice for tangata whenua and

communities to consider through the NOF process, the final decision-making on this lies with councils.

- 8 This guidance confirms that you can have a healthy ecosystem with some form of alteration – including the presence of trout and salmon. It is a question not of pre-human state but of the appropriate scale and extent of anthropogenic alteration within a healthy ecosystem.
- 9 This is a crucial aspect to several key parts of Fish and Game's relief, including:
 - (a) the trout and salmon habitat and species interaction framework, which seeks to identify where such alteration is an is not appropriate and plan for resolution in a sports fish context;
 - (b) relief that all actions support the health, well-being and resilience of water bodies or the environment, as it demonstrates that humans and their impacts can exist within healthy ecosystems;
 - (c) direction ensuring activities occur within limits, for the same reason as above;
 - (d) direction to restore water bodies, habitats or ecosystems where restore means to return to a practical state of good health, rather than an unattainable pre-human state; and
 - (e) taking a naturalised flow or unpolluted state baseline when thinking about the baseline to compare protection or restoration against, as this would help decision makers consider the appropriateness of anthropogenic alteration in a given circumstance.

Relationship with Treaty Partner and Conservation Act

- 10 Mr Paragreen was asked questions at our previous appearance on how this process and the pORPS as an instrument can be of assistance in the context of Fish and Game's obligations under section 4 of the Conservation Act (under which Fish and Game is constituted) to give effect to the principles of the Treaty.

Scope of this hearing vis a vis water quality and quantity

- 11 The matter of what relief sought, and topics generally, can be addressed by this Panel or the Freshwater Commission was discussed at our previous appearance. This was in the context of Fish and Game's discussion on species' habitat, and whether that strayed beyond the High Court declaration because of the obvious overlap between discussions on 'water

quality and quantity' and instream habitat needs of species. It is relevant to whether or not this Panel considers the new provisions sought by Fish and Game regarding the framework for trout and salmon habitat and species interaction or whether it is a matter for the Freshwater Commission. It could well be that the provisions Fish and Game is seeking to give effect to Policies 9 and 10 of the NPS-FM and address section 7 (h), in fact could be considered in either process – because they are both directly relevant to freshwater quality and quantity, but also a focus on a particular species' management. Fish and Game's preferred interpretation is that the FPI process is the most appropriate process, however it is considered that both interpretations are available.

- 12 Should this panel need to make a further determination on this point, the following provisions from the High Court decision may further assist:

[231] The declarations I make are as follows:

(a) The Otago Regional Council's determination that the whole of the proposed Otago Regional Policy Statement 2021 is a freshwater planning instrument under s 80A(1)-(3) of the Resource Management Act 1991 was in error and not in accordance with the requirements of s 80A.

(b) The Otago Regional Council must now satisfy itself as to which parts of the proposed regional statement relate to freshwater and so constitute a freshwater planning instrument through giving effect to the National Policy Statement for Freshwater Management 2020 or otherwise relating to freshwater.

(c) Following its determination as to that, the Otago Regional Council must continue with the preparation of those parts of the plan that are not part of the freshwater planning instrument, in accordance with the process set out in pt 1, sch 1 of the RMA.

- 13 However the scope of the above Declaration seems to have been perhaps inadvertently narrowed by the Court's statement at [235]:

[236] In this judgment I have held it is only those parts of the proposed regional statement that relate directly to the maintenance or enhancement of freshwater quality or quantity that can be treated as parts of a freshwater planning instrument.

...

- 14 Therefore, out of the abundance of caution, Fish and Game is seeking relief that establishes a framework for the habitat of trout and salmon, and

species interaction, in both this process and in the FPI. This is detailed further below.

Bringing Te Mana o te Wai into the full RPS framework

- 15 Fish and Game's statutory function is to maintain and enhance the sports fish and game resource in the recreational interests of anglers, so as expected, the evidence and focus is heavily weighted towards freshwater issues, but do stray into terrestrial issues to the extent there is integration, connectivity and relevant natural character and amenity issues.
- 16 Fish and Game have supported the notified aspect of the framework, and defer to Kāi Tahu in particular, on the appropriateness of extending the application of Te Mana o te Wai's priorities in an integrated way (ki uta ki tai) over the whole of the natural environment, particularly if that is considered to most appropriately recognise and provide for section 6 (e) for Kāi Tahu.
- 17 It is noted that the High Court did not say Te Mana o te Wai was not relevant beyond the strictly freshwater realm:⁴

[207] This does not mean that the fundamental concept of Te Mana o te Wai, ki uta ki tai and integrated management of natural resources can be disregarded either in the planning process in pt 1 of sch 1 or in the freshwater planning process.

[208] They 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.

- 18 I also note if there is concern as to where the statutory direction might come from authorising or sanctioning the application more broadly of the prioritisation of health of the environment first, section 7 (f)'s direction to maintain **and enhance** the quality of the environment is also relevant.

⁴ *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777.

