

# **Reply Report**

## **Proposed Otago Regional Policy Statement 2021**

### **9: LF – Land and freshwater**

**Felicity Boyd**

## Contents

<b>1.</b>	<b>Introduction .....</b>	<b>3</b>
<b>2.</b>	<b>Links with the FPI part of the pORPS.....</b>	<b>4</b>
<b>3.</b>	<b>Scope of the LF-LS chapter.....</b>	<b>6</b>
<b>4.</b>	<b>A framework for transition.....</b>	<b>6</b>
<b>5.</b>	<b>Highly productive land .....</b>	<b>10</b>
<b>6.</b>	<b>Outstanding water bodies .....</b>	<b>20</b>
<b>7.</b>	<b>LF-WAI-P3 – Integrated management/ki uta ki tai.....</b>	<b>31</b>
<b>8.</b>	<b>Habitats of trout and salmon and LF-FW-M8A .....</b>	<b>36</b>
<b>9.</b>	<b>Dams.....</b>	<b>40</b>
<b>10.</b>	<b>Other changes .....</b>	<b>41</b>

## 1. Introduction

1. This report forms part of a suite of reply reports that have been prepared to sit alongside and explain the “marked up” version of the final recommendations on the proposed Otago Regional Policy Statement (pORPS). The approach to the whole suite is set out in the first report in this series, *Reply Report – Chapter 1: Introduction and General Themes*. Appended to the suite of reports is a consolidated version of the pORPS containing all final recommendations from the reporting officers.
2. This report is the final set of advice on this chapter and is in addition to:
  - a. Section 42A report on Chapter 9: LF – Land and Freshwater (4 May 2022 (Updated 7 October 2022))
  - b. Brief of supplementary evidence of Felicity Ann Boyd: LF – Land and freshwater (11 October 2022)
  - c. Brief of second supplementary evidence of Felicity Ann Boyd: LF – Land and freshwater (Highly productive land) (21 October 2022)
  - d. Brief of supplementary evidence of Felicity Ann Boyd: LF – Land and freshwater (LF-WAI-P3) (21 October 2022)
  - e. Second brief of supplementary evidence of Felicity Ann Boyd: Introduction and general themes & LF (Mineral extraction) (24 February 2023)
  - f. Fourth brief of supplementary evidence of Felicity Ann Boyd: LF (NPSFM amendments) (24 February 2023)
  - g. Opening statement of Felicity Ann Boyd: LF – Land and freshwater (27 April 2023)
3. The key issues addressed in this reply report are:
  - a. Links with the FPI part of the pORPS,
  - b. A framework for transition,
  - c. Highly productive land,
  - d. Outstanding water bodies,
  - e. LF-FW-M8A – Species interaction, and
  - f. Dams.
4. I also address some minor changes in relation to LF-WAI-E1 and LF-FW-P13. The report does not address the following provisions because I do not consider there are any additional matters to address as a result of the hearing:
  - LF-WAI – Te Mana o te Wai
    - Policies: LF-WAI-P2
    - Methods: LF-WAI-M1, LF-WAI-M2
    - LF-WAI-AER1
  - LF-VM – Visions and management

- Objectives: LF-VM-O7
- Methods: LF-VM-M3, LF-VM-M4
- LF-VM-PR2, LF-VM-AER3
- LF-FW – Fresh water
  - Policies: LF-FW-P8, LF-FW-P13A, LF-FW-P14
  - Methods: LF-FW-M5, LF-FW-M10
  - LF-FW-AER7, LF-FW-AER8
- LF-LS – Land and soils
  - Objective LF-LS-O12
  - Policies: LF-LS-P16, LF-LS-P17, LF-LS-P20, LF-LS-P22
  - Methods: LF-LS-M11A, LF-LS-M13, LF-LS-M14
  - LF-LS-E4, LF-LS-PR4, LF-LS-AER12, LF-LS-AER13,

## 2. Links with the FPI part of the pORPS

### 2.1. Introduction

5. The LF – Land and Freshwater chapter of the pORPS falls in both the non-FPI and FPI processes. As described in my opening statement for the LF hearing, it will be difficult to finalise the recommendations on non-FPI provisions ahead of the FPI hearing.<sup>1</sup> This section outlines decisions that I consider could be made on the non-FPI provisions in advance of the hearing on the FPI provisions. It also outlines some of the consequential amendments that may be required to the non-FPI provisions as a result of the recommendations I am making on FPI provisions.

### 2.2. Non-FPI provisions without a strong link to FPI provisions

6. Notwithstanding the need for a final ‘consistency check’ to align the two parts, I consider that, in principle, decisions on the following non-FPI provisions could be made without substantive issues arising in the FPI process due to their general separation from the specific content of the FPI provisions:
- a. Outstanding water bodies: LF-FW-P11, LF-FW-P12, LF-FW-M5, APP1. While LF-FW-O8 (the relevant objective) and LF-FW-M7 (one of two relevant methods) are FPI provisions, I consider the ‘core’ of this policy framework sits in the non-FPI part.
  - b. LF-FW-P8.
  - c. All of the LF-LS chapter objectives and non-FPI policies.

---

<sup>1</sup> Opening statement of Felicity Ann Boyd: LF – Land and freshwater (27 April 2023), para [3]-[33]

7. In my view, the remaining provisions have a more significant relationship with the FPI provisions and will need to be considered further in light of any recommended amendments to FPI provisions.

### 2.3. Consequential amendments to non-FPI provisions

8. As outlined in my opening statement for the LF hearing, I am recommending changes to FPI provisions that will require consequential amendments in the non-FPI provisions.<sup>2</sup> One of the more significant recommendations I am making is to merge the LF-VM and LF-FW chapters, which will require moving some non-FPI provisions (including merging the LF-FW and LF-VM explanations and principal reasons). I cannot recommend the specific amendments in this process because it does not contain the new structure – that is in the FPI provisions. In my FPI s42A report, I outline the consequential amendments needed to non-FPI provisions but these recommendations will need to be separately made to the non-FPI panel at the conclusion of the FPI hearing.

9. This proposal will also require updates to chapter cross-references in the following non-FPI provisions:

- a. LF-WAI-M2 – Other methods
- b. LF-VM-M4 – Other methods and LF-FW-M10 – Other methods (noting one of these can be deleted as they are largely identical)
- c. LF-LS-M14 – Other methods

10. As a result of combining the LF-FW objectives and common elements of the freshwater visions in the LF-VM chapter into a region-wide objective for freshwater, I now recommend deleting LF-FW-O10 as a consequential amendment.

11. It is not possible to make consequential amendments to non-FPI provisions as a result of submissions on FPI provisions. However, given the content is simply being transferred to another provision rather than truly ‘deleted’, I consider LF-FW-O10 can be deleted as an amendment of minor effect in accordance with clause 16(2) of Schedule 1 of the RMA. This recommendation will need to be reconsidered if there is any change to the recommendations on the FPI provisions as I have described them.

12. My final recommended amendments to the notified version of the pORPS are:

~~**LF-FW-O10 – Natural character**~~

~~The natural character of wetlands, lakes and rivers and their margins is preserved and protected from inappropriate subdivision, use and development.<sup>3</sup>~~

---

<sup>2</sup> Opening statement of Felicity Boyd for LF chapter, paras [7]-[29]

<sup>3</sup> Clause 16(2), Schedule 1, RMA

### 3. Scope of the LF-LS chapter

13. As I have set out in *Reply report 1: Introduction and general themes*, there are many submissions on the planning framework set out in the pORPS, including some seeking greater recognition of rural sectors and land uses. I have addressed those submissions in that report and recommended broadening the scope of this chapter, in particular so that it addresses the role of land and soil resources in providing for the social, economic, and cultural well-being of people and communities and responds more strongly to SRMR-17 regarding the impacts of pest species.

### 4. A framework for transition

#### 4.1. Submissions and evidence

14. In his legal submissions for OWRUG, Federated Farmers, and DairyNZ, Mr Page states that while the long-term visions for freshwater set out in LF-VM-O2 to LF-VM-O6 are part of the FPI and therefore cannot be addressed in this process, the methods, principal reasons, and anticipated environmental results are not in the FPI and therefore must be addressed in this process.<sup>4</sup>
15. Mr Page considers it is unclear what changes are required to achieve the visions in the FMUs and that the pORPS does not recognise:
- a. The regional significance of the food and fibre sector,
  - b. The difficulties that community has in achieving change, or
  - c. The need for a suitable transition period.<sup>5</sup>
16. In relation to the relief sought by the submitters, Mr Page states that the LF chapter should:
- “...should lay out a framework for setting timeframes to achieve long-term visions (once there are valid ones) over a transition period, for the Regional Council to use when developing regional plan provisions to achieve long-term visions for freshwater across the Otago region. This framework must allow the food and fibre sector time to adjust at a rate that accounts for the potentially significant impacts on their social, economic, and cultural well-being. The Panel must know what the visions require and must have evidence that visions are objectively quantifiable and achievable.”*
17. Mr Page’s submissions contain an appendix outlining the relief sought, which I have discussed in *Reply report 1: Introduction and general themes*. In relation to the issue of transition timeframes, it appears there are two amendments sought:

---

<sup>4</sup> Legal submissions for OWRUG, Federated Farmers, and DairyNZ, para 112.

<sup>5</sup> Legal submissions for OWRUG, Federated Farmers, and DairyNZ, para 116.

- a. Establishment of a rural advisory panel that would advise ORC on the timing and transition of change required to implement the pORPS and new LWRP.<sup>6</sup>
- b. To replace LF-WAI-P4 with the following:<sup>7</sup>

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

18. The first is sought only in the legal submissions of Mr Page while the second is outlined in the planning evidence of Dr Mike Freeman.
19. In her opening statement for the LF chapter, Ms McIntyre for Kāi Tahu ki Otago responded to the views of Mr Page and Dr Freeman, stating that:

*I also agree with Ms Boyd that details on how the freshwater visions are to be achieved, including timeframes for transition, are more appropriately considered in the development of the Regional Land and Water Plan than in the PORPS. I understand the frustration that Mr Page and his clients have expressed about the uncertainty of not being able to see the whole picture in one place. However the NOF process in the NPSFM requires the regional plan to include environmental outcomes to fulfil the visions. Because these must be developed as part of the regional plan process, the following steps of the NOF process, including the setting of targets and pathways towards achievement of the outcomes (and therefore the visions) must also be properly part of the regional plan process.<sup>8</sup>*

#### 4.2. Analysis

20. As I have discussed in section X of *Reply report 1: Introduction and general themes*, I do not consider there is scope in submissions to support the request for establishing a rural advisory panel. I have discussed the existing ORC Industry Advisory Group and the role it has in the economic work programme to assist the development of the LWRP, which I consider addresses the submitters' concern in part.
21. Like Ms McIntyre, I can understand the frustration of Mr Page and his clients. It was evident from the presentations during the LF hearing that many in the rural sector are concerned with the current pace of regulatory change affecting rural businesses, the uncertainty about what those changes will mean 'on the ground', and confusion about which regulatory driver(s) to respond to first (for example, emissions reduction or freshwater). Some of those issues are not within the scope of the pORPS to address – for example, requirements to reduce agricultural greenhouse gas emissions and the work programme of He Waka Eke Noa. Others are within the scope of the pORPS but, due to the split between this process and the freshwater planning process, cannot be considered fully in this process.

---

<sup>6</sup> Legal submissions for OWRUG, Federated Farmers, and DairyNZ, Appendix 2, Table 1.

<sup>7</sup> Legal submissions for OWRUG, Federated Farmers, and DairyNZ, Appendix 2, Table 3 and evidence of Mike Freeman for OWRUG, Federated Farmers, and DairyNZ, p. 26.

<sup>8</sup> Opening statement of Sandra McIntyre for Kāi Tahu ki Otago on the LF chapter, para [14].

