

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN

TRANSPOWER NEW ZEALAND LIMITED
(ENV-2018-CHC-26)

FONTERRA CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL -
SECTION 32AA REPORT FOR TOPIC A OBJECTIVES
30 October 2020**

Judicial Officer: Judge Borthwick

Respondent's Solicitor
PO Box 4341 CHRISTCHURCH 8140
DX WX11179
Tel +64 3 379 7622
Fax +64 379 2467

WYNNWILLIAMS

Solicitor: P A C Maw
(philip.maw@wynnwilliams.co.nz)

WILKINS FARMING CO
(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL DISTRICT COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

H W RICHARDSON GROUP
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED
(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POUHERE TAONGA
(ENV-2018-CHC-41)

STONEY CREEK STATION LIMITED
(ENV-2018-CHC-42)

THE TERRACES LIMITED
(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED
(ENV-2018-CHC-44)

ROBERT GRANT
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, KODANSHA
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NEW ZEALAND**
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) in respect of the appeals against the Council's decision on the proposed Southland Water and Land Plan.
- 2 In its Minute dated 1 October 2020, the Court directed the Regional Council to provide a section 32AA report on objectives 2, 3, 6, 7, 9/9A, 9B, 10, 13/13A/13B, 14, 17, and 18. The Council has completed this report, which is attached as **Appendix A**.
- 3 In its Minute dated 11 September 2020, the Court directed that the section 32AA report address section 8 of the RMA and explain how (and to what extent) the principles of the Treaty of Waitangi are taken into account. The Council and Ngā Rūnanga have collaborated to draft the part of the section 32AA report (see Appendix A) that addresses the requirements of section 8 and the principles of the Treaty of Waitangi.

DATED this 30th day of October 2020



.....
P A C Maw / A M Langford
Counsel for the Southland Regional Council

Appendix A

Section 32AA Analysis

Assessment of proposed Southland Water and Land Plan objectives amended during Topic A hearing process

Prepared by Environment Southland

Dated 30 October 2020

Table of contents

1. Introduction	2
2. Objective 3 (was 2)	3
3. Objective 2 (was 3)	6
4. Objective 6.....	7
5. Objective 7.....	9
6. Objective 9/9A	11
7. Objective 9B	14
8. Objective 10.....	16
9. Objective 13/13A/13B	18
10. Objective 14.....	20
11. Objective 17.....	21
12. Objective 18.....	23
13. Treaty of Waitangi.....	24
14. Section 67(4)	26

1. Introduction

- 1.1 By Minute dated 11 September 2020, the Southland Regional Council (**Council**) was directed to file a report pursuant to section 32AA of the Resource Management Act 1991 (**RMA** or **Act**). The Minute specifies the requirement for the Court to be satisfied that the Objectives of the proposed Southland Water and Land Plan (**pSWLP** or **Plan**) give effect to national policy statements, national planning standards¹ and regional policy statements, and that by giving effect to those documents, the Plan will be achieving the purposes of the Act.
- 1.2 Section 32AA requires a further evaluation to be undertaken where amendments have been made to the proposal (in this case the Topic A objectives) since the evaluation report for the proposal was completed. The “evaluation report” for the Plan comprises the section 32 report on the notified provisions of the Plan² and the Report and Recommendations of the Hearing Commissioners³ (which was adopted in full by the Council and constitutes the Decisions Version of the pSWLP).
- 1.3 This section 32AA Evaluation Report has been prepared to assist the Court by evaluating the proposed changes to the Topic A objectives, from the wording of the Decisions Version to the wording as set out in the Court’s Minute dated 1 October 2020. An evaluation in line with section 32AA has been undertaken by Council staff and covers the following objectives: Objectives 2, 3, 6, 7, 9/9A, 9B, 10, 13/13A/13B, 14, 17 and 18. A section 32AA assessment is not required to be undertaken for Objectives 1, 4, 5, 8, 11, 12 and 15, as no changes have been made to these Objectives since the evaluation report was completed. Further, Objective 16 was not heard as part of Topic A and therefore no changes have been made to this Objective which trigger the need for a further assessment under section 32AA.
- 1.4 Section 32AA(1)(c) requires that the evaluation is undertaken in a level of detail that corresponds to the scale and significance of the changes. There are some minor changes that have been made to correct errors or make improvements to the grammar of the objectives. These are of no significance with respect to the likely outcomes of the objectives and so are not further evaluated.
- 1.5 As the Court notes at paragraph [6] of its Minute dated 11 September 2020, it has endeavoured to undertake this assessment and record it in the interim decisions. Where such an analysis is set out, this Evaluation Report refers to the Court’s assessment, rather than undertaking a duplicate assessment. This accords with s 32AA(1)(d)(ii) and (2), which clarifies that the evaluation of the changes may be referred to in the decision-making record and in which case a separate evaluation report does not need to be prepared.
- 1.6 The Court directed the Council to prepare a section 32AA analysis which assesses of each of the Objectives (that have been changed in the Court’s interim decisions), considers the principles of the Treaty of Waitangi pursuant to section 8 of the Act, and assesses whether the pSWLP is inconsistent with any water conservation orders in the region or any other regional plans for the region.

¹ While s 67(3)(ba) specifies “a national planning standard”, the pSWLP was developed prior to the National Planning Standards 2019 being promulgated. The National Planning Standards state that regional councils have 10 years to adopt the standards for regional plans. Accordingly, alignment with the National Planning Standards 2019 has not been considered in this assessment.

² Evaluation Report: Proposed Southland Water and Land Plan dated 3 June 2016.

³ Report and Recommendations of the Hearing Commissioners dated 29 January 2018.

- 1.7 For the assessment of the Objectives, this has been done by considering each objective that has been changed, with a consistent assessment framework of:
- a. Specifying the change that has been made, with tracking showing the changes between the Council's Decisions Version and the Court's amended wording in Attachment A to its Minute dated 1 October 2020;
 - b. Setting out the s 32AA analysis and consideration of higher-order planning documents contained within the Court's interim decisions;
 - c. Completing analysis of the changed objective as against the relevant Southland Regional Policy Statement (**RPS**) provisions; and
 - d. Undertaking a brief analysis of the National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**) (acknowledging that much of the reasoning in the Court's interim decisions is based on the primacy of Te Mana o te Wai, which is highly aligned with the NPSFM 2020).
- 1.8 The NPSFM 2020 came into force on 3 September 2020 and replaced the previous National Policy Statement for Freshwater Management 2014 (as amended 2017) (**NPSFM 2014**). Clause 4.1 of the NPSFM 2020 provides that "[e]very local authority must give effect to this National Policy Statement as soon as reasonably practicable". In accordance with section 80A of the Act, the Council must notify a freshwater planning instrument, where that instrument has the purpose of giving effect to the NPSFM 2020, by 31 December 2024.
- 1.9 The extent to which it is reasonably practicable for the provisions of the pSWLP to give effect to the NPSFM 2020 is confined by the scope within original submissions and the notices of appeal to make changes to the pSWLP. The Plan does not need to immediately give full effect to the NPSFM 2020. Rather, the Council must give effect to the NPSFM 2020 as soon as is reasonably practicable.
- 1.10 Accordingly, to the extent that there is scope to do so, the pSWLP should strive to give effect to the NPSFM 2020. In saying that, it is important to acknowledge that the NPSFM 2020 is in many respects a departure from previous iterations of the national policy statement, particularly in respect of the manner by which the document is implemented. The Council is already working towards notifying a plan change that will fully give effect to the NPSFM 2020, which will be notified prior to 31 December 2024.