LF Land and Freshwater chapter hearing

19 Fish and Game's focus for this chapter is:

- (a) Ensuring the framework for the protection of trout and salmon habitat is appropriately expressed, including in respect of prioritising ecosystem health, natural character, species interaction. Provisions in Fish and Game's original (from its Submission, and Mr Farrell's evidence) relief relevant to this theme are:
 - (i) SRMR-I7, new LF-WAI-P3 (10), new LF-WAI-P3 (3a), LF-VM-M3, LF-FW-P13, LF-FW-P14 3 (a), LF-FW-P14 (4)LF-FW-M7, LF-LS-P16, LF-LS-P20, LF-MS-M11, ECO-O4, ECO-P10, new ECO-P11, ECO-M5, new ECO-M9, new ECO-PR1, APP3
 - (ii) Then through discussions with key stakeholders ORC, Kāi Tahu and ORC, there was agreement in principle that the framework for trout and salmon habitat could instead better be addressed with changes to LF-FW-O8, LF-FW-P7 and a new method in the LF-FW chapter addressing species interaction. To this end Fish and Game's submission to the Freshwater Commission sought changes to LF-FW-O8, LF-FW-P7 and a new method LF-FW-, comprehensively addressing the framework for trout and salmon habitat, that would effectively replace the relief referencing trout and salmon habitat in the provisions shaded green above. In summary, the stakeholders did agree that it was preferable for the provisions related to be considered in the FPI process, however because of the uncertainty as to jurisdiction and what this Panel may determine, the relief is still live in this process also.
- (b) The positive health and wellbeing effects of outdoor recreation, including in and around water bodies, should be recognised and valued, protected and enabled including by providing for access to water bodies. Relevant provisions:
 - (i) new LF-WAI-P3 (11) LF-LS-P20 (5), LF-LS-P22 (3), LF-LS-M12 (noting Ms Boyd's recommendation to accept change sought to LF-LS-P22 (3) andM12⁵)

⁵ Opening Statement of Felicity Ann Boyd, 27 April 2023 at [121]

- (c) The appropriate and relevant baseline to be used when considering effects of activities, and when determining to what state a degraded water body could be restored. Relevant provisions:
 - (i) new LF-WAI-P3 (9)
 - (d) Ensuring provisions including APP1 in respect of identifying and protecting outstanding water bodies are appropriate. Relevant provisions:
 - (i) LF-FW-P12
 - (e) Wetlands – protection should be afforded to "wetlands" not the narrower term "natural wetlands" (that is not consistent with the NPSFM definition of "natural inland wetland). Relevant provisions (note this is very interrelated to relief being sought through the Freshwater Commission process):
 - (i) LF-FW-P13A, and oppose s42A report recommendation that LF-FW-O10 be deleted.⁶
 - (f) Fish and Game also support the s42A's adoption of Fish and Game's relief to include the words 'and instream values' in LF-FW-P13 and 14.
- 20 Fish and Game, as with many parties including the section 42A report, consider great care will need to be taken to integrate the FPI process with this process, particularly where the 'parent' or driving vision, objective and policy (such LF-WAI-O1 and P1, LF-VM-O1, LF-FW-O8 and O9) is to be determined under the FPI process, but some of the policies and methods that are designed in whole or in part to achieve those provisions, are being determined by this process.
- 21 Related to this awkward process, Fish and Game does not agree with ORC's legal submissions of 2 May 2023, which stated that the application of the NPSFM is "limited" – at least not from Fish and Game's perspective.⁷ Of the provisions Fish and Game are interested in, Fish and Game submits their relief sought ultimately comes back to giving effect to the NPSFM – as correctly stated by Counsel for ORC – the NPSFM **is** the touchstone⁸:

⁶ Ibid at [20]

⁷ Opening Submissions for the ORC on the Land and Freshwater Chapter of the pORPS dated 1 May 2023, at

⁸ Ibid, at [36]

- 22 Fish and Game in part does not agree with Counsel for ORC's proposal at [36] given it is the same panel that will be considering the FPI provision. Even though this process is disjointed, and it is not ideal or efficient for us to be addressing the panel on lower down policies and methods, without addressing you on the parent objective and policy – the fact is we will be back before you addressing those parent objectives and policies, and have the opportunity there to show how the threads draw together.⁹