22. While I agree with Mr Page that the panel must consider the non-FPI provisions in the LF chapter, I do not consider that can occur in isolation from the FPI provisions. It is the freshwater visions in the LF-VM chapter that set out the long-term outcomes sought in Otago's FMUs and rohe and the timeframes for achieving those outcomes. Without addressing those matters, I do not consider that any transitional framework can realistically be developed.
23. I also have reservations about how practical it would be to include a transitional framework in the pORPS given the direction in the NPSFM for implementing the NOF. I explained at the hearing that I considered most of the NOF implementation, including transitional arrangements, occurs in the regional plan, not in the pORPS. I maintain that view.
24. Clause 3.7 of the NPSFM describes the steps in the NOF. It does not include determining how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region (as required by clause 3.2) or the development of long-term visions for freshwater (as required by clause 3.3). However, clause 3.2 does require Te Mana o te Wai and the hierarchy of obligations to be applied when implementing the NOF. In my view, references to Te Mana o te Wai and freshwater visions in later clauses indicate that they must occur prior to the steps in clause 3.7 being undertaken. For example, environmental outcomes must, when achieved, fulfil the relevant long-term visions. That necessarily requires knowing what the long-term visions are prior to (or at least at the same time as) developing environmental outcomes.
25. The steps of the NOF set out in clause 3.7 are as follows:
- a. Identify FMUs in the region (clause 3.8),
  - b. Identify values for each FMU (clause 3.9),
  - c. Set environmental outcomes for each value and include them as objectives in regional plans (clause 3.9),
  - d. Identify attributes for each value and identify baseline states for those attributes (clause 3.10),
  - e. Set target attribute states, environmental flows and levels, and other criteria to support the achievement of environmental outcomes (clauses 3.11, 3.13, 3.16), and
  - f. Set limits (as rules in plans) and prepare action plans (as appropriate) to achieve environmental outcomes.
26. Mr Page and many of his witnesses state that they do not understand what needs to change in order to achieve the long-term visions. While some of that criticism may relate to the way the visions themselves are expressed, which cannot be addressed in this process, in my view some of that uncertainty arises from the division of NPSFM implementation between the pORPS and the LWRP. Long-term visions must be included as objectives in regional policy statements in accordance with clause 3.3. However, the provisions resulting from the NOF steps I have outlined above are either (a) not directed to be included in a particular document or (b) must be included in the LWRP.



27. Clause 3.9 requires that an environmental outcome is set for every value identified and that those outcomes are included an objective or objectives in regional plans. They must:
- a. Describe the environmental outcome sought for the value in a way that enables as assessment of the effectiveness of the RPS, plans, and action plans in achieving the environmental outcome; and
  - b. When achieved, fulfil the relevant long-term vision and the objective of the NPSFM.
28. In my view, developing environmental outcomes is the 'next step' from long-term visions and will assist with providing the clarity sought by the submitters because they are focused on specific values and will therefore be more detailed and specific than the long-term visions.
29. For every value identified in an FMU, clause 3.10 states that councils:
- a. must use all relevant attributes in Appendices 2A and 2B for compulsory values,
  - b. may identify any other attributes for compulsory values,
  - c. must identify, where practicable, attributes for all other applicable values, and
  - d. if attributes cannot be identified, or they are insufficient for assessing a value, must identify alternative criteria for assessing whether the environmental outcome for the value is being achieved.
30. Attributes identified under (b) or (c) above must be specific and, where practicable, be able to be assessed in numeric terms. I consider this will provide clarity for the submitters on how the progress towards achieving environmental outcomes will be measured.
31. In accordance with clause 3.11, councils must identify baseline states and set target attribute states for every attribute identified. Every target attribute state must specify a timeframe for its achievement or, if the target has already been achieved, the state it will be maintained in as from a specified date. These timeframes may be of any length or period but if they are long-term they must include interim target attribute states set for intervals or no more than ten years.
32. Similarly, clause 3.16 states that environmental flows and levels must be set at a level that achieves the environmental outcomes for an FMU and all relevant long-term visions, but may be set and adapted over time to take a phased approach to achieving those outcomes.
33. In my view, the requirements relating to target attribute states, interim target attribute states, and environmental flows and levels allow for the transitional framework sought by submitters. All of those parts of the NOF must have timeframes for their achievement and work together to achieve the long-term freshwater visions within the timeframes set in those visions. Completing these steps will provide the clarity submitters are seeking about what the long-term visions 'mean' in practice and will provide the opportunity for discussions about appropriate interim milestones, in the

event that there is a significant gap between the baseline and target states. I do not consider that it would be practical or helpful to establish a transitional framework in advance of these steps being completed.

34. Although I am not opposed to the principle outlined in Dr Freeman’s replacement for LF-WAI-P4, it is clear from clause 3.2(2)(c) that the hierarchy of obligations must be applied when implementing the NOF and, as set out in the objective of the NPSFM, this requires prioritising the health and well-being of water bodies and freshwater ecosystems and the health needs of people before the ability of people and communities to provide for their social, economic, and cultural well-being. I consider there is a risk that the policy proposed by Dr Freeman would ‘cut across’ this direction in a way that does not give effect to the NPSFM.

#### 4.3. Final recommendation

35. I do not recommend any amendments.

## 5. Highly productive land

### 5.1. Introduction

36. The pORPS was notified in 2021, well before the NPSHPL was gazetted in September 2022. In October 2022, Ms White and I prepared supplementary evidence on the content of the NPSHPL and its implications for the pORPS and recommended various amendments to provisions. Some of those amendments have been supported by submitters and others opposed. The key matters in contention are:

- a. whether the ‘interim’ identification of highly productive land in the NPSHPL will protect land in Otago valued for horticulture and viticulture and, if not, whether (and how) the pORPS should ‘fill the gap’.
- b. Whether highly productive land is to be maintained or protected,
- c. Use of the term ‘productive capacity’.

37. I have addressed these in turn in the sections below.

### 5.2. Identification criteria

#### 5.2.1. Introduction

38. As notified, LF-LS-P19 required identifying highly productive land using the following criteria:

- a. The capability and versatility of the land to support primary production based on the Land Use Capability (LUC) classification system, and
- b. The suitability of the climate for primary production, particularly crop production, and
- c. The size and cohesiveness of the area of land for use for primary production.

39. In my section 42A report, prepared prior to the gazettal of the NPSHPL, I recommended including a definition of ‘highly productive land’ as follows:<sup>9</sup>

means:

(a) land that has been identified in accordance with LF-LS-P19; or

(b) where the identification in (a) has not occurred, land in the rural area that is classified as LUC 1, 2, or 3 as mapped by the NZ Land Resource Inventory or by more detailed site-specific research.

40. The NPSHPL contains ‘long-term’ criteria for identifying highly productive land as well as ‘interim’ criteria that apply until the long-term identification has occurred. The long-term criteria must be used to develop maps of highly productive land for inclusion in regional policy statements. Some of the long-term criteria are mandatory and some are optional:

a. Regional councils must map as highly productive land any land that:<sup>10</sup>

- i. is in a general rural zone or rural production zone,<sup>11</sup> and
- ii. is predominantly LUC 1, 2, or 3 land, and
- iii. forms a large and geographically cohesive area, and

b. 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 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, having regard to the:

- i. soil type, and
- ii. physical characteristics of the land and soil, and
- iii. climate of the area.<sup>12</sup>

41. This mapping must be included, using a Schedule 1 process, in regional policy statements within three years of the commencement date of the NPSHPL.<sup>13</sup> Within six months of this occurring, territorial authorities must identify highly productive land in their own districts using the same maps and include them in their district plans without using a Schedule 1 process.

42. Until the long-term identification above has occurred, and the resulting maps are included in regional policy statements, interim criteria for identifying highly productive land apply and all references to highly productive land in the NPSHPL must be read and applied by territorial authorities and consent authorities as references to land identified using the interim criteria. This aims to provide protection to that land in the intervening

---

<sup>9</sup> Section 9.8.3.2, *Chapter 9: LF – Land and freshwater*.

<sup>10</sup> Clause 3.4(1), NPSHPL

<sup>11</sup> All references to zones refer to zones identified and described in Standard 8 (Zone Framework Standard) of the National Planning Standards.

<sup>12</sup> Clause 3.4(3), NPSHPL

<sup>13</sup> Clause 3.5(1), NPSHPL

period before the maps are completed. The interim criteria are narrower than the long-term criteria. “Highly productive land” in the transitional period comprises land that:

- a. Is:
  - i. Zoned general rural or rural production, and
  - ii. LUC 1, 2, and 3, but
- b. Is not:
  - i. Identified for future urban development, or
  - ii. Subject to a Council-initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

43. The NPSHPL also defines highly productive land as (with my notes in square brackets):

*land that has been mapped in accordance with clause 3.4 [the long-term criteria] 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 [the interim criteria] and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land)*

44. In my supplementary evidence, I recommended the following amendments to LF-LS-P19:

#### **LF-LS-P19 – Highly productive land**

Maintain the availability and *productive capacity*<sup>14</sup> of *highly productive land* by:

(1) identifying *highly productive land* based on the following criteria:

- ~~(a) the capability and versatility of the land to support food and fibre production primary production<sup>15</sup> based on, including using<sup>16</sup> the Land Use Capability classification system;~~
- ~~(b) the suitability of the climate for food and fibre production primary production,<sup>17</sup> particularly crop production, and~~
- ~~(c) the size and cohesiveness of the area of land for use for food and fibre production primary production,<sup>18</sup> and<sup>19</sup>~~
- ~~(d) land must be identified as *highly productive land* if:
  - ~~(i) it is in a general rural zone or rural production zone, and~~~~

<sup>14</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00014.031 Mt Cardrona Station, 00209.01 Universal Developments, 00210.012 Lane Hocking, 00211.01 LAC Properties

<sup>15</sup> 00235.008 OWRUG

<sup>16</sup> 00114.025-031 Mt Cardrona Station, 00118.025-031 Maryhill Limited, 00209.012-015 Universal Developments, 00210.011-013 & 015 Lane Hocking, 00211.011-013 & 015 LAC Properties Trustees Limited

<sup>17</sup> 00235.008 OWRUG

<sup>18</sup> 00235.008 OWRUG

<sup>19</sup> 00101.044 Tōitu Te Whenua

- (ii) it is predominantly LUC 1, 2, or 3 land, and
- (iii) it forms a large and geographically cohesive area,
- (e) land may be identified as highly productive land if:
  - (i) it is in a general rural zone or rural production zone, and
  - (ii) it is not LUC 1, 2, or 3 land, and
  - (iii) it is or has the potential to be highly productive for land-based primary production in Otago, having regard to the soil type, the physical characteristics of the land and soil, and the climate, and
- (f) land must not be identified as highly productive land if it was identified for future urban development on or before 17 October 2022, and<sup>20</sup>

...

45. I also recommended replacing the definition of ‘highly productive land’ with the definition from the NPSHPL.
46. In summary, the long-term criteria are broader than the interim criteria and allow consideration of land that is not ‘traditionally’ productive (i.e. non-LUC 1, 2, or 3). Importantly in Otago, this includes land valuable for horticulture and viticulture.

#### 5.2.2. Submissions and evidence

47. Horticulture NZ’s submission supported most of the LF-LS provisions relating to highly productive land as they were at notification. The legal submissions of Ms Louise Ford at the LF hearing identified Horticulture NZ’s concerns arising from my recommended amendments in supplementary evidence. I understand Horticulture NZ’s primary concern as being that land valued for horticulture and viticulture would have been identified as highly productive land using notified LF-LS-P19 but now, due to my recommended amendments, would not. Ms Wharfe for Horticulture NZ describes the consequence of this as being that (with my additions in square brackets):

*“land which may be deemed highly productive through a mapping process [i.e. using the long-term criteria] has no protection in the interim until mapping has occurred and included in a regional policy statement.”<sup>21</sup>*

48. Ms Leanne Roberts for Horticulture NZ describes the horticultural industry in Otago, noting that Central Otago is the largest summerfruit growing area in New Zealand at 1,144 hectares and accounts for 50% of New Zealand’s summerfruit production.<sup>22</sup> Central Otago is also the third largest production area for pip fruit in New Zealand at

<sup>20</sup> 00101.044 Tōitu Te Whenua

<sup>21</sup> Lynette Wharfe for Horticulture NZ, para [119]

<sup>22</sup> Leanne Roberts for Horticulture NZ, para [24]

470 hectares, after Hawkes Bay and Tasman.<sup>23</sup> She states that Central Otago is nationally significant for its horticultural food production.<sup>24</sup>

49. Ms Roberts describes the natural resources that support horticulture in Otago and states that summerfruit and pip fruit orchards do not require LUC 1, 2 or 3 land to be productive.<sup>25</sup> In conclusion, Ms Roberts states that in Otago, soils other than LUC 1, 2, and 3, including those that support horticulture and viticulture, are highly productive and should be protected for that purpose prior to the mapping of highly productive land occurring.<sup>26</sup>
50. Mr Stuart Ford for Horticulture NZ states that the horticultural sector accounts for approximately 4% of Otago's regional GDP.<sup>27</sup> In relation to the NPSHPL, he explains why LUC 4 and 5 land is valuable for horticulture and the lack of protection it is afforded using the interim criteria.<sup>28</sup>
51. Ms Lynette Wharfe for Horticulture NZ sets out the relevant provisions of the NPSHPL and reiterates Ms Roberts' point above: that as a consequence of the definition of highly productive land in the NPSHPL (and as I recommend it be incorporated into the pORPS), land that is highly productive for horticulture and viticulture has no interim protection prior to the long-term identification occurring and resulting maps included in the regional policy statement.<sup>29</sup>
52. To address this issue, Ms Wharfe identifies two options:
- a. Retain the definition of highly productive land from the s42A report until the long-term identification and mapping has occurred in accordance with the NPSHPL, or
  - b. Include the definition of highly productive land from the NPSHPL but add clause (1) from the notified version of LF-LS-P19 to apply in the interim period.
53. Ms Wharfe considers that although this may be more stringent than the NPSHPL there is nothing in the NPSHPL that limits such an approach.<sup>30</sup>
54. Mr Logan for ORC submits that the approach proposed by Horticulture NZ "cuts across the transitional classification of highly productive land in the NPSHPL ... [and] would not therefore give effect to the NPSHPL."<sup>31</sup>
55. For OWRUG, Mr James Dacey describes the viticulture industry in Otago, stating that plantings are predominantly in the CODC and QLDC areas, and the unique