2. Objective 3 (was 2)

The changes

- 2.1 This Objective was the second objective in the Council's Decisions Version of the pSWLP. Objectives 2 and 3 have been reordered by the Court so that the Decisions Version Objective 2 is now Objective 3 (and vice versa).
- 2.2 The change from the Council Decisions Version is shown below:
- Water and land ~~is~~ recognised as ~~an enabler~~ of ~~primary production and the economic, social and cultural wellbeing of the region.~~*
- 2.3 This evaluation examines the extent to which the changes to the Objective are the most appropriate way to achieve the purpose of the Act. The most substantive change to the Objective is the deletion of the reference to 'primary production'. This

change is considered in the first Interim Decision of the Court.⁴ This change is further considered below against the RPS and the NPSFM 2020.

- 2.4 The minor changes to the first part of this Objective (being “~~is~~ are recognised as an enablers”) have been made to improve the grammar and wording of the Objective. They are not considered to be of a substantive nature and are of no significance with respect to the intent or likely outcomes of the Objective. In accordance with section 32AA(1)(c), these changes have not been further evaluated.

The Court’s interim decisions

- 2.5 The inclusion of ‘primary production’ in the Objective was considered in some detail in the first Interim Decision. Paragraph [88] identified that the Objective does not provide for land use activities themselves but acknowledges that water and land provide for the wellbeing of the region’s communities. Community wellbeing is considered in light of economic, social and cultural aspects.
- 2.6 By including ‘primary production’ in the Objective the Court identified the potential for plan users to conclude that primary production activities were to be enabled at the expense of others. The Court then raised a concern, at paragraph [89], that by adopting that interpretation tension would occur with other objectives (specifically Objectives 9/9A and 13) of the pSWLP that address the use of land and water for productive purposes.
- 2.7 The Court considered that, through the deletion of ‘primary production’, and in light of the Interpretation Statement and the remaining objectives, the tension between the objectives would be resolved as there is no perception of primacy of any specific land use activity.

The RPS

- 2.8 The relevant provisions of the Southland Regional Policy Statement 2017 (RPS) are identified and assessed below.
- 2.9 Objective WQUAL.1 sets out the framework for managing water resources in Southland:

Objective WQUAL.1

Water quality in the region:

- (a) Safeguards the life-supporting capacity of water and related ecosystems;
 - (b) Safeguards the health of people and communities;
 - (c) Is maintained, or improved in accordance with freshwater objectives formulated under the National Policy Statement for Freshwater Management 2014;
 - (d) Is managed to meet the reasonably foreseeable social, economic and cultural needs of future generations.
- 2.10 This Objective acknowledges the ability of water to provide for ecosystem health, the health of people, and the ability of water resources to allow communities to meet their social, economic and cultural needs. It does not identify the means of achieving those needs and does not provide for one activity type to be considered as more

⁴ *Aratiatia Livestock Limited v Southland Regional Council* [2019] NZEnvC 208 (first Interim Decision).

important than others. The most relevant component of WQUAL.1 is subclause (d) which provides for water quality to meet the needs of communities, whether it be social, economic or cultural. The amendment to Objective 3 to remove 'primary production' aligns with the RPS WQUAL.1 Objective by not giving preference to any specific activity type in order to provide for the three listed wellbeings.

- 2.11 The importance of community wellbeing is also addressed in Policy WQUAL.7:

Policy WQUAL.7 – Social, economic and cultural benefits

Recognise the social, economic and cultural benefits that may be derived from the use, development or protection of water resources.

- 2.12 Policy WQUAL.7 acknowledges that use, development or protection provides for the three wellbeings (social, economic and cultural). The words "use", "development" and "protection" are applied equally and no one element is considered to be more important than the other. By deleting the reference to 'primary production' in Objective 3 the Objective is more aligned with Policy WQUAL.7.

- 2.13 Policy RURAL.1 acknowledges the importance of the rural land resources, but does not go so far as to identify specific types of activities or raise the importance of particular activity types over others:

Policy RURAL.1 – Social, economic and cultural wellbeing

Recognise that use and development of Southland's rural land resource enables people and communities to provide for their social, economic and cultural wellbeing.

- 2.14 Policy RURAL.1 recognises all land-based activities, which could include farming, forestry, mineral extraction, energy generation, manufacturing/industry, and tourism, on an equal footing. The deletion of 'primary production' from Objective 3 is also more aligned with Policy RURAL.1, as no activity type is provided for over other activity types.

- 2.15 When assessing the amendments to Objective 3 against the provisions of the RPS, it is considered that the deletion of the reference to 'primary production' better gives effect to the relevant objectives and policies.

The NPSFM 2020

- 2.16 When considering the NPSFM 2020 against the amendments to Objective 3, the NPSFM 2020 Objective and Policy 15 are considered relevant.

- 2.17 The NPSFM 2020 Objective is as follows:

2.1 Objective

- (1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems
 - (b) second, the health needs of people (such as drinking water)
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

- 2.18 This specifically identifies the ability of people and communities to provide for their social, economic and cultural wellbeing as a third priority, behind the needs of the

water and the health needs of people. This is further reflected in Policy 15, which provides:

Policy 15: Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.

- 2.19 The NPSFM 2020 does not separately identify or provide for the enablement of primary production but rather sets out a hierarchy that puts the health and wellbeing of waterbodies and freshwater ecosystems first. Again, it is considered that the deletion of ‘primary production’ is more aligned with this approach than the Council’s Decisions Version.

Conclusion

- 2.20 Overall, the amended Objective 3 is considered to be the most appropriate way to achieve the purpose of the RMA.

3. Objective 2 (was 3)

The changes

- 3.1 This Objective was the third objective in the Council’s Decisions Version of the pSWLP. Original Objectives 2 and 3 have been reordered by the Court so that the Decisions Version Objective 3 is now Objective 2 (and vice versa).

- 3.2 The change from the Council Decisions Version is shown below:

The mauri of water ~~bodies~~ provides for te hauora o te ~~tangata~~taiao (health and mauri of the ~~people~~environment), te hauora o te ~~taiao~~wai (health and mauri of the ~~environment~~waterbody) and te hauora o te ~~wai~~tangata (health and mauri of the ~~water~~bodypeople).

- 3.3 This evaluation examines the extent to which the changes to the Objective are the most appropriate way to achieve the purpose of the Act. The change to the ordering of ‘te taiao’, ‘te wai’, and ‘te tangata’ improves alignment with the National Policy Statement for Freshwater Management 2014 (as amended 2017). It is noted that the elements within the Objective are not prioritised and so the re-ordering of the elements does not significantly alter the outcomes. It is also noted that this Objective does not go so far as prioritising the elements in the way the NPSFM 2020 does.
- 3.4 The Court considered in the third Interim Decision that the change to the Objective is editorial in nature.⁵ It is also noted that the use of the word “water” rather than “waterbodies” is more aligned with the wording of the NPSFM 2020 where the Fundamental Concept of Te Mana o te Wai in clause 1.3 refers to “water” and “freshwater” rather than “waterbodies”.
- 3.5 These changes are considered to be of low significance with respect to the intent or likely outcomes of the Objective. Therefore, in accordance with section 32AA(1)(c), they have not been further evaluated against the higher-order documents.

⁵ *Aratiatia Livestock Limited v Southland Regional Council* [2020] NZEnvC 110 (third Interim Decision) at [3].

4. Objective 6

The changes

4.1 The change from the Council Decisions Version is shown below:

~~There is no reduction in the overall~~ Water quality in each ~~of freshwater body, coastal lagoon and water in estuaries and coastal lagoons, by~~ will be:

- (a) ~~maintained~~ ing the quality of water in water bodies, estuaries and coastal lagoons, where the water quality is not degraded; and
- (b) ~~improved~~ ing the quality of water in water bodies, estuaries and coastal lagoons, that have been where the water quality is degraded by human activities.