Trout and Salmon habitat framework

Protection of trout and salmon habitat

- 23 As noted above at [19(a)(ii)] an agreement in principle was reached with DoC, Ngai Tahu and ORC as to where the framework for trout and salmon habitat should be addressed (not the full detail of it), in order to give effect to both policies 9 and 10 of the NPS-FM. Fish and Game's submission to the Freshwater Commission contains the changes it seeks to LF-FW-O8, LF-FW-P7 and a new method. Those changes are appended as **Appendix 2** for ease of reference.
- 24 As submitted in our previous appearance, Fish and Game is seeking changes to this effect, which at the objective and policy level contain explicit references to protecting the habitat of trout and salmon, subject to ensuring that is consistent with Policy 9 of the NPS-FM. And is seeking a new method for managing habitat and fish passage to address species interaction concerns.
- 25 I refer to and rely on the legal submissions presented to you on 19 April 2023, where we spelt out the directive requirement of Policy 10 to protect the habitat of trout and salmon. I also note that there is no dispute as to the relevance of Policies 9 and 10 – Mr Logan confirmed to you that Policies 9 and 10 are relevant to your consideration.¹⁰
- 26 It is noted however that the section 42A writer, perhaps out of caution, has proposed a new method on the interaction between indigenous species and trout, for consideration by **this** panel. This new method would duplicate the relief sought by Fish and Game from the Freshwater Commission, and if included in this process, rather than in the FPI process, will sit without its parent objective and policy LF-FW-O8 and LF-FW-P7 (as amended in line with Fish and Game's submission to the Freshwater Commission).

⁹ Ibid at [77]

¹⁰ Ibid, at [35.3]

Therefore it is Fish and Game's preference that the new method addressing species' interaction be dealt by the Freshwater Commission. There is scope to do so, because of the package of relief sought by Fish and Game to LF-FW-O8, LF-FW-P7 and the related new method.

- 27 In general terms, whether you consider the trout and salmon habitat provisions in this hearing (the **greened highlighted** provisions), or FPI (where the relief is in LF-PW-O8 and LF-PW-P7) Fish and Game is seeking reference to 'protect' or 'sustain' and 'restore' for both salmonids and indigenous species' habitat, Fish and Game's wording regarding protecting and restoring trout habitat is couched in the context of being part and parcel of 'the health, well-being and resilience of water bodies'. Without explicit reference to protecting/sustaining and restoring the habitat of trout and salmon, the duty to give effect to the NPS-FM will not be complied with, as there is otherwise no specific direction to ensure policy 10 is achieved, alongside policy 9. Both policies 9 and 10 require habitats to be protected.

The New Method

- 28 Out of the abundance of caution, Fish and Game address Ms Boyd's revised new method in Mr Paragreen's summary evidence, but Fish and Game's preference would be that this full suite of trout and salmon habitat provisions be considered in the FPI process.
- 29 The method is directly related to the general objective and policy regarding protection of habitat of trout and salmon (water quality and quantity), and fish passage (water quantity), subject to protecting and restoring the habitat of indigenous species, Fish and Game will be presenting more comprehensive evidence on this theme of habitat protection and species interaction to the Freshwater Commission to illustrate how manageable it is to both protect the habitat of trout and salmon, and the habitat of indigenous species, and the nature and scale of the species interaction issue.
- 30 Fish and Game's evidence prepared in November 2022 was on the basis of Ms Boyd's 11 October 2022 supplementary evidence on Introduction and General Themes and the updated draft of the pORPS provided on 21 October. While the evidence addressed a new method to address species interaction, the new method was **not included** in the marked up versions of the pORPS that followed, either in October 2022 or February 2023. Fish and Game proceeded on the assumption that this was therefore intended to be addressed as a package alongside its logical parent objective and policy in the FPI process so did not call detailed evidence on this issue.

Protect, maintain, restore

31 The Panel is grappling with the interplay between the directives to "maintain" vs to "protect". While the tension is arising from the extent of the Act's requirements for protecting biodiversity, and significant habitats of significant indigenous fauna, for Fish and Game's interests those terms are relevant to the section 7 (c) and (h) matters to which particular regard is to be had:

(c) the maintenance and enhancement of amenity values

(h) the protection of the habitat of trout and salmon:

32 You will also recall that Fish and Game is seeking a definition of 'restore' be included, along with consistent reference that ecosystem health, and habitats of indigenous species and trout and salmon, be 'restored', in line with both the NPS-FM requirements to restored where health or state of a water body is degraded, and also consistent with s 7 (c) and (f):

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

33 In case further assistance is required on the Court's guidance on the terms 'protect' and 'maintain' it is addressed below.

34 The Environment Court in *Port Otago Limited v Dunedin City Council* considered the meaning of protect and, in doing so, also considered the meaning of maintain. The Court stated:¹¹ (**emphasis added**)

[42] **We accept Mr Hilder's submission that the word maintain includes the meaning of protect. In consequence and having concluded that the Proposed Plan should maintain or enhance amenity values the Council may determine that it will protect those rather than preserve or enhance them.** Whether the wording in Part II is used with the degree of precision suggested by counsel in this case is a matter on which we do not wish to express a final opinion. Even if the word is used with that level of precision, the use of the word protect by the Council is a method by which the Plan can have regard to amenity values under section 7(c). It may be that the words used in sections 6 and 7 particularly are not intended to be used with the level of chancery draughtsmanship suggested by the parties in this case. The words presence, protect, maintain may be preferable to the overall purpose of the Act contained in section 5(2) of sustainable management. On either approach the

¹¹ *Port Otago Limited v Dunedin City Council* EnvC C004/02 at [42].