---

<sup>23</sup> Leanne Roberts for Horticulture NZ, para [27]

<sup>24</sup> Leanne Roberts for Horticulture NZ, para [52]

<sup>25</sup> Leanne Roberts for Horticulture NZ, para [79]

<sup>26</sup> Leanne Roberts for Horticulture NZ, para [112]

<sup>27</sup> Stuart Ford for Horticulture NZ, para [31]

<sup>28</sup> Stuart Ford for Horticulture NZ, paras [32]-[39]

<sup>29</sup> Lynette Wharfe for Horticulture NZ, para [122]

<sup>30</sup> Lynette Wharfe for Horticulture NZ, para [164]

<sup>31</sup> Opening submissions on LF chapter, paras [55]-[56]

characteristics of winegrowing in Otago.<sup>32</sup> He considers the Central Otago wine industry is built on these characteristics and is particularly vulnerable to regulatory changes that alter its ability to make the most of these characteristics.<sup>33</sup> When describing the topography component of these characteristics, Mr Dicey states that:

*Vines flourish on land classified on the Land Use Capability scale from 1 (being the most versatile – defined as “Land with virtually no limitations for arable use and suitable for cultivated crops, pasture or forestry”) to 6 (defined as “non-arable land with moderate limitations for use under perennial vegetation such as pasture or forest”). LUC 4-6 typically includes varying angles of slope. A west facing slope increases the effect the sun has on heating the soil (and thereby enabling the vine to grow) by increasing the intercept angle.<sup>34</sup>*

### 5.2.3. Analysis

56. I agree with Horticulture NZ and OWRUG, Federated Farmers, and DairyNZ that some land in Otago valued for horticulture and viticulture is not located on LUC 1, 2, or 3 land and will not be considered ‘highly productive land’ in the interim period before maps of highly productive land are included in the regional policy statement. Based on the evidence of Mr Ford, Ms Roberts and Mr Dicey, I agree that is problematic and that productive land outside LUC classes 1, 2, and 3 should be protected during that time. I note that many of these areas are under pressure from urban development, which makes their protection even more important.
57. I agree with Ms Wharfe that the pORPS does not provide an adequate interim framework for this land. Like Ms Wharfe, I consider this is due to the definition of highly productive land in the NPSHPL. However, I am reluctant to support either of Ms Wharfe’s proposed amendments. In my experience, it is generally unhelpful to define terms in a lower order document in a way that is inconsistent with a higher order document. I am also conscious of Mr Logan’s submissions and the need to ensure that any proposed solution to the issue gives effect to the NPSHPL.
58. In my view, rather than attempting to redefine criteria or definitions from the NPSHPL, it would be simpler for the pORPS to protect additional areas of land that are valuable for horticulture and viticulture. I recommend incorporating a new clause in LF-LS-P19:
- (2A) until clause 3.5(1) of the NPSHPL has been implemented, protecting land that is suitable for horticulture or viticulture from uses that are not *land-based primary production or rural industry*.<sup>35</sup>
59. I acknowledge that this does not adopt the full suite of restrictions set out in the NPSHPL for highly productive land. However, given this is an interim policy only applicable until long-term mapping is completed (no later than December 2025), I

---

<sup>32</sup> James Dicey for OWRUG, Federated Farmers, and DairyNZ, para [13]

<sup>33</sup> James Dicey for OWRUG, Federated Farmers, and DairyNZ, para [42]

<sup>34</sup> James Dicey for OWRUG, Federated Farmers, and DairyNZ, para [25]

<sup>35</sup> 00236.004 Horticulture NZ

consider it is not necessary to repeat, in full, all of those restrictions. Given the interim nature of this policy I consider that is appropriate.

60. To address the difficulties with the definition of ‘highly productive land,’ I also recommend consequential amendments to incorporate reference to rural land in the title and chapeau of the policy.

### 5.3. Maintain vs protect

#### 5.3.1. Introduction

61. As notified, LF-LS-O11 and LF-LS-P19 both used the term ‘maintain’ in relation to highly productive land. The specific wording is:

- a. LF-LS-O11: “...the availability and productive capacity of highly productive land for primary production is maintained now and for future generations.”
- b. LF-LS-P19: “Maintain the availability and productive capacity of highly productive land by...”

62. The objective of the NPSHPL is that highly productive land is protected for use in land-based primary production, now and for future generations.

63. In *Reply report 1: Introduction and general themes*, I have recommended replacing LF-LS-O11 with a new objective which does not refer to maintaining highly productive land, instead relying on the direction in UFD-O4 (which I recommend moving to the LF-LS chapter). This objective requires that development in rural areas provides for the ongoing use of rural areas for primary production and rural industry and does not compromise the long-term viability of primary production and rural communities.

#### 5.3.2. Submissions and evidence

64. In relation to LF-LS-O11A, and my recommendation to use ‘maintain’ instead of ‘protect’ in relation to highly productive land, Ms Wharfe for Horticulture NZ considers that these are two different terms and that ‘protection’ is what is required by the NPSHPL.<sup>36</sup> She states that the submission by Horticulture NZ seeks that “the outcome related to the protection of [highly productive land] is focused on protecting the productive capacity of highly productive land from inappropriate subdivision, use and development” and considers that this provides scope for the amendment she proposes.<sup>37</sup>

#### 5.3.3. Analysis

65. As set out in my opening statement on the LF chapter, I agree with Ms Wharfe that it would be preferable to adopt the same wording as the NPSHPL (being ‘protect’) but I did not consider there is scope to make this amendment. Having heard Ms Wharfe’s

---

<sup>36</sup> Lynette Wharfe for Horticulture NZ, paras [134]-[138]

<sup>37</sup> Lynette Wharfe for Horticulture NZ, paras [140]-[142]



response to questioning on this matter, I have reflected further on Horticulture NZ's submission. I note that the relief Ms Wharfe relies on is included in Part 2 of the submission, and that Part 3 contains the specific relief sought. However, Part 3 begins "without limiting the generality of [Part 2], HortNZ seeks the following decisions..." I agree with Ms Wharfe that the general submissions in Part 2 provide scope for the amendment sought.

#### 5.4. Productive capacity

##### 5.4.1. Introduction

66. As notified, the pORPS used the phrase 'productive capacity' but did not define it. When the NPSHPL was gazetted, it included a definition. In my supplementary evidence, I recommended including this definition in the pORPS:

**productive capacity**

has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below)

<p><u>in relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:</u></p> <p><u>(a) physical characteristics (such as soil type, properties, and versatility); and</u></p> <p><u>(b) legal constraints (such as consent notices, local authority covenants, and easements); and</u></p> <p><u>(c) the size and shape of existing and proposed land parcels</u></p>
---

##### 5.4.2. Submissions and evidence

67. Ms Wharfe considers that my recommendations relating to the use of 'productive capacity' as a defined term in the pORPS are, in some places, incorrect.<sup>38</sup> This is because 'productive capacity' as defined in the NPSHPL (and as I recommend it be included in the pORPS) relates to supporting land-based primary production (also a defined term in the NPSHPL and pORPS) whereas in some places in the pORPS it is used in relation to activities that are not land-based primary production.

68. To address this, she seeks the following amendment to the definition:

Productive capacity in respect of highly productive land

Has the same meaning as in clause 1.3 of the National Policy Statement for Highly Productive Land (as set out in the box below).

...

---

<sup>38</sup> Lynette Wharfe for Horticulture NZ, paras [144]-[151]

#### 5.4.3. Analysis

69. I agree with Ms Wharfe that productive capacity, as defined, relates to the ability of land to support land-based primary production, which is defined in the NPSHPL (and, as I recommend, in the pORPS) as:

...production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land

70. The term 'productive capacity' is used in the following places in the pORPS:

- a. SRMR-I4 – Context and SRMR-I10 – Impact snapshot (economic),
- b. LF-LS-P19 and LF-LS-M12(4),
- c. UFD-O4(4A), UFD-P7(6), and UFD-AER13.

71. In the SRMR chapter, the term is used in SRMR-I4 in relation to 'land' generally. I agree with Ms Wharfe that this is problematic given the definition does not apply to all land. I recommend replacing the reference to 'productive capacity' in SRMR-I4 with 'the ability of land to support primary production.' In regard to SRMR-I10, 'productive capacity' is used in regard to the impacts of land management practices on agricultural land, and in that context 'productive capacity' is the appropriate term. I do not consider any amendments SRMR-I10 are necessary.

72. In LF-LS-P19, LF-LS-M12(4) and UFD-P7(6), the term is used in relation to highly productive land. I do not consider any amendments are necessary.

73. In UFD-O4(4A) and UFD-AER13, the term is used in relation to 'primary production'. I agree with Ms Wharfe that this is incorrect as the definition of productive capacity only refers to 'land-based primary production', which is a subset of primary production (as defined in the National Planning Standards). Both provisions also refer to the long-term viability of primary production and rural communities, which I consider necessarily incorporates matters such as productive capacity. I recommend deleting 'productive capacity'.

#### 5.5. Final recommendation

74. I recommend the following amendments:

- a. In SRMR-I4 – Context, replacing 'productive capacity' with 'the ability of land to support primary production'.
- b. In UFD-O4(4A) and UFD-AER13, deleting the reference to 'productive capacity.'

75. My final recommended amendments to the notified version of the LF-LS-P19 are:

**LF-LS-P19 – Rural land and highly<sup>39</sup> productive land**

~~Maintain~~ Protect<sup>40</sup> the availability of rural land<sup>41</sup> and the *productive capacity* of *highly productive land* by:

---

<sup>39</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00236.004 Horticulture NZ

- (1) identifying *highly productive land* based on the following criteria:
  - ~~(a) the capability and versatility of the land to support primary production based on the Land Use Capability classification system,~~
  - ~~(b) the suitability of the climate for primary production, particularly crop production, and~~
  - ~~(c) the size and cohesiveness of the area of land for use for primary production, and~~
  - (d) land must be identified as *highly productive land* if:
    - (i) it is in a general rural zone or rural production zone, and
    - (ii) it is predominantly *LUC 1, 2, or 3 land*, and
    - (iii) it forms a large and geographically cohesive area,
  - (e) land may be identified as *highly productive land* if:
    - (i) it is in a general rural zone or rural production zone, and
    - (ii) it is not *LUC 1, 2, or 3 land*, and
    - (iii) it is or has the potential to be highly productive for *land-based primary production* in Otago, having regard to the soil type, the physical characteristics of the land and soil, and the climate, and
  - (f) land must not be identified as *highly productive land* if it was *identified for future urban development* on or before 17 October 2022, and<sup>42</sup>
- (2) prioritising the use of *highly productive land* for *land-based primary production* in accordance with the NPSHPL ~~ahead of other land uses, and~~<sup>43</sup>
- (2A) until clause 3.5(1) of the NPSHPL has been implemented, protecting land that is suitable for horticulture or viticulture from uses that are not *land-based primary production or rural industry*.<sup>44</sup>
- ~~(3) managing urban development in rural areas, including rural lifestyle and rural residential areas, in accordance with UFD-P4, UFD-P7 and UFD-P8.<sup>45</sup>~~

76. As notified, LF-LS-P19 protected these areas of land because it did not distinguish between interim and long-term criteria for identification in the way the NPSHPL does. In

---

<sup>40</sup> 00236.005 Horticulture NZ

<sup>41</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00236.004 Horticulture NZ

<sup>42</sup> 00101.044 Tōitu Te Whenua

<sup>43</sup> 00413.004 New Zealand Cherry Corp, 00414.002 Infinity Investment Group

<sup>44</sup> 00236.004 Horticulture NZ

<sup>45</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00101.044 Tōitu Te Whenua

my view, the amendments I recommend retain the originally notified scope of LF-LS-P19, albeit with amendments to ensure that the pORPS gives effect to the NPSHPL.

77. Mr Ford and Mr Dicey have outlined the economic benefits of horticulture and viticulture to the region.<sup>46</sup> Ms Roberts, Ms Wharfe, and Mr Dicey have outlined the competing demands for suitable land for these activities, including from urban development, and the often long-term decision-making needed for investment. Given the evidence presented by these witnesses, I consider it is appropriate to retain the notified scope of the LF-LS chapter and continue to protect valuable horticultural and viticultural land until mapping of highly productive land has been completed. I consider this will be more effective at achieving UFD-O4 as it will ensure land suitable for horticulture and viticulture is protected from other uses of land.