4.2 This evaluation examines the extent to which the changes to the Objective are the most appropriate way to achieve the purpose of the Act. The most substantive change to the Objective is the deletion of the reference to ‘overall’ water quality. This change is considered in the first Interim Decision of the Court.⁶ This change is further considered below against the RPS and the NPSFM 2020.

4.3 Some other minor amendments have been made to the Objective that are not considered to be of a substantive nature. Those changes that are simply improvements to the grammar and/or wording of the Objective⁷ are of no significance with respect to the intent or likely outcomes of the Objective. In accordance with section 32AA(1)(c), these minor changes have not been further evaluated.

The Court’s interim decisions

4.4 The Court considered that the deletion of the opening statement of the Objective does not alter the meaning of the balance of the Objective.⁸

4.5 The deletion of the term ‘overall’ in relation to water quality and insertion of ‘each’ in relation to waterbodies aims to provide clarity to plan users regarding when the Objective applies and was considered by the Court in some detail in the first Interim Decision.⁹ At paragraph [100] the Court discusses the uncertainty that arises by using terms from the NPSFM (in this case the NPSFM 2014) when the NPSFM objective to which the term relates is to be given effect to through a future plan change.

4.6 Along with the deletion of ‘overall’, the clarity of the Objective is improved and the intent made clear by changing the language to refer to “each freshwater body”. This removes the risk of improvements in one freshwater body being traded off against declining water quality in another, on the argument that the “overall quality of freshwater” in the region or an FMU has not been reduced.¹⁰

The RPS

4.7 The relevant provisions of the RPS are identified and assessed below.

⁶ First Interim Decision at [100]-[107].

⁷ “~~by will be maintained~~ ~~ing where~~” and “~~and, improved~~ ~~ing where~~”.

⁸ First Interim Decision at [106].

⁹ First Interim Decision at [100]-[107].

¹⁰ First Interim Decision at [107].

- 4.8 Objective WQUAL.1 (as set out at paragraph 2.9 above) sets out the framework for the management of water quality in the region. The most relevant component of Objective WQUAL.1 is subclause (c) which requires that water quality be “maintained or improved in accordance with freshwater objectives”. This RPS objective does not refer to the maintenance or improvement of the ‘overall’ water quality therefore the deletion of the word ‘overall’ from Objective 6 of the pSWLP is considered to be consistent with Objective WQUAL.1 of the RPS.
- 4.9 Objective WQUAL.2 also requires that water quality is maintained and improved while reflecting the interconnectedness of freshwater bodies to the coastal receiving environments:

Objective WQUAL.2 – Lowland water bodies

Halt the decline, and improve water quality in lowland water bodies and coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands in accordance with freshwater objectives formulated in accordance with the National Policy Statement for Freshwater Management 2014

- 4.10 This again, does not refer to ‘overall’ water quality and therefore, as addressed above, the deletion of ‘overall’ from Objective 6 is considered to be consistent with this RPS Objective.

The NPSFM 2020

- 4.11 When considering the provision of the NPSFM 2020 against the amendment to Objective 6, the following provisions are relevant.
- 4.12 Policy 1 of the NPSFM 2020 requires that freshwater is managed in a way that gives effect to Te Mana o te Wai:

Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.

- 4.13 Te Mana o te Wai is clearly reflected in the changes to Objective 6 by requiring water quality to be, at a minimum, maintained. The deletion of ‘overall’ and the addition of ‘each freshwater body’ into Objective 6 provides certainty that there will be no ‘trading off’ of water quality between waterbodies and there will be no further decline in water quality. By stopping the decline in water quality and improving water quality where it has declined, the mauri of the water is able to be protected. When the mauri of the water is protected the water is then able to provide for the environment and communities.
- 4.14 The changes to Objective 6 of the pSWLP seek to achieve the same goal as that identified in Policy 5 of the NPSFM 2020:

Policy 5: Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

- 4.15 Objective 6 requires that the quality of water in all water bodies is to be maintained and improved where water quality is degraded. This is considered to be consistent with Policy 5 of the NPSFM 2020.

Conclusion

- 4.16 The changes to Objective 6 result in the provision taking a risk evaluation approach as opposed to the more typical effects-based approach of RMA provisions. This

'activation' of the Objective to now consider how resource users protect water differs from the typical management of effects on the environment.¹¹ This implements Te Mana o te Wai and is guided by the Interpretation Statement which requires the health of the water to be the first consideration when using resources.

- 4.17 The deletion of the word 'overall' and addition of the phrase 'each freshwater body' is a clearer reflection of the RPS and NPSFM 2020 and is considered to be the most appropriate way to achieve the purpose of the RMA.

5. Objective 7

The changes

- 5.1 The change from the Decisions Version is shown below:

Following the establishment of freshwater objectives, limits, and targets (water quality and quantity) in accordance with the Freshwater Management Unit processes:

(a) where water quality objectives and limits are met, water quality shall be maintained or improved;

(b) ~~Any further over-allocation of freshwater (water quality and quantity) is avoided;~~ and

(c) ~~any existing over-allocation is phased out in accordance with freshwater objectives, targets, freshwater quality limits and timeframes, established under Freshwater Management Unit processes.~~

- 5.2 This evaluation examines the extent to which the changes to the Objective are the most appropriate way to achieve the purpose of the Act. The substantive changes to the Objective are:
- a. the clarification that the Objective applies only once the FMU processes have occurred; and
 - b. the addition of subclause (a) to the Objective, which was considered in the first Interim Decision.¹²
- 5.3 The clarification as to the application of the Objective and the addition of subclause (a) is assessed below against the RPS and the NPSFM 2020.
- 5.4 Some other minor amendments have been made to the Objective that are not considered to be of a substantive nature. Some of these changes are improvements to the grammar and structure of the Objective, such as the re-ordering of the Objective to contain a chapeau and three subclauses.¹³ These changes are of lower significance with respect to the intent or likely outcomes of the Objective and therefore, in accordance with section 32AA(1)(c), these editorial changes are not specifically evaluated.
- 5.5 Objective 7 addresses water allocation following the FMU level processes set out in the NPSFM 2020, which is now made clear in the Objective. The addition of

¹¹ First Interim Decision at [121] and [122].

¹² First Interim Decision at [130].

¹³ Noting that subclause (a) is an addition to the Decisions Version of the Objective and is evaluated below.

subclause (a) to the Objective makes it clear that, where water quality is not over-allocated, water quality must, at a minimum, be maintained. This subclause provides a transition between Objective 6 and Objective 7 and ensures that Objective 6 is still able to address those contaminants and water bodies that are not subject to an allocation regime once the FMU limit setting process occurs.

The RPS

- 5.6 The relevant provisions of the RPS are considered below.
- 5.7 Objective WQUAL.1 (as set out paragraph 2.9 above) sets out the framework for managing water resources in Southland, including by requiring that water quality is maintained and improved in accordance with freshwater objectives formulated under the NPSFM 2014. Objective 7 seeks the same goal of maintaining and improving water quality under an FMU regime, but goes further by the inclusion of subclause (a) which requires maintenance (at a minimum) of water quality where water quality is not over-allocated.
- 5.8 Policy WQUAL.2 specifically identifies the contaminants which are having the most significant impact on water quality in the Southland region, as a result of point source discharges, non-point source discharges and land management practices:

Policy WQUAL.2 – All waterbodies

Maintain or improve water quality, having particular regard to the following contaminants:

- (a) nitrogen;
- (b) phosphorus;
- (c) sediment;
- (d) microbiological contaminants.