Council is able to seek to protect as a policy to achieve the purpose of the Act.

35 In *Canyon Vineyard* the High Court cited the Environment Court and their interpretation of the meaning of "maintain" in relation to s7(c). In that context the Environment Court held:

(a) the requirement of 'maintain' allows a council to protect, rather than preserve or enhance, and

(b) to 'protect' means to keep safe from harm or injury although does not require prevention or prohibition.¹²

36 The Court held at [123] that despite submissions of Counsel *Port Otago* at [42] did provide a definition of "maintain", although was correct that it was in the context of the meaning of "protect":

[123] I note, despite Bendigo's submissions to the contrary, *Port Otago* does appear to provide a definition of "maintain" at [42], although it is correct that what was in issue was indeed the meaning of "protect".⁵³

[124] In any event, that case is cited in the commentary to s 7 of the RMA as authority for the proposition that the requirement to maintain allows a council to protect rather than preserve or enhance, which means to "keep safe from harm or injury" and does not require prevention or prohibition. In my view this reinforces Bendigo's submission that Canyon is not entitled to "an unspoilt rural landscape".

[125] I conclude that the weight of recent authority supports Bendigo's submissions as summarised in [121]-[122]. No error arose in the EC's decision in this regard.

Wellbeing

37 As noted above, there is another set of provisions, in addition to those addressed at our first appearance, in respect of which Fish and Game seeks relief relevant to the positive health and wellbeing effects of outdoor recreation, including in and around water bodies. It is a fundamental section 5 matter that people's health and wellbeing be provided for. The suite of provisions sought by Fish and Game, including the new Issue drafted by Mr Farrell, as a whole are intended to ensure this important point is recognised

¹² *Canyon Vineyard Limited v Central Otago District Council* [2022] NZHC 2458 at [44] citing the Environment Court in *Harris v Central Otago District Council* [2016] NZEnvC 52.

and valued, protected and enabled including by providing for access to water bodies. (LF-WAI-P3 (11) LF-LS-(5), LF-LS-P22 (3), LF-LS-M12).

- 38 The evidence presented at our previous appearance supports the relief sought above.

Baseline against which effects should be assessed

- 39 Fish and Game are seeking explicit acknowledgement in LF-WAI-P3 (11) that the appropriate and relevant baseline to be used when considering effects of activities, and when determining to what state a degraded water body could be restored, is the state of the environment minus the effects of any of the permits that have finite terms. This is not a pre-human state – it is that baseline state that has been confirmed by the Courts as the relevant baseline against which to assess effects.

- 40 This acknowledgement is necessary because recent experience through the deemed permit process has shown that there is uncertainty among plan users about which baseline state to compare adverse effects against when applying for resource consents. For example, the assessment of effects can be significantly different depending on whether you use a naturalised flow or a flow that is subject to the existence of the abstraction consent that is being replaced. It is also relevant for the consideration of key direction used or sought in the PORPS, such as ‘maintain’, ‘sustain’, ‘improve’, ‘enhance’, ‘protect’ or ‘restore’. The key question being in what context you apply those tests.

- 41 In Fish and Game’s submission the correct ‘existing environment’ for considering effects and direction such as restore is as confirmed by the High Court in *Ngati Rangī Trust v Manawatu-Whanganui Regional Council*.¹³ In that case Collins J considered:¹⁴

[W]hether the Environment Court, when assessing the possible effects on the environment of the proposed consents, was required to have regard to the existing scheme **or the effects on the environment by assessing the environment prior to the construction of the scheme.**

- 42 The Court confirmed that in the context of water permits that follow the expiry of existing permits, the existing permits of limited duration are not to be considered as part of the “receiving environment”, rejecting the idea that

¹³ *Ngati Rangī Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948.

¹⁴ At [58].

expiring takes could be construed as being part of the existing environment of the river and noting that in that case the expired 100 year old water take permit was “not permanent and [did] not carry existing use right protections”.¹⁵ In dismissing the idea that the expiring water permit should form part of the “existing environment” the High Court observed¹⁶:

[63] Applying the approach [...] to the circumstances of this case would cut across the sustainable management objectives of the Act. The effect of not following the approach adopted by the Environment Court in *Port Gore Marine Farms Ltd v Marlborough District Council* when assessing the environmental impacts of a proposed consent is to lock in hydro-electricity water takes and flow rates for so long as the controlled activity status is retained thereby preventing adverse effects from being avoided or mitigated.