## 6. Outstanding water bodies

### 6.1. Introduction

78. The LF-FW chapter contains a series of provisions that collectively manage outstanding water bodies. Some are in this process and some are in the FPI:

- Objective LF-FW-O8 – Freshwater,
- Policy LF-FW-P11 – Identifying outstanding water bodies,
- Policy LF-FW-P12 – Protecting outstanding water bodies,
- Method LF-FW-M5 – Outstanding water bodies,
- Method LF-FW-M7(1) and (2) – District plans, and
- APP1 – Criteria for identifying outstanding water bodies.

79. These provisions are discussed in section 9.7.4 of the section 42A report, with my analysis in paragraphs:

- [729] – [739]: Alignment with the NPSFM
- [745] – [747]: LF-FW-O8(5)
- [754] – [758]: LF-FW-P11
- [770] – [782]: LF-FW-P12
- [793] – [800]: LF-FW-M5
- [808] – [813]: LF-FW-M7(1) and (2)
- [825] – [841]: APP1

80. There are two unresolved matters relating to outstanding water bodies: the criteria for their identification (LF-FW-P11 and APP1) and the relationship between LF-FW-P12 and EIT-INF-P13 in relation to managing the adverse effects of infrastructure.

---

<sup>46</sup> Stuart Ford for Horticulture NZ, para [31], James Dicey for OWRUG, Federated Farmers, and DairyNZ, para [16]

## 6.2. Identification

### 6.2.1. Introduction

81. The key provisions for identifying outstanding water bodies are LF-FW-P11 and APP1. LF-FW-P11 identifies as outstanding water bodies:
- a. those water bodies described in the Kawarau WCO and the Lake Wānaka Preservation Act 1973,
  - b. any water body or part of a water body identified as being within an outstanding natural feature or landscape, or
  - c. any water body identified in accordance with APP1.
82. As notified, APP1 contained criteria for identifying outstanding water bodies. In my section 42A report, I recommended accepting a submission point by Manawa seeking to replace notified APP1 with a set of criteria adopted in Hawke’s Bay Regional Council’s Plan Change 7, the decision on which was made after the pORPS provisions were approved for notification by ORC.
83. In my opening statement to the LF hearing, I noted that in early 2023 ORC had commissioned a project to identify outstanding water bodies using the criteria in APP1 and a set of draft reports had been received by ORC in April 2023. At that time, I was unsure whether this would affect my previous recommendations to replace APP1.

### 6.2.2. Submissions and evidence

84. Beef + Lamb and DINZ and Federated Farmers oppose and seek to delete LF-FW-P11(3) which states that any water body or part of a water body within an outstanding natural feature or landscape is an outstanding water body.<sup>47</sup> Beef + Lamb and DINZ consider this does not make those water bodies outstanding in their own right. Federated Farmers considers this policy should not override the criteria in APP1, which also address landscape values.<sup>48</sup>
85. A number of submitters raise concerns with the notified APP1 criteria:
- a. Federated Farmers consider the criteria are unclear and seek to either delete the table or clarify and substantiate the basis for its content, amend it to ensure more than one criterion needs to be met, and resolve the uncertainty between APP1 and APP9.<sup>49</sup>
  - b. Manawa considers the criteria are open to interpretation and seeks to align APP1 with the criteria adopted in Hawke’s Bay Regional Council’s Plan Change 7.<sup>50</sup>

---

<sup>47</sup> 00237.037 Beef + Lamb and DINZ, 00239.087 Federated Farmers

<sup>48</sup> 00239.087 Federated Farmers

<sup>49</sup> 00239.184 Federated Farmers

<sup>50</sup> 00311.062 Manawa, 00311.020 Manawa

- c. DOC seeks unspecified amendments to provide clear guidance for assessing whether the values are outstanding.<sup>51</sup>
86. In relation to the 'ecology' value, Federated Farmers and Beef + Lamb and DINZ seek to delete the reference to salmonids which they note are exotic species.<sup>52</sup>
87. Few parties responded to my s42A recommendation to replace APP1 with the Hawke's Bay criteria. Mr Paragreen, in his evidence for Fish and Game, notes the ambiguity about whether APP1 was included in the FPI or not as well as his concern that key recreational groups have not had the opportunity to have input into the more detailed criteria I recommend. I understand from his oral presentation at the hearing that he has concerns that my recommendation is ultra vires for this reason.
88. Dr Richarson for DOC considers that APP1 as notified provided space for expert evaluation and interpretation and that the Hawke's Bay criteria are unsatisfactory and not specific to the Otago region.<sup>53</sup> Dr Richarson considers that in the 'ecology' value the criteria for native fish are too restrictive and leave out some critical habitats such as spawning grounds.<sup>54</sup> She also considers the second criterion ("native fish that are landlocked and not affected by presence of introduced species") is problematic because non-diadromous galaxiids are landlocked but in most areas affected by salmonids. She recommends including an additional criterion: "is critical to the persistence of a threatened species or to the maintenance of a population with threatened status."<sup>55</sup> Mr Brass for DOC supports this addition.<sup>56</sup>
89. In relation to the 'recreation' value, Dr Richarson considers the criterion regarding numbers of trout incompatible with the preservation of indigenous freshwater communities, fish, and macroinvertebrates as high trout biomass means a high degree of competition and predation on indigenous fauna. Mr Couper and Mr Paragreen for Fish and Game outline a number of concerns with the Hawke's Bay criteria for recreation that I recommended including in my s42A report.<sup>57</sup> In his opening statement to the LF hearing, Mr Paragreen provided tracked amendments to APP1 to address these concerns.<sup>58</sup>

### 6.2.3. Analysis

90. Having reflected on LF-FW-P11 further, I agree with Beef + Lamb and DINZ that forming part of an outstanding natural feature or landscape does not make a water body outstanding in its own right. This is particularly evident in the Queenstown-Lakes district, nearly all of which is an outstanding natural landscape, but which also contains many water bodies that would not, on their own, be considered outstanding. I also

<sup>51</sup> 00137.156 DOC

<sup>52</sup> 00239.184 Federated Farmers, 00237.066 Beef + Lamb and DINZ

<sup>53</sup> Marine Richarson for DOC, para [123]

<sup>54</sup> Marine Richarson for DOC, para [125]

<sup>55</sup> Marine Richarson for DOC, para [127]

<sup>56</sup> Murray Brass for DOC, para [112]

<sup>57</sup> Jayde Couper for Fish and Game, paras [146]-[157]; Nigel Paragreen for Fish and Game, para [125]

<sup>58</sup> Opening statement of Nigel Paragreen for LF hearing, Appendix 2

agree with Federated Farmers that there is a lack of clarity about the relationship between LF-FW-P11(3) and the landscape criteria in APP1. I recommend deleting clause (3) from LF-FW-P11 and instead relying on the criteria in APP1. This will ensure that the landscape values of the particular water body are considered, in addition to its relationship with a wider outstanding natural feature or landscape.

91. The criteria recommended in my s42A report are sought in the submission by Manawa. I understand from Mr Logan that there is no legal difficulty with my recommendation. His closing legal submissions will address this matter.
92. Given the work already undertaken to identify outstanding water bodies, I no longer consider it is helpful to replace the APP1 criteria. However, as further assessments are still to occur, I agree with submitters that it would assist that process for the APP1 criteria to be amended to clarify the thresholds for what is 'outstanding.' The large number of water bodies identified as 'candidates' for being outstanding suggests to me that the criteria may not be clear enough on the threshold for being considered outstanding.
93. I have also considered the comments by Dr Richarson, Mr Couper, and Mr Paragreen in relation to the Hawke's Bay criteria and the extent to which they apply (or do not apply) in Otago. For all of the reasons set out in this section, I consider that retaining APP1 as notified with amendments to clarify the thresholds for 'outstanding' values will be the most effective and efficient approach.
94. I have addressed the criteria as they were notified in the sections below.

#### 6.2.3.1. Cultural and spiritual

95. In response to the submissions by Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku, I recommended deleting this value from APP1. This was supported by Ms McIntyre in her evidence for Kāi Tahu ki Otago.<sup>59</sup> She recommends a consequential amendment to LF-FW-E3 which I agree is appropriate. I do not recommend any further amendments.

#### 6.2.3.2. Ecology

96. I agree with Federated Farmers and Beef + Lamb and DINZ that the reference to salmonid fish in this value is inappropriate. Policy 9 of the NPSFM requires that the habitats of indigenous freshwater species are protected, and Policy 10 provides that the habitat of trout and salmon is protected, insofar as this is consistent with Policy 9. I consider there is a risk of APP1 being inconsistent with the NPSFM if the inclusion of habitats of salmonid fish as an outstanding ecological value results in those habitats being protected to the detriment of the protection of habitats of indigenous freshwater species.
97. Salmonids predate on indigenous fish species. A strict reading of APP1 requires any water body with an outstanding ecological habitat of salmonids to be identified as an

---

<sup>59</sup> Sandra McIntyre for Kāi Tahu ki Otago, paras [103]-[105]

outstanding water body, even if it the existence of salmonids or their habitat has a negative effect on the habitats of indigenous freshwater species. This would not give effect to Policies 9 and 10. I recommend deleting 'salmonid fish' from this value.

98. The Hawke's Bay criteria sought by Manawa contain much greater detail on ecological values, including different thresholds for determining whether a value is 'outstanding' depending on whether the habitat is for birds, fish, or plants. Dr Richardson's evidence has highlighted the need for criteria to be specific to the region, and I accept that there are significant differences between Otago and Hawke's Bay when it comes to freshwater habitats and the indigenous freshwater species they support. I note Dr Richardson's view that broad criteria can provide space for expert evaluation and interpretation.
99. In my view, given the differences between the regions, I am not convinced it is appropriate to adopt the Hawke's Bay criteria, despite appearing on their face to provide more clarity about the thresholds for the value being considered 'outstanding.' I therefore recommend retaining the notified APP1 criterion, with the deletion of 'salmonid fish'.

#### 6.2.3.3. Landscape

100. As notified, the landscape value in APP1 focused on water bodies that formed part of landscape that is 'conspicuous, eminent, remarkable or iconic' within the region or were critical to an outstanding natural feature. For the reasons outlined by Beef + Lamb and DINZ in relation to LF-FW-P11(3) I am concerned that this places too much emphasis on a water body's location within a wider landscape or feature. While I acknowledge that water bodies cannot and should not be 'divorced' from their wider context, that should not be the only criterion.
101. The Hawke's Bay criteria incorporate this relationship but also require that water bodies have 'wild and/or scenic values that contain distinctive qualities which 'stand out' and are present in few other water bodies in the region.' I understand this terminology has its foundation in s199(2)(b)(iii) of the RMA, which lists 'wild, scenic, or other natural characteristics' as those which can be considered outstanding under a water conservation order. I support the adoption of this criteria, with the exception of the reference to 'few other water bodies.' Otago has many highly valued water bodies, particularly for their landscape values, and I do not consider identification should be limited simply because some have already been identified.
102. That said, landscape assessments will occur within the regional context and so I consider the Hawke's Bay criterion should be amended to refer to distinctive qualities that stand out as 'exceptional in the context of the region'. This would assist with clarifying the appropriate spatial scale for being considering 'outstanding', while retaining the focus on quality rather than quantity.



6.2.3.4. Natural character

103. As notified, this value referred to ‘high naturalness’ and an ‘exceptional combination’ of matters. Generally, I consider this to be appropriate, although I consider that for clarity the criterion should read as a combination which is ‘exceptional in the context of the region’ in the same way as I have recommended for the landscape value. That will assist in clarifying the threshold for determining what is ‘outstanding.’
104. The Hawke’s Bay criterion refers to natural character being ‘conspicuous, eminent and/or remarkable’ within the region. I understand that terminology is generally used in relation to landscape value, not natural character. Natural character is focused on the ‘naturalness’ of the water body, which I consider the APP1 criteria already addresses.
105. I am aware that, in relation to APP9, a number of submitters seek to align the criteria for identifying outstanding natural features and landscapes with New Zealand Institute of Landscape Architect’s (NZILA) Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment guidelines (“Te Tangi a Manu”). In *Reply report 14: NFL – Natural features and landscapes*, Mr MacLennan acknowledges that Te Tangi a Manu is the most recent best practice for landscape assessment and recommends aligning APP9 accordingly.
106. Te Tangi a Manu also contains guidelines on assessments of natural character. Only the NZCPS differentiates ‘outstanding natural character’ and so Te Tangi a Manu addresses the concept in this context as follows (my emphasis added):<sup>60</sup>

*‘Outstanding’ is assumed to mean the same with respect to natural character as it does to natural features and landscapes. That is, it encapsulates both quality and relativity. It is a matter of reasoned judgement. ‘Outstanding’ is a high threshold but does not mean ‘the best’ or ‘uniquely superior’.*

- *It is not limited by quota: there are extensive lengths of coast in some parts of the country with outstanding natural character (for instance, Fiordland).*
- *On the other hand, it does not mean ‘best of a poor choice’: it may be that there are no areas of outstanding natural character in a district.*
- *Outstanding natural character should be reasonably obvious and compelling, particularly when the reasons are explained.*

*...‘outstanding natural character’ means areas where the collective natural characteristics and qualities have outstanding significance or value. That is, it is a qualitative rather than a quantitative measure. It is a matter of reasoned judgement. It does not mean ‘outstanding naturalness’—although a high degree of naturalness may very well be a key characteristic that contributes to an area’s outstanding natural character.*

107. In my view, the notified APP1 criterion is consistent with this approach because it requires ‘high naturalness’ as well as an ‘exceptional combination’ of natural processes, natural patterns, and natural elements.