- 5.9 Objective 7 of the pSWLP requires water quality to be, at a minimum, maintained and therefore is consistent with this policy. When considering Objective 7 together with Objective 6, current and future water quality is managed by ensuring contaminants not subject to an allocation regime are still managed.
- 5.10 Objective WQUAN.1 requires the management of surface water quantity which supports the life-supporting capacity of water, while also acknowledging the interconnectedness of surface water quantity and quality:

Objective WQUAN.1 – Sustainably managing the region's water resources

Flows, levels and allocation regimes of surface water and groundwater in the region are developed in accordance with the National Policy for Freshwater Management 2014 to:

- (a) safeguard the life-supporting capacity of water, catchments and related ecosystems;
- (b) support the maintenance or improvement of water quality in accordance with Policy WQUAL.1;
- (c) meet the needs of a range of uses, including the reasonably foreseeable social, economic and cultural needs of future generations;
- (d) comply with limits or targets set to achieve freshwater objectives.

- 5.11 Objective 7 addresses the management of water under an allocation regime (water quality and quantity) of an FMU, aligning the Objective with Objective WQUAN.1 of the RPS.
- 5.12 Policy WQUAN.2 requires the avoidance of surface water and groundwater over allocation and that any existing over allocation to be resolved:

Policy WQUAN.2 – Overallocation

Avoid over-allocation of surface water and groundwater, and resolve any historical instances of overallocation, while recognising the special provisions made for the Waiau catchment.

- 5.13 Objective 7 aligns with Policy WQUAN.2 and is clear in its requirement to avoid any further over-allocation and phase out existing over-allocation under plan provisions developed through and FMU process.

The NPSFM

- 5.14 The Objective of the NPSFM 2020 is to ensure that resources are managed in a way that first prioritises the health and wellbeing of waterbodies and freshwater ecosystems. The fundamental concept of Te Mana o te Wai is reflected in Objectives 6 and 7 of the Plan as the amended Objectives require that, as of now and through the FMU limit setting process, all contaminants and waterbodies are managed, no further degradation can occur, and any existing degradation is phased out.

Conclusion

- 5.15 Overall the amended Objective 7 is considered to be the most appropriate way to achieve the purpose of the RMA.

6. Objective 9/9A

- 6.1 The change from the Council Decisions Version is shown below:

Objective 9/9A

The quantity of water in surface water-bodies is managed so that:

(a) the life-supporting capacity and aquatic ecosystem health, life-supporting capacity, the values of outstanding natural features and landscapes and, the natural character and the historic heritage values of waterbodies and their margins are safeguarded;

(b) there is integration with the freshwater quality objectives (including the safeguarding of human health for recreation); and

Objective 9A

(c) provided that (a) and (b) are met, surface water is sustainably managed in accordance with Appendix K to support the reasonable needs of people and communities to provide for their economic, social, economic and cultural wellbeing.

- 6.2 The most substantive changes to Objective 9 and 9A are the remerging of the two Objectives and the addition of the new subclause (b). Each of these changes is considered first against the NPSFM 2020, and then the relevant provisions of the RPS. Finally, any minor changes to grammar are identified. This structure differs

from that of other Objectives evaluated in the report, as the changes are distinct and more appropriately addressed separately under subclauses (a), (b), and (c).

Amalgamation

- 6.3 Objectives 9 and 9A were one objective in the notified version of the pSWLP, which addressed surface water quantity and prioritised the health of aquatic ecosystems above the use of water. The Hearing Panel recommended this single objective be split, which resulted in that prioritisation of aquatic ecosystem health being lost.
- 6.4 The NPSFM 2020 Objective prioritises the health and wellbeing of waterbodies and freshwater ecosystems above other needs and wellbeings. By re-merging Objectives 9 and 9A, that prioritisation is returned and closely reflects the intention of the NPSFM 2020 and the foundation of Te Mana o te Wai.

Subclause (a)

- 6.5 Subclause (a) of the re-merged Objective addresses ecosystem health and the management of the values associated with surface water. The natural features of waterbodies themselves are not managed but the 'values' associated with those features are. The same follows for the values associated with historic heritage. The Court considered how applicable the heritage values are to this provision in the first Interim Decision.¹⁴
- 6.6 The addition of the 'margins' of surface water bodies to subclause (a) better allows for the life-supporting capacity of ecosystems to be safeguarded as the complete habitat is managed, in accordance with ki uta ki tai. This prioritises the instream values over the out of stream values, which is consistent with the intent of the notified version of the Objective.

Subclause (b)

- 6.7 While Objective 9/9A is focussed on the management of surface water quantity, the addition of subclause (b) requires the consideration of water quality when making decisions on water quantity due to their interconnectedness. This is considered to be an improvement to the provision by ensuring that water quality and water quantity are managed together. The consideration of water quality in this water quantity provision is a reflection of ki uta ki tai.
- 6.8 The addition of recreation values was considered at length by the Court.¹⁵ Human health for recreation was a compulsory value of the NPSFM 2014 which was to ensure that people are able to connect with water through a range of activities in a range of different flows. The addition of recreational values (which takes into account both water quality and water quantity) into the Objective provides a link between the pSWLP and the future FMU process and further improves the provision.

Subclause (c)

- 6.9 The subclause (c) changes require that the ecological health and the values associated with surface water, including in relation to water quality, are managed prior to any use of the resource. This reflects the prioritisation in the NPSFM 2020 of the health of the water above the needs of the environment and the people.

¹⁴ First Interim Decision at [148] and [149].

¹⁵ First Interim Decision at [152]-[155].

- 6.10 Subclause (c) includes a reference to the standards set out in Appendix K of the pSWLP which sets out the methodology for establishing minimum flows in surface waterbodies and is considered to give certainty to plan users when considering water use.
- 6.11 The relevant provisions of the RPS are considered below.
- 6.12 Objective WQUAN.1 (as set out at paragraph 5.10 above) sets out requirements regarding the management of surface water and groundwater. It provides that flows, levels, and allocation regimes must be developed to safeguard the life-supporting capacity of water and ecosystems, and maintain water quality while providing for the community's needs. Subclause (b) of this Objective acknowledges the relationship between the flows and levels of surface water bodies and the quality of the water within them. The addition of subclause (b) of Objective 9/9A addresses the same relationship by ensuring that water quality is considered when decisions are being made on surface water quantity. Objective 9/9A is also required to safeguard the life-supporting capacity of the water and aquatic ecosystem health which aligns with Objective WQUAN.1.
- 6.13 Objective WQUAN.1 does not prioritise the subclauses in the way Objective 9/9A of the pSWLP does. Objective 9/9A, while giving effect to Objective WQUAN.1 of the RPS, is also reflecting Te Mana o te Wai by putting the instream values above the out of stream values.
- 6.14 The amended Objective 9/9A is a direct reflection of Policy WQUAN.1 of the RPS in that they are both seeking to maintain the instream values of surface waterbodies:

Policy WQUAN.1 – Instream values

Maintain instream values of surface water that derive from flows and levels of water, while recognising the special circumstances of the Waiau catchment.

- 6.15 The RPS Objective HH.1, which protects historic heritage values from inappropriate subdivision, use and development, gives effect to section 6(f) of the RMA. Policy HH.2 of the RPS further clarifies how those values are to be protected:

Objective HH.1 – Protection of historic heritage

Historic heritage values are identified and protected from inappropriate subdivision, use and development

Policy HH.2 – Protection of historic heritage

Avoid, mitigate and, where appropriate, remedy adverse effects on historic heritage values from inappropriate subdivision, use and development. On a case-by-case basis take into account factors such as the significance of heritage values, financial cost and technical feasibility when making decisions relating to the protection of historic heritage.