- 43 This approach is consistent with the High Court ruling in *Speargrass Holdings Limited v Queenstown Lakes District Council* which observed “the concept of the environment for the purposes of s 104 must reflect reality”.¹⁷ The Court held that “if the consented activity is likely to be terminated or removed as a consequence of the breach, [the] activity could sensibly be ignored as part of the existing environment.”¹⁸
- 44 The Environment Court in *DR Sampson and Others v Waikato Regional Council*¹⁹ described the rationale for the differing approach to the existing environment in relation to land use consents which include existing land use consents as part of the existing environment²⁰ and water permits:

[33] We are also conscious of the distinction between land use consents, which are granted in perpetuity, and water consents, which are granted for a defined term and not necessarily renewed. In relation to the latter, the existing environment must be determined as the environment that might exist if the existing activity to which the water consents relate, were discontinued.²¹

¹⁵ At [61].

¹⁶ At [63].

¹⁷ *Speargrass Holdings Limited v Queenstown Lakes District Council* [2018] NZHC 1009 at [73].

¹⁸ At [73].

¹⁹ *DR Sampson and Others v Waikato Regional Council* EnvC Auckland A178/2002, 2 September 2002.

²⁰ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZLR 424.

²¹ At [33].

45 The Environment Court²² and then High Court²³ considered this question in the context of Plan Change 5A in respect of the Lindis catchment. The High Court was asked to assess whether the *Ngati Rangī* baseline should have been assessed by the Environment Court. The High Court went through the authorities (*Ngati Rangī* etc) in paragraphs [130] to [137] and noted at [138] that no case was referred to that applied *Ngati Rangī*'s approach in a plan change setting. That is correct, as there is no explicit authority. The High Court then went on to find that the Environment Court did not treat *Ngati Rangī* as irrelevant, as it did use the naturalised flow as one of its points of comparison, and that the weight to be attributed to the naturalised flow was a matter for the Court in carrying out its expert assessment. Then at paras [146]- [148] it went on to state:

[146] The Environment Court in the appealed judgement did not treat the *Ngati Rangī* approach to the baseline as irrelevant. The Court engaged with the *Ngati Rangī* "naturalised flow" scenario as one of its comparisons but did so in conjunction with other options, including the status quo, which it found to be a more useful comparator.

[147] In the evaluative exercise conducted by the Court, it took into account the naturalised flow. As submitted by counsel for the respondents, the weight to be attached to the naturalised flow and the degree to which the competing options departed from it were matters for the Court in carrying out its expert assessment.

[148] The answer to Question 3, as raised by Fish & Game on this appeal, is therefore "No" – because the Court did not evaluate the proposals by a reference to a single scenario (status quo) and in fact **included the naturalised flow in its evaluative exercise.**'

- 46 The effect of this is that it is correct to apply *Ngati Rangī*, in the Court's evaluative exercise in the context of a Plan Change.
- 47 Fish and Game's relief on LF-WAI-P3 (9) is explicit on this point, as is the relief seeking reference to 'restore' throughout the suite of provisions.

Outstanding

- 48 As notified, LF-FW-P11 specifically identified known outstanding bodies, and at (4) provided for other water bodies to be identified as outstanding "in accordance with APP1". APP1 as notified did not contain detailed criteria, but instead listed the general categories for "values", a general description as to outstandingness for that value category, and some examples of sub values that might fall within the category.

²² *Lindis Catchment Group Inc v Otago Regional Council* [2019] NZEnvC 166.

²³ *Otago Fish & Game Council v Otago Regional Council* [2021] NZHC 3258.

- 49 Fish and Game and other submitters raised concerns as to the generality of APP1.
- 50 In response to various submitters' concerns, the section 42 report recommended adoption of a schedule used in the Hawkes Bay context. Fish and Game has concerns with the adoption of a schedule based on a different region's water bodies, as from Fish and Game's perspective, it is not appropriate (from a sports fishery point of view) to simply cut and paste, as the make up and character of each region's sports fishery's is different.
- 51 Mr Couper's evidence sets out the key changes that would be required to the APP1 if it is to be pursued in the more detailed form. Some are changes he would recommend no matter what region the criteria to be applied. Others reflect key differences between Otago and the Hawkes Bay that illustrate it can't just be copied over – for example Otago has important sea run salmon fisheries (Hawkes Bay does not). There is no expert evidence to counter Mr Couper's recommendations therefore if the more detailed APP1 is to be advanced, Mr Couper's recommendations should be adopted. Further refinements will also be explained by Mr Paragreen.
- 52 Fish and Game also notes a broader concern with the adoption of such a comprehensive APP1 without the input of directly affected stakeholders. Fish and Game's "allies" if you like in a recreational sense, (recreational fishers for fish that are not "sports fish" under the Conservation Act, kayakers, rafters, jetboaters) are not present in this process and have not been consulted as to the appropriateness of the recommended APP1 for Otago. There is no expert evidence as to the appropriateness of those very detailed criteria and no opportunity for those stakeholders to comment. This panel has no evidential basis to accept those criteria.
- 53 A more detailed APP1 is necessary – and whether it is to be placed in the pORPS or the pLWRP, the ability for input from a wider range of stakeholders is important, both to ensure it is 'right' but also in terms of natural justice.
- 54 If the more detailed criteria or thresholds, which would be of assistance to provide all with certainty as to what the threshold is, is to be developed through the pLWRP process the APP1 as notified could remain, and perhaps the 'signpost' in LF-FW-P11 (4) amended the following lines:

LF-FW-P11 Otago's outstanding water bodies

Otago's outstanding water bodies are:

...