---

<sup>60</sup> Tuia Pito Ora New Zealand Institute of Landscape Architects. (2022). Te Tangi a Manu: Aotearoa New Zealand landscape assessment guidelines, paras [9.31]-[9.32]

108. The notified APP1 criterion refers to 'low levels of modification', whereas the Hawke's Bay criterion uses 'little or no human modification.' I consider the latter is preferable for two reasons. First, 'little or no' modification is more stringent than 'low' which I consider is appropriate when determining 'outstanding' natural character. Second, modification occurs regularly in the environment, including from human activities and non-human activities (such as floods which alter a river's channel). I do not consider a water body should be excluded from being considered as having outstanding natural character because it is regularly modified by large flows, for example. I recommend adopting 'little or no human modification' instead of 'low levels of modification'.
109. For readability, I also recommend splitting the criterion into two parts which both have to be satisfied.

#### 6.2.3.5. Recreation

110. Balancing recreational value with ecological value in a way that gives effect to Policies 9 and 10 of the NPSFM is complex. I have noted Dr Richardson's evidence on the adverse effects of introduced species on indigenous species and I consider that is good reason to be cautious when describing recreational values that pertain to trout and salmon in particular. I am concerned that Mr Paragreen's proposed amendments to the recreation value in APP1 (as I recommended it be amended in my s42A report) have the potential to 'lower the bar' for being outstanding, which poses a risk of being inconsistent with the NPSFM.
111. As notified, the APP1 'recreation' value was fairly broad and did not establish 'hard' thresholds, in comparison to those in the Hawke's Bay criteria. I take the point made by the DOC and Fish and Game witnesses that Hawke's Bay is not Otago, and I consider one of the important differences are the indigenous freshwater species found in Otago, the number that at Threatened or At Risk, and the interactions between these and introduced species. For this reason, and out of an abundance of caution, I recommend retaining the 'recreation' value in APP1 as notified. As Dr Richardson states, broad criteria can provide space for expert evaluation and interpretation which I consider is appropriate for managing this particular value.

#### 6.2.3.6. Physical

112. In the Hawke's Bay criteria, this value is described as 'geology' rather than 'physical', however the first two criteria to be satisfied are, in my view, comparable. In the Hawke's Bay criteria, the requirement for the feature to be dependent on the water body's condition and functioning is listed separately from the test requiring the values to be 'conspicuous, eminent, and/or remarkable'. In APP1 as notified, those are combined. APP1 uses 'outstanding' rather than 'conspicuous, eminent, and/or remarkable' because I understand the latter phrasing has been developed in the context of assessing landscapes, and is not generally applied outside that context.
113. The Hawke's Bay criteria include an additional matter: that the feature is classified as Class A on the New Zealand Geopreservation Inventory. I understand the Inventory uses three classes of importance: A (international scientific, aesthetic or educational value),

B (national scientific, aesthetic, or educational value) and C (regional scientific, aesthetic, or educational value).<sup>61</sup> I am unsure why the Hawke’s Bay criterion requires the feature to be Class A (internationally important) given the assessment is at a regional scale. In my view, the Inventory provides information that can be used to assess whether a feature is ‘outstanding’ in accordance with the APP1 criterion as notified and does not need to be used as a threshold on its own.

6.2.4. Final recommendation

114. My final recommended amendments to the notified version of the pORPS are:

**LF-FW-P11 – Identifying outstanding water bodies**

Otago’s *outstanding water bodies* are:

- (1) the Kawarau River and tributaries described in the Water Conservation (Kawarau) Order 1997,
- (2) Lake Wanaka and the outflow and tributaries described in the Lake Wanaka Preservation Act 1973, and
- ~~(3) any *water bodies* identified as being wholly or partly within an outstanding natural feature or landscape in accordance with NFL P1, and<sup>62</sup>~~
- (4) any other *water bodies* identified in accordance with APP1.

**APP1 – Criteria for identifying outstanding water bodies**

*Outstanding water bodies* include any *water body* with one or more of the following outstanding values, noting that sub-values are not all inclusive:

Values	Description	Example sub-values
Cultural and spiritual	<del>A <i>water body</i> which has outstanding cultural and spiritual values.</del>	Wāhi tapu, wāhi taoka, wai tapu, rohe boundary, battle sites, pa, kāika, tauraka waka, mahika kai, pa tuna; <del>and acknowledged in korero tuku iho, pepeha, whakatauki or waiata</del>
Ecology	A <i>water body</i> which has outstanding ecological value as a habitat for: <ul style="list-style-type: none"> <li>• Native birds</li> <li>• Native fish</li> <li><del>• Salmonid fish</del></li> </ul>	Native birds, native fish, native plants, aquatic macroinvertebrates

<sup>61</sup> <http://www.geomarine.org.nz/NZGI/>

<sup>62</sup> 00237.037 Beef + Lamb and DINZ, 00239.087 Federated Farmers

	<ul style="list-style-type: none"> <li>• Other aquatic species</li> </ul>	
Landscape	<p>A <i>water body</i> that:</p> <p>(1) <del>is an essential</del> <u>which forms a key component of a landscape or natural feature</u> that is “conspicuous, eminent, remarkable or iconic” within the region, <del>and or is critical to an outstanding natural feature.</del></p> <p>(2) <del>has at least high landscape, wild and/or scenic values that contain distinctive qualities which are outstanding in the context of the region.</del><sup>63</sup></p>	Scenic, association, natural characteristics (includes hydrological, ecological and geological features)
Natural character	<p>A <i>water body</i> with high naturalness that:</p> <p>(1) <del>exhibits an exceptional</del> combination of natural processes, natural patterns and natural elements <del>with low levels of modification to its form, ecosystems and the surrounding landscape that is</del> <u>exceptional in the context of the region,</u> and</p> <p>(2) <del>has little to no human modification to its form, ecosystems, and the surrounding landscape.</del><sup>64</sup></p>	Natural characteristics (includes hydrological, ecological and geological features)
Recreation	A <i>water body</i> which is recognised as providing an outstanding recreational experience for an activity which is directly related to the <i>water</i> .	Angling, fishing, kayaking, rafting, jetboating
Physical	A <i>water body</i> which has an outstanding geomorphological, geological or hydrological feature which is dependent on the <i>water body's</i> condition and functioning-	Science

### 6.3. Infrastructure

#### 6.3.1. Introduction

115. LF-FW-P12 sets out how outstanding water bodies are to be managed. The recommended version of this provision currently reads:<sup>65</sup>

**LF-FW-P12 – ~~Protecting~~ Identifying and managing<sup>66</sup> *outstanding water bodies***

~~The significant and outstanding values of *outstanding water bodies* are:~~

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

<sup>63</sup> 00311.062 Manawa, 00239.184 Federated Farmers

<sup>64</sup> 00311.062 Manawa

<sup>65</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

<sup>66</sup> Clause 16(2), Schedule 1, RMA

(2) — ~~protected by avoiding adverse effects on those values.~~<sup>67</sup>

Identify *outstanding water bodies* and their significant and outstanding values in the relevant *regional plans* and *district plans* and protect those values ~~by avoiding adverse effects on them, except as provided by EIT-INF-P13 and EIT-INF-P13A.~~<sup>68,69</sup>

116. A reference to this policy appears in EIT-INF-P13. In relation to outstanding water bodies, that policy requires avoiding, as the first priority, locating infrastructure in outstanding water bodies and if it is not demonstrably practicable to do that, for nationally or regionally significant infrastructure, manage adverse effects in accordance with LF-FW-P12.

#### 6.3.2. Submissions and evidence

117. Ms Craw discusses my recommended amendments above in her evidence for Waka Kotahi. She interprets my s42A report as saying that protecting the significant and outstanding values of outstanding water bodies means “avoiding all adverse effects” and she considers this is not practical for nationally and regionally significant infrastructure such as State Highways that may need to be located in, under, or over outstanding water bodies such as the Clutha/Mata-au or the Taiari River.<sup>70</sup>

118. On this basis, she considers that the reference to LF-FW-P12 in EIT-INF-P13 means that all adverse effects from nationally or regionally significant infrastructure on the significant or outstanding values of outstanding water bodies must be avoided.<sup>71</sup> To address this, she proposes the following amendments:

- a. Remove the reference to LF-FW-P12 in EIT-INF-P13 and EIT-INF-P13A (which relates to managing the effects of infrastructure in the coastal environment), and
- b. Amend LF-FW-P12 requiring adverse effects to be managed under EIT-INF-P13 and EIT-INF-P13A.<sup>72</sup>

#### 6.3.3. Analysis

119. The paragraph of my s42A report that Ms Craw interprets as saying that protection requires avoiding all adverse effects reads as follows:

*I do not agree with Blackthorn Lodge, Trojan, and Wayfare that protection can be achieved by avoiding, remedying, or mitigating adverse effects. In my view, this is the ‘baseline’ approach in the RMA to managing any adverse effects, and protection requires a more stringent approach.*<sup>73</sup>

---

<sup>67</sup> 00230.091 Forest and Bird

<sup>68</sup> 00235.095 OWRUG, 00315.032 Aurora Energy, 00305.023 Waka Kotahi,

<sup>69</sup> 00230.091 Forest and Bird, 00119.011 Blackthorn Lodge, 00206.033 Trojan, 00411.045 Wayfare,

<sup>70</sup> Aileen Craw for Waka Kotahi, para [7.8]

<sup>71</sup> Aileen Craw for Waka Kotahi, para [7.11]

<sup>72</sup> Aileen Craw for Waka Kotahi, paras [7.13]-[7.14]

<sup>73</sup> Chapter 9: LF – Land and freshwater, para [774]

120. As set out in section 5(2)(c) of the RMA, part of sustainable management includes “avoiding, remedying, or mitigating any adverse effects of activities on the environment.” Further, section 17 confers a duty on every person to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried out by or on behalf of the person. That is the ‘baseline’ I was describing in my paragraph above. In my view, if this is the approach required for managing “any adverse effect on the environment” (per section 17(1)) then protection will require a more stringent approach to managing adverse effects. I did not say, and do not consider, that this requires avoiding all adverse effects.
121. I understand that the consequence of the amendments sought by Ms Craw to EIT-INF-P13 and LF-FW-P12 would be that, if it is not demonstrably practicable to avoid locating nationally or regionally significant in an outstanding water body, adverse effects on the values that contribute to the area’s significance would need to be minimised (EIT-INF-P13(2)(a)(iv)). I am not convinced this gives effect to the NPSFM. In particular, the requirements to:
- a. protect the significant values of outstanding water bodies (Policy 8), and
  - b. avoid the loss of river extent and values, unless there is a functional need for the activity in that location and the effects are managed by applying the effects management hierarchy (clause 3.24), and
  - c. the loss of extent of natural inland wetlands is avoided and their values protected, unless specified exceptions apply, in which case the effects are managed by applying the effects management hierarchy (clause 3.22).
122. Minimising adverse effects may be able to protect the significant values in accordance with Policy 8, but I do not consider that minimising is comparable to implementing the effects management hierarchy required under clauses 3.22 and 3.24.
123. I do acknowledge that nationally and regionally significant infrastructure face functional and operational constraints, and that the effects of these activities can be managed to reduce their impact on the values of an area. Rather than adopt the amendments proposed by Ms Craw, I recommend replacing the reference to LF-FW-P12 in EIT-INF-P13 with a reference to LF-FW-P9 and LF-FW-P13(1) and (2). These policies (respectively) implement the direction in clauses 3.22 and 3.24 of the NPSFM. In my opinion, this amendment will provide clarity about how the effects of nationally and regionally significant infrastructure are to be managed in a way that gives effect to the NPSFM.
124. Ms Craw refers to EIT-INF-P13A in her evidence, which is a policy that applies to the coastal environment. “Outstanding water bodies” are defined in the NPSFM as (my emphasis added):
- ...a water body, or parts of a water body, identified in a regional policy statement, a regional plan, or a water conservation order as having one or more outstanding values.*
125. “Water body” is defined in section 2 of the RMA as:

*...fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.*

126. “Fresh water” is defined in section 2 of the RMA as:

***freshwater or fresh water*** means all water except coastal water and geothermal water

127. “Geothermal water” and “coastal water” are also defined in section 2 of the RMA:

***geothermal water*** means water heated within the earth by natural phenomena to a temperature of 30 degrees Celsius or more’ and includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by natural phenomena

***coastal water*** means seawater within the outer limits of the territorial sea and includes–

(a) seawater with a substantial fresh water component; and

(b) seawater in estuaries, fiords, inlets, harbours, or embayments

128. In summary, a water body (and therefore an outstanding water body) can contain fresh or geothermal water but not coastal water (even if there is a substantial freshwater component). For this reason, I do not consider EIT-INF-P13A is relevant to outstanding water bodies.