- 6.16 By including historic heritage values in Objective 9/9A the pSWLP is clearly giving effect to the RPS objective and policy and therefore section 6 of the RMA.
- 6.17 Some of the changes to this Objective has been made to improve its grammar and/or wording, such as the reordering of the three wellbeings in subclause (c) to make it consistent with the order of the wellbeings in Objective 3. These changes do not alter the intent or likely outcome of the objective. In accordance with section 32AA(1)(c), these minor changes have not been further evaluated.

- 6.18 Overall, the remerging of Objective 9 and Objective 9A, and the additional amendments, are considered to be the most appropriate way to give effect to higher order documents and achieve the purpose of the RMA.

7. Objective 9B

The changes

- 7.1 The change from the Council Decisions Version is shown below:

The ~~importance~~effective development, operation, maintenance and upgrading of Southland's regionally ~~significant~~and nationally significant and ~~critical~~ infrastructure is recognised and its sustainable and effective development, operation, maintenance and upgrading enabled.

- 7.2 The changes evaluated below are:

- a. the addition of 'importance';
- b. the direction that the enabled 'development, operation, maintenance, and upgrading' is 'sustainable and effective'; and
- c. the removal of the reference to critical infrastructure.

- 7.3 Critical infrastructure is a component of 'regionally significant infrastructure' as defined in the RPS and the pSWLP. As this is a change to the Objective that is of no significance with respect to the intent or likely outcome, in accordance with section 32AA(1)(c) this is not further evaluated.

The RPS

- 7.4 The RPS establishes a framework for managing infrastructure in Southland. This framework is discussed at paragraphs [170] to [174] of the first Interim Decision. Paragraph [170] identified the resource management issues around infrastructure and highlights Objective INF.1, which identifies that while the need for the infrastructure is certain, it must still be "appropriately integrated with land use activities and the environment".
- 7.5 Policy INF.1 recognises the benefits derived from infrastructure and ensures there is provision for its development:
- Policy INF.1:**
- Recognise the benefits to be derived from, and make provision for, the development, maintenance, upgrade and ongoing operation of regionally significant, nationally significant and critical infrastructure and associated activities.
- 7.6 Objective 9B gives effect to this RPS policy by the inclusion of the wording to "The importance of Southland's regionally and nationally significant infrastructure is recognised..." while also allowing for its development, operation, upgrading and maintenance.
- 7.7 Policy INF.2 requires that, where practicable, the adverse effects of infrastructure on the environment are avoided, remedied or mitigated:

Policy INF.2:

Where practicable, avoid, remedy or mitigate the adverse effects of infrastructure on the environment. In determining the practicability of

avoiding, remedying, or mitigating adverse effects on the environment, the following matters should be taken into account:

- (a) any functional, operational or technical constraints that require the physical infrastructure of regional or national significance to be located or designed in the manner proposed;
- (b) whether there are any reasonably practical alternative designs or locations;
- (c) whether good practice approaches in design and construction are being adopted;
- (d) where appropriate, and such measures are volunteered by a resource user, whether any significant residual adverse effects can be offset or compensated for; and
- (e) the need to give effect to the NPSET (2008) including that planning and development of the transmission system should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities.

7.8 The Court noted that the RPS provides no greater weight to the development of infrastructure over environmental outcomes.¹⁶ Objective 9B has been amended to ensure the development and the environmental outcomes are both considered equally. The Objective now makes it clear that any development, upgrading, maintenance and use of regionally and nationally significant infrastructure needs to be undertaken in both a sustainable and effective manner.

The National Policy Statement for Renewable Electricity Generation and the National Policy Statement for Electricity Transmission

7.9 The National Policy Statement for Renewable Electricity Generation (**NPSREG**) and the National Policy Statement for Electricity Transmission (**NPSET**) recognise the national significance of renewable electricity generation activities and the need to operate, maintain, develop, and upgrade the electricity transmission network. The addition of 'importance' to Objective 9B more appropriately recognises these matters of national significance. The NPSET Objective requires the management of adverse effects on the environment as part of the operation, maintenance and upgrading of the infrastructure.

7.10 The addition of 'importance' to this Objective is also appropriate in the context of Objective 10, as the change to Objective 10 means that it applies only to the Manapōuri hydro-electric generation scheme (**MPS**). Regionally significant and nationally significant infrastructure includes hydro-electric generation schemes, and the Hearing Panel added Objective 9B to the Decisions Version of the pSWLP to better give effect to the RMA, NPSREG, NPSET, and the RPS.¹⁷

The NPSFM 2020

7.11 Although infrastructure is 'enabled', it must still be in a manner which is 'sustainable and effective'. The inclusion of 'sustainable and effective' in Objective 9B reflects the foundation of Te Mana o te Wai and ki uta ki tai by requiring consideration of any adverse environmental effects in order to ensure the health of water, people and the

¹⁶ First Interim Decision at [172].

¹⁷ Report and Recommendations of the Hearing Panel at [141].

environment is protected. This is particularly so given the confirmation of the emphasis to be placed on Te Mana o te Wai and ki uta ki tai in the Interpretation Statement. In the context of the NPSFM 2020, the addition of ‘sustainable and effective’ is more appropriate as it better reflects the hierarchy of obligations in Te Mana o te Wai that prioritises:

- a. first, the health and well-being of water bodies and freshwater ecosystems
- b. second, the health needs of people (such as drinking water)
- c. third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future

Conclusion

Overall, the amended Objective 9B is considered the most appropriate way of achieving the purpose of the Act.

8. Objective 10

The changes

8.1 The change from the Council Decisions Version is shown below:

The national importance of the existing ~~hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment,~~ is provided for, ~~and recognised in any resulting flow and level regime,~~ ~~and their structures are considered as part of the existing environment.~~

8.2 The changes to Objective 10 include the deletion of the reference to the structures being considered as part of the existing environment, along with the Objective now only applying to the MPS. These changes are considered against the RPS and NPSFM 2020.

8.3 The deletion of the reference to the other hydro-electric schemes is considered to be appropriate as the MPS is the only scheme of national importance existing in the Southland region.¹⁸

The Court's interim decisions

8.4 In the first Interim Decision the Court considered the use of the term ‘existing environment’.¹⁹ Case law was considered in relation to this term, however it did not provide sufficient direction to be certain how the term ‘existing environment’ would be applied in this instance. The reference to the structures being considered as part of the existing environment was deleted due to that uncertainty.²⁰ The deletion of this reference improves the clarity of the Objective.

The RPS

8.5 The relevant provisions of the RPS (in addition to those considered at paras [212] to [219] of the first Interim Decision) are considered below.

¹⁸ First Interim Decision at [185] and [188].

¹⁹ First Interim Decision at [204] and [206].

²⁰ First Interim Decision at [205]-[208].

8.6 Objective ENG.4 provides for the continued operation of the MPS:

Objective ENG.4 – National significance

Recognise and make provision for the national significance of renewable electricity generation activities.

8.7 Objective 10 of the pSWLP also makes provision for the MPS and the scheme is recognised accordingly. The RPS provides certainty regarding the need for the on-going operation of the MPS, and this is consistent with the revised Objective 10 of the pSWLP.

8.8 Objective WQUAN.2 specifically recognises and provides for the MPS scheme along with the resultant modified flows and levels:

Objective WQUAN.2 – The efficient allocation and use of water

The allocation and use of Southland’s water resources:

- (a) is efficient;
- (b) recognises and makes provision for the Monowai and nationally significant Manapōuri hydroelectric generation schemes in the Waiau catchment and the resultant modified flows and levels.

8.9 Objective 10 is a direct reflection of this RPS provision as the MPS is provided for along with the resulting flows and levels.

The NPSFM 2020

8.10 The NPSFM 2020 provides a process, common to all FMUs, for the setting of a flow and allocation regime. Clause 3.31 directs the Council to have regard to the importance of the MPS.²¹ In addition, with respect to water quality attributes, clause 3.31 recognises that some attributes may be set below national bottom lines, if certain criteria are met.