(4)_any other water bodies identified in accordance with APP1 and more detailed criteria and methodology to be developed under the Land and Water Plan

Dated this 8th day of May

Maree Baker-Galloway

Maree Baker-Galloway/Laura McLaughlan
Counsel for the Submitters

Appendix 1 – Relief sought by Fish and Game

Before the Independent Hearing Panel

Under the Resource Management Act 1991

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

Updated Appendix to Legal Submissions on behalf of Otago and Central South Island Fish and Game Councils (#0321)

8 May 2023

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Appendix – Relief sought by Otago Fish and Game Council

Fish and Game submission points as per 3 September 2021 Submission tracked against notification version, as follows:

Red underline or strikethrough: Amendments sought to notification version

Mr Farrell's November 2022 recommendations tracked against the section 42A Report version, as follows:

Underline or strikethrough: **s42A Report** amendments

Bold double underline or ~~bold double strikethrough~~: Ben Farrell amendments 16 March 2023 (most cut & paste from EIC dated 28 November 2022 but some have been updated)

Shaded in grey: provisions being addressed in the Land and Freshwater week.

Shaded in green: provisions that it is considered may be more appropriately dealt with/addressed in the FPI

Part 1 – INTRODUCTION AND GENERAL PROVISIONS

Interpretation

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

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

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

Precautionary approach means an approach that:
(a) avoids not acting due to uncertainty about the quality of quantity of the information available, and
(b) interprets uncertain information in a way that best supports the health, well-being and resilience of the natural environment

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

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

PART 2 – RESOURCE MANAGEMENT OVERVIEW

SRMR – Significant resource management issues for the region

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

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

Fish and Game seek insertion of:

Human adaptation to climate change, such as building or expanding dams or flood protection schemes, may impose adverse impacts upon ecosystems in addition to those imposed by climate change itself.

SRMR-I7 – Rich and varied biodiversity has been lost or degraded due to human activities and the presence of pests and predators

Fish and Game seek insertion of a new sentence to place focus on a more holistic gambit of issues facing native freshwater species:, which was generally accepted in the section 42A report

“degraded native fish communities, due to anthropogenic alteration of waterways, such as damming, abstraction, bed manipulation, draining wetlands and the discharge of contaminants, ~~the presence of the Clutha dams and their effects on eel populations~~ and trout predation on native galaxiids.”

SRMR-I12

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

SRMR–I12 – Social, cultural and economic wellbeing of Otago’s communities depends on use and development of natural and physical resources

Statement

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

Context

The social, cultural and economic wellbeing of Otago’s communities depends on use and development of natural and physical resources. Loss

or degradation of resources can diminish their intrinsic values and constrains opportunities for use and development now and into the future. Some of Otago's resources are nationally or regionally important for their natural values and economic potential and so warrant careful management.

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

Impact snapshot

Environmental

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

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

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

Social and economic

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

IM – Integrated management

IM-O1

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

The management of *natural and physical resources* in Otago, by and for the people of Otago, including Kāi Tahu, and as expressed in all resource management plans and decision making, achieves,

as a priority, a healthy, resilient, and safeguarded natural systems environment, and including the ecosystem services they it offers, and then ensures that actions by humans supports the well-being of the natural environment and present and future generations, mō tātou, ā, mō kā uri ā muri ake nei.

IM-O3

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

IM-P1&P2

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

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

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

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

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

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

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

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

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

IM-P4

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

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

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

- (1) ~~protects having~~ have particular regard to ~~their~~ the intrinsic values of ecosystems.
- (2) ~~takes taking~~ take a long-term strategic approach that recognises ~~changing environments and ongoing environmental change,~~ including the impacts of climate change.
- (3) ~~recognises recognising~~ recognise and ~~provides providing~~ provide for ecosystem complexity and interconnections, and
- (4) ~~anticipates anticipating~~ anticipate, or ~~responds responding~~ respond swiftly to, changes in activities, pressures, environmental state and trends,
- (5) measures cumulative effects on the environment and requires their proactive management, and
- (6) Identifies and implements environmental limits in at least the following matters: (a) air, (b) coastal waters, (c) estuaries, (d) freshwater, (e) wetlands, and (f) soil.
- (7) Promotes use and development of resources which support the above

IM-P5

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

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

- (1) situations where the value and function of a natural or physical resource, or the natural environment, extends beyond the immediate,

or directly adjacent, area of interest, in time or space.