6.3.4. Final recommendation

129. My final recommended amendment to the notified version of the pORPS is to replace the reference to LF-FW-P12 in EIT-INF-P13(2)(a)(iii) with a reference to LF-FW-P9 and LF-FW-P13(1) and (2).

## 7. LF-WAI-P3 – Integrated management/ki uta ki tai

7.1. Introduction

130. This topic is discussed in section 9.5.7 of the section 42A (*Report 1: Introduction and general themes*) with my analysis in paragraphs 202 – 250. I address the topic again in my supplementary evidence,<sup>74</sup> where I recommend an additional amendment to clause (6).

131. The recommended version of this provision currently reads:<sup>75</sup>

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

---

<sup>74</sup> Brief of supplementary evidence of Felicity Ann Boyd, LF – Land and freshwater (LF-WAI-P3), dated 21 October 2022.

<sup>75</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

Manage the use of *freshwater* and *land*, ~~in accordance with tikanga and kawa,~~ using an integrated approach that is consistent with tikaka and kawa,<sup>76</sup> that:

- (1) recognises, ~~and~~ sustains and, where degraded or lost, restores<sup>77</sup> the natural<sup>78</sup> 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<sup>79</sup> connections and interactions between *land* and *water*, from the mountains to the sea,
- (3) sustains and, wherever possible, restores the habitats of ~~mahika kai~~ *mahika kai*<sup>80</sup> and indigenous species, including taoka species associated with the ~~water body~~ bodies,<sup>81</sup>
- (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,<sup>82</sup>
- (5) 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,<sup>83</sup> ~~and~~
- (7) has regard to cumulative *effects*, and
- (8)<sup>84</sup> ~~the need to apply~~ applies<sup>85</sup> a precautionary approach where there is limited available information or uncertainty about potential adverse *effects*<sup>86</sup>, in accordance with IM-P6.<sup>87</sup>

## 7.2. Submissions and evidence

132. During the hearing there was general discussion about the application of this policy and how it aligns with the direction elsewhere in the LF chapter, particularly in relation to the requirements for restoration and whether doing so ‘wherever possible’ is practically achievable.

---

<sup>76</sup> 00235.080 OWRUG, FS00226.362 Kāi Tahu ki Otago, FS00234.164 Te Rūnanga o Ngāi Tahu

<sup>77</sup> 00234.027 Te Rūnanga o Ngāi Tahu

<sup>78</sup> 00026.161 Moutere Station

<sup>79</sup> 00026.161 Moutere Station

<sup>80</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>81</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>82</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>83</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>84</sup> 00231.047 Fish and Game

<sup>85</sup> 00231.047 Fish and Game

<sup>86</sup> 00239.072 Federated Farmers, 00022.016 Graymont, 00409.005 Ballance

<sup>87</sup> 00022.016 Graymont, 00409.005 Ballance



133. Harbour Fish seeks to replace ‘restores’ with ‘improves’ across the policy.<sup>88</sup> Meridian seeks to replace ‘wherever possible’ with ‘wherever practicable’ across the policy.<sup>89</sup> The submitter considers that is not always practicable to enhance connections and interactions and that amendments are required to allow a degree of flexibility in the application of the policy.
134. Kāi Tahu ki Otago seeks to refer to ‘natural’ connections in clauses (1) and (2) so that the policy does not inadvertently capture artificial connections.<sup>90</sup> During the hearing, Commissioner Cubitt noted concerns about how this clause would apply to a modified environment such as the Clutha/Mata-au and whether it would require removal of dams in order to restore natural connections.
135. Fish and Game seeks to include a clause in this policy as follows:<sup>91</sup>
- (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,

136. Ms Baker-Galloway’s legal submissions support the relief sought. She states that:

*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.<sup>92</sup>*

### 7.3. Analysis

137. I address the amendment sought by Harbour Fish in my section 42A report and note my difficulty with ‘improving’ a connection that has been lost. In this context, I consider ‘restore’ is the more appropriate term. However, I agree that connections can also be improved.
138. I also agree with Meridian that ‘wherever possible’ is a high bar. Elsewhere in the pORPS, reporting officers and I have recommended replacing this phrase with ‘to the greatest extent practicable.’ I consider a similar amendment in this policy is appropriate, recognising that there are practical constraints on the ability to fully restore or improve connections between water bodies.

---

<sup>88</sup> 00126.032 Harbour Fish

<sup>89</sup> 00306.032 Meridian

<sup>90</sup> 00226.161 Kāi Tahu ki Otago

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

<sup>92</sup> Legal submissions for Fish and Game for LF hearing, para [40]

139. To address these issues, I consider clauses (1) to (3) could be restructured as follows:

Manage the use of *freshwater* and *land*, ~~in accordance with tikanga and kawa,~~ using an integrated approach that is consistent with tikaka and kawa,<sup>93</sup> that:

- (1) sustains and, to the greatest extent practicable, restores or improves:
  - (a) ~~recognises and sustains~~ the natural<sup>94</sup> connections and interactions between *water bodies* (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),
  - (2b) ~~sustains and, wherever possible, restores~~ the natural<sup>95</sup> connections and interactions between *land* and *water*, from the mountains to the sea,
  - (3c) ~~sustains and, wherever possible, restores~~ the habitats of ~~mahika kai~~ *mahika kai*<sup>96</sup> and indigenous species, including taoka species associated with the ~~water body~~ *bodies*,<sup>97</sup>

140. In my view, these amendments improve the consistency in direction across these clauses and clarify their application. The reference to ‘restores or improves’ provides flexibility for either approach to be adopted, depending on the circumstances. I note that the LF-FW chapter provides additional detail on when improvement and restoration must occur, particularly in relation to the health and well-being of water bodies and natural character.

141. I consider this amendment addresses the potential issue with referring to ‘natural connections’ because it situates this within the context of practicability – recognising that there are cases where restoring natural connections will not be practicable.

142. Mr Logan responds to the legal submissions of Ms Baker-Galloway in his closing submissions. From a planning perspective, I addressed the submitter’s relief in my s42A report and my views have not changed.<sup>98</sup> In short, I understand that it can be very difficult to determine the naturalised flows and/or natural state of a water body, particularly where there is significant modification. I consider the requirements of the NPSFM, and particularly the NOF process, will address the submitter’s concerns without the added complexity and argument involved in attempting to determine each water body’s naturalised flows and/or natural state.

#### 7.4. Final recommendation

143. My final recommended amendments to the notified version of the pORPS are:

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

---

<sup>93</sup> 00235.080 OWRUG, FS00226.362 Kāi Tahu ki Otago, FS00234.164 Te Rūnanga o Ngāi Tahu

<sup>94</sup> 00026.161 Moutere Station

<sup>95</sup> 00026.161 Moutere Station

<sup>96</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>97</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>98</sup> *Chapter 9: LF – Land and freshwater*, paras [247]-[248]

Manage the use of *freshwater* and *land*, ~~in accordance with tikanga and kawa,~~ using an integrated approach that is consistent with tikaka and kawa,<sup>99</sup> that:

- (1) sustains and, to the greatest extent practicable, restores or improves:<sup>100</sup>
  - (a) ~~recognises and sustains~~<sup>101</sup> the natural<sup>102</sup> connections and interactions between *water bodies* (large and small, surface and ground, fresh and coastal, permanently flowing, intermittent and ephemeral),
  - (2b) ~~sustains and, wherever possible, restores~~<sup>103</sup> the natural<sup>104</sup> connections and interactions between *land* and *water*, from the mountains to the sea,
  - (3c) ~~sustains and, wherever possible, restores~~<sup>105</sup> the habitats of ~~mahika kai~~ *mahika kai*<sup>106</sup> and indigenous species, including taoka species associated with the ~~water body~~ bodies,<sup>107</sup>
- (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,<sup>108</sup>
- (5) 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,<sup>109</sup> ~~and~~
- (7) has regard to cumulative *effects*, ~~and~~
- (8)<sup>110</sup> ~~the need to apply~~ applies<sup>111</sup> a precautionary approach where there is limited available information or uncertainty about potential adverse *effects*,<sup>112</sup> in accordance with IM-P6.<sup>113</sup>

144. The amendments I recommend to this policy are primarily for clarification. While they may result in a slightly 'lower' environmental outcome (due to the replacement of

---

<sup>99</sup> 00235.080 OWRUG, FS00226.362 Kāi Tahu ki Otago, FS00234.164 Te Rūnanga o Ngāi Tahu

<sup>100</sup> 00306.032 Meridian

<sup>101</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00306.032 Meridian

<sup>102</sup> 00026.161 Moutere Station

<sup>103</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00306.032 Meridian

<sup>104</sup> 00026.161 Moutere Station

<sup>105</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00306.032 Meridian

<sup>106</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>107</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>108</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>109</sup> 00226.161 Kāi Tahu ki Otago, 00234.027 Te Rūnanga o Ngāi Tahu

<sup>110</sup> 00231.047 Fish and Game

<sup>111</sup> 00231.047 Fish and Game

<sup>112</sup> 00239.072 Federated Farmers, 00022.016 Graymont, 00409.005 Ballance

<sup>113</sup> 00022.016 Graymont, 00409.005 Ballance

‘wherever possible,’ which is a high bar), I consider this is more efficient than the notified version because it acknowledges the significant costs that would arise from requiring natural connections to be restored. I still consider the policy will be effective at achieving LF-WAI-O1 because it continues to require sustaining and, to the greatest extent practicable, restoring or improving the listed matters.

## 8. Habitats of trout and salmon and LF-FW-M8A

### 8.1. Introduction

145. This topic is discussed in section 1.6.8 of the section 42A (*Report 1: Introduction and general themes*) with my analysis in paragraphs 279 – 293. I address the topic again in my supplementary evidence,<sup>114</sup> where I recommend including a new method LF-FW-M8A for managing species interaction as a result of pre-hearing discussions.

146. In their evidence for DOC, Dr Richarson and Mr Brass propose a number of amendments to this method.<sup>115</sup> In my opening statement for the LF hearing, I respond to their evidence and recommend further amendments to the method.<sup>116</sup> I also note that Fish and Game now seek inclusion of the same method in the pORPS through its submission on the FPI as well as through its submission on the non-FPI part.

### 8.2. Submissions and evidence

147. In her legal submissions for Fish and Game, Ms Baker-Galloway states that (my emphasis added):

*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). 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.<sup>117</sup>*

148. Despite that, Mr Paragreen for Fish and Game discusses the method further in his opening statement<sup>118</sup> and recommends further amendments.<sup>119</sup> The amendments he

---

<sup>114</sup> Brief of supplementary evidence of Felicity Ann Boyd, Introduction and general themes, dated 11 October 2022.

<sup>115</sup> Marine Richarson for Director General of Conservation, paras [139] – [140]; Murray Brass for Director General of Conservation, paras [39] – [41]

<sup>116</sup> Opening statement of Felicity Boyd on the LF chapter, paras [88]-[91]

<sup>117</sup> Legal submissions for Fish and Game for the LF chapter, para [26]

<sup>118</sup> Opening statement of Nigel Paragreen for Fish and Game on the LF chapter, paras [8]-[22]

<sup>119</sup> Opening statement of Nigel Paragreen for Fish and Game on the LF chapter, Appendix 1

proposes are shown in blue, against a background of black (originally proposed wording from my supplementary evidence) and red (amendments I recommend in my opening statement):

**LF-FW-M8A – Identifying and managing species interactions between trout and salmon and indigenous species**

- (1) When making decisions that might affect the interactions between trout and salmon and indigenous species, local authorities will have particular regard to the recommendations of the Department of Conservation, the Fish and Game Council relevant to the area, Kāi Tahu, and the matters set out in LF-FW-M8A(2)(a) to (c), and
- (2) Otago Regional Council will work with the Department of Conservation, the relevant Fish and Game Council and Kāi Tahu to:
  - (aa) ~~identify describe the physical habitats and biological conditions~~ required to provide for the protection of indigenous species for the purposes of 2(a) and (b),
  - (a) identify areas where the protection of the habitat of trout and salmon, including fish passage, will be consistent with the protection of the habitat of indigenous species,
  - (b) identify areas where the protection of the habitat of trout and salmon will not be ~~is~~ consistent with the protection of habitat of indigenous species,
  - (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,
    - (ii) set short-, medium- and long-term objectives for the species involved,
    - (iii) identify appropriate management actions that will achieve the objectives determined in (ii) and account for habitat needs, ~~including measures to manage the adverse effects of trout and salmon on indigenous biodiversity where appropriate,~~
    - (iv) consider the use of a range of tools, such as those available within the Conservation Act 1987 and the Freshwater Fisheries Regulations 1983, where appropriate.