8.11 Those changes that have been made to improve the grammar and/or wording of the Objective are of no significance with respect to the intent or likely outcomes of the Objective.²² In accordance with section 32AA(1)(c), these changes have not been evaluated.

Conclusion

8.12 Overall, the changes to Objective 10 are considered the most appropriate way of achieving the purpose of the Act.

²¹ Clause 3.31(2) “When implementing any part of this National Policy Statement as it applies to an FMU or part of an FMU affected by a Scheme, a regional council must have regard to the importance of the Scheme’s:

- (a) contribution to meeting New Zealand’s greenhouse gas emission targets; and
- (b) contribution to maintaining the security of New Zealand’s electricity supply; and
- (c) generation capacity, storage, and operational flexibility.

²² “catchment; is provided for, and recognised”.

9. Objective 13/13A/13B

The changes

- 9.1 The change from the Council decisions version involves the amalgamation of these objectives into one, along with restructuring, additions and changes. While the three Council decisions version objectives are shown struck out, in reality substantial parts of Objective 13 and 13B are included in the revised Objective, along with the whole of Objective 13A. With this understanding, the change is shown as:

~~*Enable the use and development of land and soils to support the economic, social and cultural wellbeing of the region.*~~

~~*The quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land.*~~

~~*The discharges of contaminants to land and water that have significant cumulative adverse effects on human health are avoided.*~~

Provided that

- (a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and*
- (b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and*
- (c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded:*

then land and soils may be used and developed to enable the economic, social and cultural wellbeing of the region.

- 9.2 The remerging of the Objectives into one ensures that all three of the subclauses are considered prior to any use and development of a resource occurring.²³ Subclause (a) is carried through from the Council Decisions Version of Objective 13A. Subclause (b) is a modification of the Council Decisions Version of Objective 13. A new subclause (c) has been inserted to address the section 30 function of regional councils to maintain indigenous biological diversity. This new subclause has its genesis in subclause (c) of the notified version of the Objective, which was deleted in the Council Decision.
- 9.3 The Council Decisions Version of the Objective stated that the use of soils would be 'enabled' to 'support' economic, social and cultural wellbeing. The revised wording of the Objective is a clearer reflection of Te Mana o te Wai as the wellbeings are enabled, provided the pre-conditions can be met.
- 9.4 The three subclauses must be satisfied before the use and development of land and soils is enabled.

²³ Discussed at paragraph [228] of the first Interim Decision.

The RPS

- 9.5 Subclause (a) is carried through from the Council Decisions Version of Objective 13A. This clause is highly aligned with RPS Objective RURAL.2 and Policies RURAL.4 and RURAL.5, which seek to prevent degradation of soil resources:

Objective RURAL.2 – Life-supporting capacity of soils

Safeguard the life-supporting capacity, mauri and health of soils in rural areas, and prevent or minimise soil erosion and sedimentation from land use soil disturbance.

Policy RURAL.4 - Loss of high value soils from productive use

Avoid the irreversible loss of high value soils from productive use, through inappropriate subdivision, use and development.

Policy RURAL.5 – Effects of rural land development

The effects of rural land development shall be sustainably managed and land management practices encouraged so that:

soil properties are safeguarded;

soil erosion is minimised;

soil compaction and nutrient and sediment loss is minimised;

soil disturbance is reduced;

water quality is maintained or enhanced;

indigenous biodiversity is maintained or enhanced;

the mauri of water and soils is safeguarded.

- 9.6 Objective RURAL.2 provides high-level direction to safeguard the life-supporting capacity, mauri and health of soils. This direction is reflected in subclause (a) of the Objective which identifies, and seeks to protect, the physical properties of soil resources which contribute to these values.
- 9.7 Subclause (b) is a modification of the Council Decisions Version of Objective 13. This clause is aligned with RPS Objective RURAL.2 and Policies CONTAM.2 and HAZ.7, which direct the appropriate management of soils, contaminated land and hazardous substances:

Policy CONTAM.2 – Management of contaminated land

Protect human health when undertaking activities on land that is potentially, or known to be, contaminated.

Manage contaminated land to avoid, remedy or mitigate adverse effects on the environment.

Policy HAZ.7 - New contaminated land

Avoid to the extent practicable the creation of new contaminated land in Southland.

- 9.8 These policies are relevant to the protection of the health of people and communities, but it is acknowledged that the Objective is broader than these RPS objectives and policies.
- 9.9 Subclause (c) correlates with Objective BIO.2, which directs that indigenous biodiversity is maintained, and significant indigenous vegetation and habitats of indigenous fauna are protected:

Objective BIO.2 – Maintain and protect

Maintain indigenous biodiversity in Southland and protect areas of significant indigenous vegetation and significant habitats of indigenous fauna for present and future generations.

- 9.10 However, subclause (c) takes a broader approach and seeks to safeguard all ecosystems, including indigenous biological diversity and integrity of habitats.
- 9.11 Finally, the Objective is aligned with Policy RURAL.1 (set out at paragraph 2.13 above) which recognises that the use and development of land enables people and communities to provide for their social, economic and cultural wellbeing.

The NPSFM 2020

- 9.12 This revised Objective contains elements of water and land health, human health, and health of indigenous biodiversity. It therefore has a wider subject range than the NPSFM 2020, which primarily relates to freshwater, waterbodies and wetlands, each of the components of the Objective relates directly to the three components of NPSFM 2020 Objective and is a clear reflection of Te Mana o te Wai in that only when the three components are appropriately protected can the resource be used. This also aligns with the way Policy 15 of the NPSFM 2020, in relation to social, economic and cultural wellbeing, is framed.

Conclusion

- 9.13 Overall, the amended Objective 13 is considered to be the most appropriate way to achieve the purpose of the RMA.

10. Objective 14

The changes

- 10.1 The change from the Council decisions version is shown below:
- The range and diversity of indigenous ecosystems ~~types and habitats~~ within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.*
- 10.2 Objective 14 seeks to prevent any reduction in the range and diversity of indigenous ecosystems, including the reduction in their areas, functions and qualities, and responds to the matter of national importance set out in section 6(c) of the RMA.
- 10.3 The term ‘ecosystem types’ is not used in any other provision in the plan and has the potential to create uncertainty for the plan user when considering ‘ecosystems’ and ‘ecosystem types’ as ‘ecosystem’ is defined by both the RPS and the pSWLP. The removal of the word ‘types’ resolves that potential uncertainty and improves the implementation of the Objective. The RPS, NPSFM 2020, and RMA all refer to ‘ecosystems’ rather than ‘ecosystem types’.

- 10.4 Other than improving certainty, the change is inconsequential in terms of the outcomes to be achieved by this Objective.
- 10.5 Overall, the amended Objective 14 is considered to be the most appropriate way to achieve the purpose of the RMA.

11. Objective 17

The changes

- 11.1 The change from the decisions version is shown below:

Preserve ~~the~~ the natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, ~~are and~~ protected them from inappropriate use and development.

- 11.2 The primary changes to be assessed are the addition of 'preserve', and the context change to preserve the natural character and protect it from inappropriate use and development.

The Court's interim decisions

- 11.3 The Court traversed the detail of this Objective in the first Interim Decision and considered the higher-order planning documents.²⁴ The provisions considered by the Court have been further considered as part of this analysis, and the assessment by the Court in those paragraphs is adopted for this analysis, in accordance with section 32AA(1)(d)(ii). The changes are considered in the first Interim Decision and below against the RPS, New Zealand Coastal Policy Statement 2010 (**NZCPS**), and NPSFM 2020. The Court considered the 2017 version of the NPSFM in the Interim Decisions and the 2020 version is considered below.
- 11.4 The Court considered the difference between the use of 'preserve' and 'protect' in paragraphs [272] and [279] of the first Interim Decision and found 'preserve' to have a stronger direction to keep natural character in its original or existing state.