- (2) the effects of activities on a natural or physical resource, or the natural environment, as a whole when that resource is managed as sub- units, ~~and~~
- (3) the impacts of management of one natural or physical resource on the values of another, or on the environment, and
- (4) the impact of individual and cumulative effects on the form, function, and resilience of Otago's environment such that the sum of human activity in Otago supports a healthy environment and provides opportunities available for future generations.

IM-P12

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

...

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

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

IM-P13

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

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

IM-P14

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

IM-P14 – Human impact

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

- (1) identifying environmental and resource use limits wherever practicable, to both growth and adverse effects of human activities beyond which the environment or resources will be degraded,
- (2) requiring that activities are established in places, and carried out in ways, that support the health, well-being and resilience of the environment and are within those environmental and resource use limits and are compatible with the natural capabilities and capacities of the resources they rely on, and
- (3) regularly assessing and adjusting environmental and resource use limits and thresholds for activities over time in light of the actual and potential environmental impacts, including those related to climate change, and
- (4) promoting activities that reduce, mitigate, or avoid adverse effects on the environment.

IM-M1

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

IM-M1 – Regional plans and district plans

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

...

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

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

IM-M2

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

IM-M2 – Relationships

Local authorities must:

...

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

PART 3 – DOMAINS AND TOPICS

DOMAINS

LF – Land and freshwater

Fish and Game seeks and Mr Farrell recommends LF-Wai-P3 be amended, as follows:

LF-WAI-P3 – Integrated management/ki uta ki tai

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

- (1) recognises, ~~and~~ sustains and, where degraded or lost, restores the natural connections and interactions between *water bodies* (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),
- (2) sustains and, ~~wherever possible~~ where degraded or lost, restores the natural connections and interactions between *land* and *water*, from the mountains to the sea,
- (3) sustains and, ~~wherever possible~~, restores the habitats of mahika kai and indigenous species, including taoka species associated with the ~~water body~~ *bodies*,
- (4) manages the *effects* of the use and development of *land* to maintain or enhance the health and well-being of *freshwater*, ~~and coastal water~~ and associated ecosystems,

- (5) ~~requires~~ ~~encourages~~ the coordination and sequencing of regional or urban growth to ensure it is sustainable,
- (6) has regard to foreseeable *climate change* risks and the potential effects of climate change on water bodies, including on their natural functioning; and
- (7) has regard to cumulative *effects*, and
- (8) ~~the need to apply~~ applies a precautionary approach where there is limited available information or uncertainty about potential adverse *effects*.
- (9) preferentially considers effects against the naturalised flow and unpolluted state of a water body when making flow and quality decisions about the health, well-being and resilience of water bodies and freshwater ecosystems, including when setting limits or environmental outcomes, and
- (10) requiring all activities affecting water bodies to support the health, well-being and resilience of relevant water bodies and associated freshwater ecosystems.
- (11) Recognise and provide for the human health and well-being benefits that people and communities derive from accessing and using water, including outdoor recreation and harvesting natural resources for personal use.

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

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

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

- 3) strongly considering supporting community initiatives that contribute to maintaining or improving the health and well-being of water bodies, and
- (4) strongly considering supporting industry-led guidelines, codes of practice and environmental accords where these would contribute to achieving the objectives of this RPS.

Ben Farrell recommends changes to FL-PW-P12:

LF-FW-P12 – Protecting Identifying and managing outstanding water bodies

The significant and outstanding values of outstanding water bodies are:

(1) identified in the relevant regional and district plans, and

(2) protected by avoiding adverse effects on those values.

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

Fish and Game seek the following changes to LF-FW-P13

(b) the effects of the activity are managed by applying:

(i) for effects on indigenous biodiversity and the habitat of trout and salmon ECO-P3 ECO-P6 or ECO-P11 and

Mr Farrell recommends changes to LF-FW-P13:

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

...

(1)(b)(ii) for other effects on the natural character and instream values (excluding those managed under (1)(b)(i)), the effects management hierarchy (in relation to natural wetlands and rivers) in LF-FW-P13A

...

(3) establishing environmental flow and level regimes and water quality standards that support the health and well-being, and resilience, of the water body, acknowledging that environmental flow and level regimes may change over time due to climate change

(4) wherever practicable possible, sustaining the form and function of a water body that reflects its natural behaviours

...

(7) preventing permanent modification that would reduce the braided character of a river, unless the modification is necessary to avoid or mitigate risk to people's health and safety, and

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

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

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

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

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

(1) restore a form and function that reflect the natural behaviours of the water body,

(2) improve water quality or quantity where it is degraded,

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

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

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

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

LF-FW-M7

Fish and Game seek the following additions:

require, wherever practicable, the adoption of water sensitive urban design techniques when managing ~~the existing~~ subdivision, use or development of land in urban areas

(3a) require the adoption of water sensitive urban design techniques when managing new subdivision, use or development or land in urban areas, and

LF-LS Chapter

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

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

New LF-LS-P20 (5)

Fish and Game seeks and Mr Farrell recommends LF-LS-P20 be amended, as follows:

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

(1). the sustainability ~~and efficiency~~ of water use,

(2). resilience to the impacts of climate change,

(3). the health and quality of soil,

(3) water quality

(4). restoration or enhancement of indigenous vegetation, or

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

LF-LS-P22(3)

Fish and Game seeks amendments to subclause (3) (largely accepted by section 42A):

...