149. In his opening statement for the LF chapter, Mr Brass for DOC supported the amendments I propose in my opening statement and did not oppose Fish and Game progressing the inclusion of this method through the freshwater planning process.<sup>120</sup>

### 8.3. Analysis

150. It is not clear to me whether Fish and Game is continuing to pursue this relief in this process. I am not aware that Fish and Game has withdrawn any of its submission points on the non-FPI part of the pORPS and therefore I address the evidence of Mr Paragreen in this report for completeness and in the event the panel considers it should be addressed here.

151. I note that during his presentation at the LF hearing, Mr Couper acknowledged there are numerous definitions of habitats. In response to Mr Paragreen's proposed amendments to clause (2)(aa) above, I agree with him that the intent of that clause is to determine what constitutes a 'habitat' for the purposes of implementing this method.. For this reason, I agree that 'describe' is a better word than 'identify'. I also agree that the reference to biological conditions may indicate that these are to be considered part of a 'habitat'. However, I disagree with Mr Paragreen's amendments for the same reason he disagrees with mine – I consider only referring to 'physical habitat' pre-determines the outcome of this exercise. I consider that deleting 'physical' would resolve this issue. I understand Mr Paragreen intends 'for the purposes of 2(a) and (b)' to clarify the reason for undertaking the exercise in (aa), however I am unsure why there is no reference to (c) as that clause also relates to managing these habitats. I consider (c) should be included.

152. I understand Mr Paragreen's desire to ensure that the method identifies both areas where protecting the habitat of trout and salmon is consistent with protecting the habitats of indigenous species and areas where that is inconsistent. I considered that identifying 'consistent areas' would automatically result in identifying 'inconsistent areas', as presumably the latter would be anything not captured in the former. However, having considered Mr Paragreen's evidence further, I agree there is value in being clear. Rather than two separate but very similar clauses, I consider (a) could be retained but amended to include 'and areas where this will not be consistent' at the end of the clause.

153. While I understand Mr Paragreen's concerns about the deletion of 'habitat' from clause (2)(c)(iii), I consider that matters relating to managing the habitats themselves are not the focus of this policy. Rather, habitats of trout and salmon and indigenous species are addressed by the remainder of the provisions in the LF chapter. This method is focused specifically on the interactions between species and the areas where this is problematic (or not). For that reason, I do not agree with Mr Paragreen's amendments.

---

<sup>120</sup> Opening statement of Murray Brass for DOC on LF chapter, paras [13]-[14]

8.4. Final recommendation

154. My final recommended amendments to the notified version of the pORPS are:

**LF-FW-M8A – Identifying and managing species interactions between trout and salmon and indigenous species**

- (1) When making decisions that might affect the interactions between trout and salmon and indigenous species, local authorities will have particular regard to the recommendations of the Department of Conservation, the Fish and Game Council for the relevant area, Kāi Tahu, and the matters set out in LF-FW-M8A(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) describe the habitats required to provide for the protection of indigenous species for the purposes of 2(a), (b), and (c),
  - (b) identify areas where the protection of the habitat of trout and salmon, including fish passage, will be consistent with the protection of the habitat of indigenous species and areas where it will not be consistent,
  - (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,
    - (ii) set short-, medium- and long-term objectives for the species involved,
    - (iii) identify appropriate management actions that will achieve the objectives determined in (ii), including measures to manage the adverse effects of trout and salmon on indigenous species where appropriate, and
    - (iv) consider the use of a range of tools, including those in the Conservation Act 1987 and the Freshwater Fisheries Regulations 1983, as appropriate.<sup>121</sup>

155. My supplementary evidence contained a s32AA evaluation of the method as I proposed it at the time. I do not consider that the amendments I have recommended above alter that evaluation.

---

<sup>121</sup> 00231.003 Fish and Game

## 9. Dams

### 9.1. Introduction

156. As notified, the pORPS does not contain any specific direction on the damming of water bodies and I have not recommended including any through either my section 42A report or supplementary evidence.

### 9.2. Submissions and evidence

157. The submission of Ngāi Tahu ki Murihiku recorded the concerns of rūnaka about the effects of dams and weirs within and outside the coastal marine area. The submission seeks further clarification within the pORPS provisions about the management of dams and weirs. The reasons for this are:

*There is a lack of clarity regarding management expectations, including the relationship between dams and weirs and natural hazard management. The pORPS would benefit from expansion of Explanation and/or Principal Reasons in a number of chapters relevant to the effects of damming of waterbodies beyond the infrastructure related chapters, such as Land and Freshwater, Coastal Environment, Ecosystems and Indigenous Biodiversity, and Natural Features and Landscapes, to assist users of the document to better understand intended outcomes. The provisions in those chapters may be implicitly managing the effects of dams, but explicit references would be helpful.<sup>122</sup>*

158. Ms Bartlett supports the submission of Ngāi Tahu ki Murihiku and considers that the lack of specific attention is a failure to provide necessary connections between issues, objectives, policies, and methods as required by section 62(1)(d) and (e) of the RMA.<sup>123</sup> She highlights that dams are a significant feature of the existing landscape of resource management in Otago and that they are regularly identified as causing mana whenua concern.<sup>124</sup> She concludes by stating that additional references in explanations and principal reasons of relevant chapters would be a helpful addition to the pORPS and be the minimum necessary to appropriately address the Ngāi Tahu ki Murihiku submission.<sup>125</sup>

### 9.3. Analysis

159. Ms Bartlett's evidence addresses the definition of 'hard protection structure' and the way it applies to dams. Mr Maclennan addresses this in *Reply report 12: HAZ – Hazards and risks* and recommends making those amendments.

160. Although the pORPS does not contain specific direction on damming, I consider there are many provisions that will apply to this activity. In particular, in the LF chapter:

---

<sup>122</sup> Submission by Ngāi Tahu ki Murihiku, p.7

<sup>123</sup> Maria Bartlett for Ngāi Tahu ki Murihiku, para [19]

<sup>124</sup> Maria Bartlett for Ngāi Tahu ki Murihiku, para [32]

<sup>125</sup> Maria Bartlett for Ngāi Tahu ki Murihiku, para [33]



- a. The provisions in the LF-WAI chapter.
- b. The outcomes sought by the freshwater visions in LF-VM and objective LF-FW-O8.
- c. The requirements of LF-FW-P7 which describe the 'minimum requirements' for environmental outcomes, attribute states, and limits set in the LWRP.
- d. The requirements of LF-FW-P13 which manage the loss of values or extent of rivers and various other matters relating to natural character and in-stream values and LF-FW-P13A which applies an effects management hierarchy in relation to the loss of values or extent of rivers.
- e. Provision in LF-FW-M6(6) for off-stream storage of water, subject to conditions.

161. While I acknowledge the significance of this issue to mana whenua, I do not agree with Ms Bartlett that a lack of specific reference to an activity means it is not managed. In my view, the LF chapter contains a range of provisions that apply to managing issues relevant to damming, including flow and level regimes, allocation, natural character, fish passage, and the extent and values of rivers. I have reviewed the explanations and principal reasons in this chapter and cannot see a logical place to include direction on damming. I disagree that lack of a specific reference to damming results in a failure of the pORPS to comply with section 62(1) of the RMA. Damming is an activity that is addressed in detail in regional plans and the provisions of the pORPS will set the foundation for the management of that activity.

#### 9.4. Final recommendation

162. I do not recommend any further amendments.

## 10. Other changes

163. In addition to the matters above, there are two more minor changes I recommend with respect to LF-WAI-E1 and LF-FW-P13. Those are discussed in this section.

### 10.1. LF-WAI-E1

#### 10.1.1. Submissions and evidence

164. In my opening statement, I noted that Ms McIntyre considered the English translations of some te reo terms in this provision should be deleted. I invited her to clarify her reasons for this during the LF hearing, which she did. In her opening statement, she states that reducing cultural concepts such as kawa, tikaka and mauri to definitions of one or two words is problematic and notes that most terms are described in more detail in the MW chapter of the pORPS.<sup>126</sup>

---

<sup>126</sup> Opening statement of Sandra McIntyre for Kāi Tahu ki Otago for the LF hearing, para [4]

10.1.2. Analysis

165. Paragraphs 2 and 3 of LF-WAI-E1 contain the following te reo terms with English translations I recommended in my section 42A report:

- a. Wai (water),
- b. Atua (gods),
- c. Tūpuna (ancestors),
- d. Tikaka (customary practices or values), and
- e. Mauri (life-force).

166. I agree with Ms McIntyre that ‘wai’ is commonly understood and does not require a translation. I also agree that the references to atua and tūpuna occur in a sentence describing the Kāi Tahu relationship with water, and are not pivotal to understanding the explanation. I note kawa and tikaka are described more fully in the MW chapter and therefore do not need to be further translated in this provision.

167. In relation to mauri, I note that the first time the term is used in the MW chapter, it appears in the section titled ‘Environmental management perspectives and values of Kāi Tahu’ and includes ‘life-force’ in brackets. That was included in the pORPS at notification and no submitter (including Kāi Tahu ki Otago) sought to amend it. For that reason, I do not agree with deleting the same English translation in LF-WAI-E1.

10.1.3. Final recommendation

168. My final recommended amendments to the notified version of the pORPS are:

**LF-WAI-E1 – Explanation**

*Water* is a central element in Kāi Tahu creation traditions. It was present very early in the whakapapa of the world: in the beginning there was total darkness, followed by the emergence of light and a great void of nothingness. In time Maku mated with Mahoronuiatea which resulted in great expanses of water, then ~~Papatūānuku~~ Papatūānuku<sup>127</sup> and Takaroa met and had children after which Takaroa took a long absence. ~~Papatūānuku~~ Papatūānuku<sup>128</sup> met Rakinui and they had many children who conspired to force their parents’ coupled bodies apart to let the light in. They were also responsible for creating many of the elements that constitute our world today – the mountains, rivers, forests and seas, and all fish, bird and animal life. To Kāi Tahu, the<sup>129</sup> whakapapa and spiritual source of *water* and *land* are connected, and *water bodies* are the central unifying feature that connects our landscapes together. The spiritual essence of *water* derives from the atua and the life it exudes is a reflection of the atua.

---

<sup>127</sup> 00226.024 Ngāi Tahu ki Murihiku

<sup>128</sup> 00226.024 Ngāi Tahu ki Murihiku

<sup>129</sup> 00226.165 Kāi Tahu ki Otago

To Kāi Tahu, the<sup>130</sup> whakapapa of *mana whenua* and *water* are also integrally connected. There is a close kinship relationship, and *mana whenua* and the wai cannot be separated. The tūpuna relationship with *water*, and the different uses made of the *water*, provide a daily reminder of greater powers – of both the atua and tūpuna. This relationship continues into the present and future and is central to the identity of Kāi Tahu. The mana of wai is sourced from the time of creation and the work of kā Atua, invoking a reciprocal relationship with *mana whenua* based in kawa, tikaka and respect for *water's* life-giving powers and its sanctity.

The kinship connection engenders a range of rights and responsibilities for *mana whenua*, including rakatirataka rights and the responsibility of kaitiakitaka. Kaitiakitaka encompasses a high duty to uphold and maintain the mauri (life-force)<sup>131</sup> of the wai. If the mauri is degraded it has an impact not only on the mana of the wai but also on the kinship relationship and on *mana whenua*. The mauri expresses mana and connection, which can only be defined by *mana whenua*. Recognising rakatirataka enables *mana whenua* to enjoy their rights over *water bodies* and fulfil their responsibilities to care for the wai and the communities it sustains.

The condition of *water* is seen as a reflection of the condition of the people - when the wai is healthy, so are the people. Kawa and tikaka have been developed over the generations, based on customs and values associated with the Māori world view that span the generations, ~~recognising and honouring~~ Giving effect to ~~te mana~~ Te Mana o te wai Wai and upholding upholds the mauri of the wai and is consistent with this value base.<sup>132</sup>

To Kāi Tahu, ~~Each~~ each<sup>133</sup> *water body* is unique. This is a reflection of its unique whakapapa and characteristics, and it means that each *water body* has different needs. Management and use must recognise and reflect this.