The RPS

- 11.5 In addition to the higher-order documents traversed by the Court in the first Interim Decision, the RPS addresses the natural character of the coastal environment²⁵ in Objective COAST.4:

²⁴ First Interim Decision at [264]-[270].

²⁵ Coastal Environment is defined in the RPS as:
 "An environment in which the coast is a significant part or element and includes:
 (a) the coastal marine area;
 (b) islands within the coastal marine area;
 (c) areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;
 (d) areas at risk from coastal hazards;
 (e) coastal vegetation and the habitat of indigenous coastal species including migratory birds;
 (f) elements and features that contribute to the natural character, landscape, visual qualities or amenity values;
 (g) items of cultural and historic heritage in the coastal marine area or on the coast;
 (h) inter-related coastal marine and terrestrial systems, including the intertidal zone; and
 (i) physical resources and built facilities, including infrastructure, that have modified the coastal environment.

Objective COAST.4 – Natural character:

The natural character of the coastal environment is restored, rehabilitated, or preserved.

- 11.6 The change from ‘protect’ to ‘preserve’ in Objective 17 better reflects the direction of Objective COAST.4 in the context of interactions with the coastal environment.

The NPSFM 2020

- 11.7 At paragraph [265] the Court considered the direction of Objective B4 of the NPSFM 2017 and the NZCPS, specifically Policy 13 which describes the meaning of ‘natural character’, at paragraph [266].
- 11.8 In the NPSFM 2020, the Objective and Policy 1 (set out at paragraphs 2.17 and 4.12 respectively) require that freshwater is managed in a way that gives effect to Te Mana o te Wai. In particular, the NPSFM 2020 sets out a hierarchy of obligations in Te Mana o te Wai.
- 11.9 The change to using ‘preserve’ is considered to be a better reflection of Te Mana o te Wai in that ‘preserving’ natural character values will maintain the well-being of the water, the environment, and people. Policies 6 and 8 use the word ‘protect’ in relation to the values of natural inland wetlands and the significant values of outstanding water bodies, while Policy 7 requires avoidance of the loss of river extent and values to the extent practicable:

Policy 6:

There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

Policy 7:

The loss of river extent and values is avoided to the extent practicable.

Policy 8:

The significant values of outstanding water bodies are protected.

- 11.10 Retaining ‘protect’ rather than replacing it with ‘preserve’ would be consistent with these policies. However, given the context of Te Mana o te Wai and the obligation to first provide for the health and well-being of water bodies, the change to ‘preserve’ is considered to be more appropriate.
- 11.11 The ‘preservation’ of natural character values of wetlands, lakes, rivers, and their margins along with their ‘protection’ from inappropriate use and development is a reflection of section 6(a) of the RMA. Overall, ‘preserve’ is considered to be the most appropriate wording to give effect to the higher order documents and section 6(a) of the RMA.
- 11.12 The wording change from ‘are protected from’ to ‘and protect them from’ may be interpreted as more than a change of grammar. The language is being changed from passive to active voice, with the result that the objective is more directive. The higher-order documents contain both passive and active voices, with the RMA and NPSFM 2020 Policies 6-8 being passive, the NZCPS Policy 13 being active, and the RPS containing both passive (Objective BRL.1) and active (Objective COAST.4 and Policies WQUAL.3 and WQUAN.1). The other Objectives of the pSWLP are also a combination of passive and active voices. Neither voice is considered to be inappropriate, but the active voice provides clearer direction and therefore considered to be more appropriate.

12. Objective 18

The changes

12.1 The change from the Council Decisions Version is shown below:

~~All persons implement environmental practices that activities operate in accordance with “good management practice” or better to optimise efficient resource use, safeguard the life supporting capacity of the region’s land and soils, and maintain or improve the quality and quantity of the region’s water resources.~~

12.2 This evaluation examines the extent to which the changes to this Objective are the most appropriate way to achieve the purpose of the Act. The overall intent of Objective 18 is to provide a high-level expectation of behaviour under which all activities should be undertaken, and this was confirmed in the first Interim Decision at [282]. The directive of Objective 18 has been extended from requiring all activities operate in accordance with “good management practice” or better, to requiring that all persons implementing environmental practices do so to secure three outcomes. This amendment to the Council Decisions Version of the Objective is two-fold: first, it cannot now be interpreted to apply only to agricultural activities; and second, the Objective applies to “persons” rather than “activities”.

The Court’s interim decisions

12.3 The reasons for the change are discussed in detail from [280] to [290] of the first Interim Decision.

The RPS

12.4 The relevant provisions of the Southland Regional Policy Statement 2017 (RPS) are identified and assessed below.

12.5 The high level approach taken by the RPS is to specify that water quality will be at least maintained and the setting of freshwater objectives (under the NPSFM 2014 framework) will identify areas where water quality needs to be improved. Objective WQUAL.1²⁶ states the overall goals for water quality in Southland. This is supported by Policy WQUAL.1²⁷ which sets out the framework for managing water quality to achieve the goals set out in Objective WQUAL.1. Subclause (b) of Policy WQUAL.1 seeks the management of discharges and land use activities to maintain or improve water quality. Policies WQUAL.8, WQUAL.9 and WQUAL.10²⁸ set out a range of

²⁶ Set out in full at paragraph 2.9.

²⁷ **Policy WQUAL.1 – Overall management of water quality**

(a) Identify values of surface water, groundwater, and water in coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands, and formulate freshwater objectives in accordance with the National Policy Statement for Freshwater Management 2014; and

(b) Manage discharges and land use activities to maintain or improve water quality to ensure freshwater objectives in freshwater management units are met.

²⁸ **Policy WQUAL.8 – Preference for discharge to land**

Prefer discharges of contaminants to land over discharges of contaminants to water, where:

(a) a discharge to land is practicable;

(b) the adverse effects associated with a discharge to land are less than a discharge to water.

Policy WQUAL.9 – Untreated human and animal wastes

Avoid the direct discharge of sewage, wastewater, industrial and trade waste and agricultural effluent to water unless these discharges have undergone treatment.

Policy WQUAL.10 – Siting and operation

environmental practices (including a preference to discharge to land over water, where possible, and avoidance of discharges of waste to water) to assist in achieving the overall water quality goals in Objective WQUAL.1.

- 12.6 In assessing the amendments to Objective 18 against the relevant provisions of the RPS, it is evident there are no provisions in the RPS that require the behavioural change of all persons who undertake environmental practices in a manner similar to Objective 18. As set out above, the RPS sets out the objectives for the management of water quality and provides the framework for the attainment of the objectives. The behavioural change required by Objective 18 is considered to be an aspect of managing discharges and land use activities, as required by Policy WQUAL.1 to achieve Objective WQUAL.1, and is considered to better give effect to the relevant Objective and policies of the RPS.

The NPSFM 2020

- 12.7 The following provisions of the NPSFM 2020 are considered of most relevance to Objective 18.
- 12.8 Objective 1 of the NPSFM 2020 sets out a hierarchy of obligations for managing natural resources. Policy 1 of the NPSFM 2020 directs that freshwater is managed in a way that gives effect to Te Mana o te Wai and Policy 3 directs the integrated management of freshwater (kia uta ki tai). Clause 3.5 in Subpart 2 of the NPSFM 2020 sets out the requirements for local authorities to adopt an integrated approach.
- 12.9 In terms of achieving the Objective and relevant policies of the NPSFM 2020, it is considered the change to Objective 18 to apply to all persons is consistent with the approach of the NPSFM 2020, which does not differentiate between activities and applies to all freshwater management, not just the specific aspects of freshwater management referred to in the RPS. The three outcomes of Objective 18 apply generally to resource use, the life supporting capacity of land and soils and the quality and quantity of water resources. Environmental practices that achieve these three outcomes are considered to embody the actions that will support the attainment of Te Mana o te Wai and recognise that a critical element of this is to adopt an integrated management approach as required by Policy 3 of the NPSFM 2020. Based on this, the changes to Objective 18 are considered to better give effect to the provisions of the NPSFM 2020.
- 12.10 Overall, it is considered Objective 18 is the most appropriate way to give effect to the relevant provisions of the NPSFM 2020 and the RPS.