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

LF-LS-M12

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

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

(3) facilitate public access to and along 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, and any other means of public access rights, to that connect with *esplanade reserves* and *esplanade strips*.

ECO – Ecosystems and indigenous biodiversity

ECO-O1

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

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

ECO-O4

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

ECO-O4 – Trout and salmon

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

ECO-P10

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

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

...

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

...

New ECO-P11

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

ECO-P11 – Trout and Salmon

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

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

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

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

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

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

ECO-M4

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

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

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

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

...

ECO-M5

Fish and Game seeks and Mr Farrell recommends ECO-M5 be amended, as follows:

ECO-M5 – District plans

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

...

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

ECO-M8

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

...

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

...

(7) gathering information on ~~indigenous~~ ecosystems, indigenous biodiversity and habitats, and taaka and

mahika kai species and ecosystems including outside significant natural areas.

New ECO-M9

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

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

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

(1) identify areas where the protection and restoration of trout and salmon habitat is consistent with that of the habitat of indigenous species

(2) identify areas where the protection and restoration of trout and salmon habitat is not consistent with that of the habitat of indigenous species, such that it requires management, and

(3) for areas identified in (2), encourage the joint production a species interaction management plan, which will:

a. determine information needs to manage the species

b. determine short, medium and long term objectives

c. determine appropriate management actions that support identified objectives and account for habitat needs, and

(4) use tools available within the Conservation Act 1987, where appropriate.

ECO-PR1

Fish and Game an addition to PR1:

The provisions in this chapter also provide guidance on the protection and restoration of the habitat of trout and salmon.

including how to manage issues that may arise when this conflicts with outcomes sought for indigenous biodiversity

ECO-AER1

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

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

ECO-AER2

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

EIT – Energy, infrastructure and transport

EIT-EN-O2

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

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

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

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

EIT-EN-P1

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

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

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

Recognising renewable electricity generation activities in decision making

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

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

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

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

EIT-EN-P3

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

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

EIT-EN-M1

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

...

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

UFD – Urban form and development

UFD-P7

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

The management of rural areas:

...

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

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

PART 5 – APPENDICES AND MAPS

APP1 – Criteria for identifying outstanding water bodies

Further develop table to include criteria.

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

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

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

APP3 – Criteria for biodiversity offsetting

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

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

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

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

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

Appendix 2 – Changes sought in Fish and Games Submission on the FPI to the Freshwater Commissioner to LF-FW-O8, LF-FW-P7 and new method LF-FW-MX

Amendments shown as track changes in red underline and ~~strikethrough~~

LF-FW-O8

In Otago's water bodies and their catchments

(1) the health of the wai supports the health of the people and thriving mahika kai,

(1a) the health, well-being and resilience of water bodies is prioritised,

(2) water flow is continuous throughout the whole system,

(3) the interconnection of fresh water (including groundwater) and coastal waters is recognised,

(4) native fish can migrate easily and as naturally as possible and taoka species and their habitats are protected and restored, ~~and~~

(4a) the habitat of trout and salmon, including fish passage, is protected and restored as part of the health, well-being and resilience of water bodies, and

(5) the significant and outstanding values of Otago's outstanding water bodies are identified and protected.

LF-FW-P7

(1) the health, and well-being and resilience of water bodies is maintained or, if degraded, improved protected and restored,

(1a) all activities related to freshwater support the health, well-being and resilience of water bodies,

(2) the habitats of indigenous species associated with water bodies are protected and restored, including by providing for fish passage

(2a) the habitat of trout and salmon, including fish passage, is protected and restored insofar as it is consistent with (2),

(3) specified rivers and lakes are suitable for primary contact within the following timeframes:

(a) by 2030, 90% of rivers and 98% of lakes, and

(b) by 2040, 95% of rivers and 100% of lakes, and

(4) mahika kai, wild harvested food and drinking water are safe for human consumption,

(5) existing over-allocation is phased out and future over-allocation is avoided, and

(6) fresh water is allocated within environmental limits and used efficiently, and

(7) discharges to freshwater are allocated within environmental limits.

LF-FW-Mx – Identifying and managing species interactions between trout and salmon and indigenous species

(1) Local authorities:

(a) when making decisions involving the interactions between trout and salmon and indigenous species, 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-Mx(2)(a) to (c), and

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

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

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

(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:

(i) determine information needs to manage the species, and

(ii) determine short, medium and long term objectives, and

(iii) determine appropriate management actions that will achieve objectives determined in (ii) and account for habitat needs, and

(iv) use tools available within the Conservation Act 1987, where appropriate.