The concept of *Te Mana o te Wai* aligns closely with the Kāi Tahu approach to *freshwater* management, but it is not confined to Kāi Tahu.<sup>134</sup> *Water* is valued by the community.<sup>135</sup> The life-giving qualities of *freshwater* support the health and well-being of the whole community and all people have a shared responsibility to respect and care for the health and well-being of *freshwater bodies*.<sup>136</sup> Access to *water*, within *limits* (in relation to *water*),<sup>137</sup> is an important contributor achieving social, cultural and economic well-being within Otago.<sup>138</sup>

---

<sup>130</sup> 00226.165 Kāi Tahu ki Otago

<sup>131</sup> 00239.192 Federated Farmers; 00236.111 Horticulture NZ; 00140.003 Waitaki DC

<sup>132</sup> 00235.082 OWRUG

<sup>133</sup> 00226.165 Kāi Tahu ki Otago

<sup>134</sup> 00226.165 Kāi Tahu ki Otago

<sup>135</sup> 00235.082 OWRUG

<sup>136</sup> 00226.165 Kāi Tahu ki Otago

<sup>137</sup> 00231.009 Fish and Game

<sup>138</sup> 00235.082 OWRUG

169. These amendments are explanatory and do not alter the application of the provisions in this chapter, therefore I do not consider a s32AA evaluation is required.

10.2. LF-FW-P13

10.2.1. Introduction

170. This topic is discussed in section 9.7.13 of the section 42A (*Report 1: Introduction and general themes*) with my analysis in paragraphs 1095 – 1124. I address the topic again in my supplementary evidence,<sup>139</sup> where I recommend an additional amendment to clause (6).

171. The recommended version of this provision currently reads:<sup>140</sup>

**LF-FW-P13 – Preserving natural character and instream values**<sup>141</sup>

Preserve the natural character and instream values<sup>142</sup> of *lakes* and *rivers* and the natural character of<sup>143</sup> their *beds* and margins by:

- (1) avoiding the *loss of values* or extent of a *river*, unless:
  - (a) there is a *functional need* for the activity in that location, and
  - (b) the *effects* of the activity are managed by applying:
    - (i) for *effects* on indigenous *biodiversity*, either ECO-P3 or the effects management hierarchy (in relation to indigenous biodiversity) in<sup>144</sup> ECO-P6 (whichever is applicable), and
    - (ii) for other *effects* (excluding those managed under (1)(b)(i)),<sup>145</sup> the *effects management hierarchy (in relation to natural wetlands and rivers)* in LF-FW-P13A,<sup>146</sup>
- (2) not granting resource consent for activities in (1) unless ~~Otago Regional Council~~ the consent authority<sup>147</sup> is satisfied that:
  - (a) the application demonstrates how each step of the *effects management hierarchies hierarchy (in relation to indigenous*

---

<sup>139</sup> Fourth brief of supplementary evidence of Felicity Ann Boyd, LF – Land and freshwater (NPSFM amendments), dated 24 February 2023.

<sup>140</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

<sup>141</sup> 00231.058 Fish and Game

<sup>142</sup> 00231.058 Fish and Game

<sup>143</sup> Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00231.058 Fish and Game

<sup>144</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>145</sup> Clause 16(2), Schedule 1, RMA

<sup>146</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>147</sup> 00137.074 DOC

*biodiversity*<sup>148</sup> in (1)(b)(i) and the *effects management hierarchy (in relation to natural wetlands and rivers) in (1)(b)(ii)*<sup>149</sup> will be applied to the *loss of values* or extent of the *river*, and

- (b) any consent is granted subject to conditions that apply the *effects management hierarchies hierarchy (in relation to indigenous biodiversity)*<sup>150</sup> in (1)(b)(i) and the *effects management hierarchy (in relation to natural wetlands and rivers) in (1)(b)(ii)*<sup>151</sup> in respect of any loss of values or extent of the river,<sup>152</sup>
  - (c) if aquatic offsetting or aquatic compensation is applied, the applicant has complied with principles 1 to 6 in Appendix 6 and 7 of the NPSFM, and has had regard to the remaining principles in Appendix 6 and 7 of the NPSFM, as appropriate, and
  - (d) if aquatic offsetting or aquatic compensation is applied, any consent granted is subject to conditions that will ensure that the offsetting or compensation will be maintained and managed over time to achieve the conservation outcomes,<sup>153</sup>
- (3) establishing environmental flow and level regimes and *water quality* standards that support the health and well-being of the *water body*,<sup>154</sup>
  - (4) ~~wherever possible~~ to the greatest extent practicable,<sup>155</sup> sustaining the form and function of a *water body* that reflects its natural behaviours,
  - (5) recognising and implementing the restrictions in Water Conservation Orders,
  - (6) preventing the impounding or control of the level of Lake Wanaka,
  - (7) preventing modification that would permanently<sup>156</sup> reduce the braided character of a *river*, ~~and~~
  - (8) controlling the use of *water* and *land* that would adversely affect the natural character of the water body, and

<sup>148</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>149</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>150</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>151</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>152</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00119.010 Blackthorn, 00206.031 Trojan, 00411.043 Wayfare

<sup>153</sup> 00230.005 Forest and Bird

<sup>154</sup> [00235.096 OWRUG](#)

<sup>155</sup> 00318.015 Contact

<sup>156</sup> 00206.034 Trojan, 00411.046 Wayfare, 00119.012 Blackthorn Lodge

- (9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity and reduce ~~sedimentation of~~ contaminant loss to<sup>157</sup> water bodies.<sup>158</sup>

172. Reinstating clause (3) returns the policy to its notified form, therefore I do not consider any further evaluation is required under s32AA.

#### 10.2.2. Submissions and evidence

173. Aurora Energy, Network Waitaki, PowerNet, and Contact seek to include a new clause in this policy to exclude infrastructure and instead refer to a new stand-alone chapter managing energy also proposed by the submitters. In my opening statement, I noted that I would need to consider this relief in reply as it related to relief sought on another chapter (EIT).

174. Kāi Tahu ki Otago seeks to include a new clause (9) in this policy as follows:<sup>159</sup>

- (9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity, reduce sedimentation of water bodies and support improved functioning of catchment processes,

175. In my s42A report, I recommend accepting this submission point with the exception of the reference to ‘improved functioning of catchment processes’ as I do not understand this phrase. In her evidence for Kāi Tahu ki Otago, Ms McIntyre proposes replacing this phrase with ‘supporting natural flow behaviour’.<sup>160</sup> In my opening statement, I state that I am not opposed to the amendment in principle but still do not fully understand its application.<sup>161</sup> Ms McIntyre clarifies in her opening statement that:

*The point is intended to provide for consideration of the way in which the management of riparian margins can affect the ability for natural flow behaviour at times of high flow. For example, erection of solid structures or planting of invasive vegetation in the riparian margin can constrict flow, while de-vegetation may also change the natural flow paths.*<sup>162</sup>

176. During the hearing, and in response to (primarily) my recommendation to delete clause (3) on the basis that it is addressed in LF-fW\_P7, Commissioner Sullivan queried whether LF-FW-P13 would be applicable to resource consent decision-making as well as to plan-making.

#### 10.2.3. Analysis

177. In *Reply report 11: EIT – Energy, infrastructure and transport*, Mr Langman has addressed the proposal for a stand-alone Energy chapter as sought by the submitters

---

<sup>157</sup> Clause 16(2), Schedule 1, RMA

<sup>158</sup> 00226.187 Kāi Tahu ki Otago

<sup>159</sup> 00226.187 Kāi Tahu ki Otago

<sup>160</sup> Sandra McIntyre for Kāi Tahu ki Otago, Appendix 2

<sup>161</sup> Opening statement to LF hearing, para [73]

<sup>162</sup> Opening statement of Sandra McIntyre for Kāi Tahu ki Otago for LF hearing, para [9]

above. He has not recommended its inclusion therefore I do not recommend incorporating the cross-reference sought by the submitters in LF-FW-P13.

178. While I now understand Ms McIntyre's reasoning for new clause (9), I am not convinced that listing the specific outcomes to be achieved from maintaining or enhancing the values of riparian margins is necessary. In my view, there are many reasons to implement this action and they are not necessary to specify in this policy. I recommend ending this clause after 'riparian margins.'

179. I have considered the application of both LF-FW-P13 and LF-FW-P7. The latter provision applies specifically within the context of setting environmental outcomes, attribute states, and limits which are provisions that the NPSFM requires to be included in regional plans. Therefore, the policy would not apply in decision-making on resource consents. Given the importance of water quantity and quality to natural character, I now consider clause (3) should be retained.

#### 10.2.4. Final recommendation

180. My final recommended amendments to the notified version of the pORPS are:

**LF-FW-P13 – Preserving natural character and instream values**<sup>163</sup>

Preserve the natural character and instream values<sup>164</sup> of lakes and rivers and the natural character of<sup>165</sup> their beds and margins by:

- (1) avoiding the *loss of values* or extent of a river, unless:
  - (a) there is a *functional need* for the activity in that location, and
  - (b) the *effects* of the activity are managed by applying:
    - (i) for *effects* on indigenous *biodiversity*, either ECO-P3 or the effects management hierarchy (in relation to indigenous biodiversity) in<sup>166</sup> ECO-P6 (whichever is applicable), and
    - (ii) for other *effects* (excluding those managed under (1)(b)(i)),<sup>167</sup> the *effects management hierarchy (in relation to natural wetlands and rivers) in LF-FW-P13A,<sup>168</sup>*
- (2) not granting *resource consent* for activities in (1) unless ~~Otago Regional Council~~ the consent authority<sup>169</sup> is satisfied that:
  - (a) the application demonstrates how each step of the *effects management hierarchies* hierarchy (in relation to indigenous

<sup>163</sup> 00231.058 Fish and Game

<sup>164</sup> 00231.058 Fish and Game

<sup>165</sup> Clause 10(2)(b)(i), Schedule 1, RMA - consequential amendment arising from 00231.058 Fish and Game

<sup>166</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>167</sup> Clause 16(2), Schedule 1, RMA

<sup>168</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>169</sup> 00137.074 DOC

biodiversity<sup>170</sup> in (1)(b)(i) and the effects management hierarchy (in relation to natural wetlands and rivers) in (1)(b)(ii)<sup>171</sup> will be applied to the loss of values or extent of the river, and

- (b) any consent is granted subject to conditions that apply the effects management hierarchies hierarchy (in relation to indigenous biodiversity)<sup>172</sup> in (1)(b)(i) and the effects management hierarchy (in relation to natural wetlands and rivers) in (1)(b)(ii)<sup>173</sup> in respect of any loss of values or extent of the river,<sup>174</sup>
  - (c) if aquatic offsetting or aquatic compensation is applied, the applicant has complied with principles 1 to 6 in Appendix 6 and 7 of the NPSFM, and has had regard to the remaining principles in Appendix 6 and 7 of the NPSFM, as appropriate, and<sup>175</sup>
  - (d) if aquatic offsetting or aquatic compensation is applied, any consent granted is subject to conditions that will ensure that the offsetting or compensation will be maintained and managed over time to achieve the conservation outcomes,<sup>176</sup>
- (3) establishing environmental flow and level regimes and water quality standards that support the health and well-being of the water body,<sup>177</sup>
  - (4) ~~wherever possible~~ to the greatest extent practicable,<sup>178</sup> sustaining the form and function of a water body that reflects its natural behaviours,
  - (5) recognising and implementing the restrictions in Water Conservation Orders,
  - (6) preventing the impounding or control of the level of Lake Wanaka,
  - (7) preventing modification that would permanently<sup>179</sup> reduce the braided character of a river, and
  - (8) controlling the use of water and land that would adversely affect the natural character of the water body, and

<sup>170</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>171</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>172</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>173</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.014 Aurora Energy, 00235.125 OWRUG, 00511.012 PowerNet, 00320.012 Network Waitaki

<sup>174</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00119.010 Blackthorn, 00206.031 Trojan, 00411.043 Wayfare

<sup>175</sup> 00230.005 Forest and Bird

<sup>176</sup> 00230.005 Forest and Bird

<sup>177</sup> 00235.096 OWRUG

<sup>178</sup> 00318.015 Contact

<sup>179</sup> 00206.034 Trojan, 00411.046 Wayfare, 00119.012 Blackthorn Lodge



- (9) maintaining or enhancing the values of riparian margins to support habitat and biodiversity and reduce ~~sedimentation of~~ contaminant loss to<sup>180</sup> *water bodies*.<sup>181</sup>

---

<sup>180</sup> Clause 16(2), Schedule 1, RMA

<sup>181</sup> 00226.187 Kāi Tahu ki Otago