13. Treaty of Waitangi

- 13.1 The Court's Minute of 11 September 2020 directs that "the report writer addresses s 8 of the Act and to explain how (and to what extent) the principles of the Treaty are taken into account."
- 13.2 In order to "take into account" the principles of the Treaty, as required by section 8, it is considered that the following should be undertaken:

Manage the siting and operation of activities that result in point source discharges of contaminants to land to ensure that adverse effects on groundwater, surface water and coastal water quality are avoided, remedied or mitigated.

- a. enable active participation by tangata whenua in resource management decision-making;
 - b. engage with tangata whenua in good faith;
 - c. seek reciprocity and mutual benefit;
 - d. endeavour to protect resources of importance to tangata whenua from adverse effects; and
 - e. take positive action to protect tangata whenua interests.
- 13.3 Active participation of tangata whenua was encouraged and has occurred through the Plan drafting process, joint Council and Te Ao Marama Inc²⁹ workshops to consider Plan issues and Plan provisions, the close working relationship between the Council and local Rūnanga, the Council hearing process and the hearing before the Court. This engagement has been in good faith, and is ongoing through further steps in NPSFM plan-making process.
- 13.4 Reciprocity and mutual benefit are reflected in the close working relationship of the Council and local Rūnanga, and is at the core of the Charter of Understanding He Huarahi mō Ngā Uri Whakatupu. Section 1.4 the Charter, setting out the “Common Goals and Objectives” is indicative of this principle in action. Further, Te Mana o te Wai, as set out in the preamble to the Plan, has a strong element of mutual benefit as the three key functions are:
- a. it is a korowai (cloak) or overarching statement associating the values relating to a particular waterbody and freshwater management unit;
 - b. it provides a platform for tangata whenua and the community to collectively express their values for freshwater; and
 - c. it aligns management tools with values and aspirations to maintain and improve both water quality and quantity.
- 13.5 Mutual benefit is strengthened through the interpretation statement, which ensures that the Plan is considered in the context of Te Mana o te Wai.
- 13.6 The protection of resources of importance to tangata whenua, and processes by which this is enabled, is specifically incorporated into Objectives 4, 5, 14, 15 and 16 and considered in the wording of the remaining objectives. This is described in some detail in the Report and Recommendations of the Council Hearing Commissioners in the section titled Ngai Tahu. Further, the revision of the Objectives through the Court’s decisions and the inclusion of the interpretation statement are more closely aligned with the notified version of the Plan, and the intent of the Plan as set out in its preamble. Ngā Rūnanga expressed a level of satisfaction with the Objectives of the notified version of the Plan, acknowledging that subsequent provisions could be further improved.
- 13.7 Active protection of interests is guaranteed to Māori under Article 2 the Treaty. Active protection can be taken into account in a regional plan through the management of natural and physical resources. Active protection is evident in the Objectives resulting from the Court’s interim decisions, which place specific emphasis on ki uta ki tai and Te Mana o te Wai and their put these at the forefront of decision-making about water

²⁹ Te Ao Mārama Inc represents Ngāi Tahu ki Murihiku tangata whenua for resource management and local government purposes.

and land.³⁰ The Council and Ngā Rūnanga consider the Objectives (as amended in the interim decisions) to have taken active protection into account. Both the Council and Ngā Rūnanga acknowledge that how the principle is addressed in finalising the remainder of the policies and rules of the Plan, and the NPSFM 2020 plan-making processes, will be critical for the active protection of interests guaranteed to Māori.

- 13.8 Overall, the Council is satisfied that the principles of the Treaty, as set out above, have been appropriately taken into account in the Objectives as set out in the Court's interim decisions. The Council acknowledges that the obligations in respect of Treaty principles are ongoing, particularly with respect to resolving the remainder of the policies and rules, and undertaking the NPSFM 2020 plan making processes.

14. Section 67(4)

- 14.1 Section 67(4) of the RMA requires that a regional plan is not inconsistent with a water conservation order or any other regional plan for the region. These are considered in the context of the changes to the Objectives described above.

Water Conservation Orders

- 14.2 The Southland region has two water conservation orders (**WCOs**): the Water Conservation (Mataura River) Order 1997 (**Mataura WCO**) and the Water Conservation (Oreti River) Order 2008 (**Oreti WCO**). The pSWLP was prepared to ensure that the provisions were not inconsistent with the WCOs³¹ and the assessments undertaken at the time are still considered to stand..
- 14.3 The Mataura WCO is to protect the outstanding fisheries and angling amenity features. It contains provisions relating to the following topics:
- a. Rates of flow for the Mataura River and the Waikaia River;
 - b. Discharges and water quality; and
 - c. Damming to ensure fish passage.
- 14.4 The Oreti WCO identifies outstanding characteristics, features, and values for brown trout habitat, angling amenity, black-billed gull habitat, and significance in accordance with tikanga Māori. It contains provisions relating to the following topics:
- a. Damming of waters;
 - b. Maintenance of fish passage; and
 - c. Discharges and water quality.
- 14.5 The WCOs provide specific direction primarily targeted towards rules in plans and applications for resource consents. The changes to each Objective have been considered against each WCO and are not inconsistent with the WCOs.

Other regional plans

- 14.6 The Southland region has two other regional plans which must be considered under section 67(4): the Regional Coastal Plan 2013 (**RCP**) and the Regional Air Plan 2016

³⁰ See also paragraph [22] of the first Interim Decision: "Te Mana o te Wai expresses Treaty principles, including the principles of rangitiratanga and active protection."

³¹ Section 42A Hearing Report at page 14; and Section 32A Report at Section 2.2.2.

(**RAP**). The pSWLP was prepared to ensure it was not inconsistent with the RCP and the proposed Regional Air Plan 2014.³² The recommendations by the hearing panel ensured that the recommendations were consistent with the Regional Air Plan 2016 which had become operative since notification of the pSWLP.³³ These assessments are still considered to stand..

- 14.7 While the FMUs in the pSWLP extend to the mouths of estuaries, in order to best encompass the principle of ki uta ki tai, the pSWLP does not control activities in the Coastal Marine Area (**CMA**). The rules in the RCP apply only to the CMA but some objectives and policies recognise that effects can extend landwards of the CMA, in order to address cross-boundary issues.
- 14.8 The provisions of the RCP have been considered in the context of the changes to the Objectives, and the Objectives are not inconsistent with the RCP.
- 14.9 The RAP became operative on 14 October 2016, after the notification of the pSWLP. It combined 'Stage One' provisions for discharges from domestic heating, outdoor burning, agricultural and fertiliser use, and fire training, with the existing 'Stage Two' provisions of the previous Regional Air Quality Plan for Southland 1999 which addresses all other discharges to air (such as industrial and commercial discharges).
- 14.10 The provisions of the RAP have been considered in the context of the changes to the Objectives, and the Objectives are not inconsistent with the RAP.
- 14.11 All other existing regional plans will be replaced by the pSWLP when it becomes operative.

³² Section 42A Hearing Report at page 14.

³³ Report and Recommendations of the Hearing Commissioners at [76].