

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the proposed Southland Water and Land Plan

**REPORT AND RECOMMENDATIONS  
OF THE  
HEARING COMMISSIONERS**

## Table of Contents

<b>Chapter 1 Introduction</b> .....	1
<b>Chapter 2 The Resource Management Act</b> .....	4
<b>Chapter 3 Higher Order and other Relevant Instruments</b> .....	9
<b>Chapter 4 Ngāi Tahu</b> .....	18
<b>Chapter 5 Scope for Amending the pSWLP</b> .....	23
<b>Chapter 6 Physiographic Zones</b> .....	25
<b>Chapter 7 Objectives</b> .....	29
<b>Chapter 8 Farming</b> .....	32
<b>Chapter 9 Dairy Farming</b> .....	37
<b>Chapter 10 Intensive Winter Grazing</b> .....	40
<b>Chapter 11 Cultivation</b> .....	45
<b>Chapter 12 Effluent, Wastewater and Stormwater Management</b> .....	48
<b>Chapter 13 Stock Exclusion</b> .....	54
<b>Chapter 14 Taking and Using Water</b> .....	57
<b>Chapter 15 Manapōuri Power Scheme</b> .....	59
<b>Chapter 16 Historic Heritage</b> .....	62
<b>Chapter 17 Definitions</b> .....	64
<b>Chapter 18 Appendix N</b> .....	67
<b>Chapter 19 IASM</b> .....	70
<b>Chapter 20 Minor Amendments</b> .....	72
<b>Chapter 21 Evaluation and Recommendations</b> .....	75
Appendix A: Schedule of recommended decisions on submissions	
Appendix B1: Proposed Southland Water and Land Plan – incorporating recommended amendments (Tracked changes version)	
Appendix B2: Proposed Southland Water and Land Plan – incorporating recommended amendments (Clean version)	
Appendix C: Reference material	

## Chapter 1 Introduction

### ***Proposed Southland Water and Land Plan***

- [1] On 27 May 2016, the Southland Regional Council ('the Council' or 'Environment Southland'), acting under section 65 of the Resource Management Act 1991 ('the RMA') and clause 5 of Schedule 1 to the RMA, resolved to publicly notify the Proposed Southland Water and Land Plan ('the pSWLP' or 'the Plan'). The pSWLP was publicly notified on 3 June 2016. The Council set the closing date for submissions as 1 August 2016 and the closing date for further submissions as 19 December 2016.
- [2] The pSWLP as notified contained objectives, policies and rules that apply throughout the region, with separate policies and rules that are specific to particular Physiographic Zones. The pSWLP as notified also contained policies in relation to freshwater management unit (FMU) processes, and signalled the intention that sections of the pSWLP would be developed in the future that may contain objectives, policies and rules applying to specific FMUs. As noted in the Council's opening legal submissions, the pSWLP is intended to provide direction and guidance regarding the sustainable use, development and protection of water and land resources in the Southland region. It seeks to amalgamate, simplify and strengthen the existing planning framework, whilst commencing the process of giving effect to the NPSFM.<sup>1</sup>
- [3] The pSWLP seeks to better manage rural land use activities that are considered to contribute a disproportionate amount of contaminants (nitrogen, phosphorus, sediment, and microbes) to the environment. In particular, additional land use controls are introduced in respect of intensive winter grazing, cultivation and further intensification or establishment of new dairy farms. In relation to urban land use the pSWLP seeks to better manage discharges of stormwater and sewage.<sup>2</sup>

### ***Submissions on the pSWLP***

- [4] The Council received 898 submissions on the pSWLP. The Council publicly notified a summary of the decisions requested in those submissions and an Addendum<sup>3</sup> to that summary. It received 50 further submissions and six further submissions to the Addendum. A substantial number of the submissions relate to a limited range of policies and rules, particularly those associated with farming activities.

---

<sup>1</sup> Opening Legal Submissions of Counsel for the Southland Regional Council, 17 May 2017, paragraph 13.

<sup>2</sup> Ibid, paragraphs 16 and 17.

<sup>3</sup> The Addendum was required because 16 submission points were omitted from the Summary of Decisions Requested and four submission points were summarised incorrectly.

### ***Appointment of hearing commissioners***

- [5] The Council, acting under section 34A of the RMA, appointed us the undersigned, as hearing commissioners to hear, consider and make recommendations to it on the submissions on the pSWLP.<sup>4</sup> The Council delegated to us all its functions, powers and duties to hear and consider submissions on the pSWLP, including requiring and receiving reports under section 42A and exercising powers conferred by sections 41B and 41C of the RMA.
- [6] For the avoidance of doubt, we affirm that throughout the performance of our duties we have been entirely independent and objective in considering and making recommendations on the submissions.

### ***Hearing of submissions***

- [7] We have required and received reports under section 42A of the RMA on the pSWLP and the submissions on it. We have conducted public hearings on the reports and evidence and submissions of the submitters who wished to be heard. Those hearings were conducted at Invercargill on 22 to 25 May, 14 to 17 August, 4 and 5 September, 11 to 14 September and 25 to 28 September and at Gore on 12 to 15 June and 26 to 28 June. On 14 November 2017, we reconvened at the Council offices in Invercargill for the authors of the section 42A report to publicly deliver their reply to the matters presented by the submitters, and to answer our questions on it. In total the public hearings occupied 26 days.
- [8] During the hearings, we asked questions of submitters to enhance our understanding of their requests, the grounds for them, and their responses to requests made by other submitters and advice given in the section 42A reports. We endeavoured to conduct the hearings with a minimum of formality to an extent that allowed for fairness to all submitters. An audio recording of the proceedings was made available on the Council's webpage.
- [9] Following the completion of the public hearings, we deliberated on the matters raised in the submissions and formulated our recommendations to Council on the decisions requested.
- [10] Most of the submissions on the pSWLP requested amendments to it, and gave reasons for requesting those amendments. Many also constructively proposed specific improvements to the pSWLP, developed by themselves or their advisers. In addition, the authors of the section 42A reports made successive detailed recommendations regarding wording improvements to the pSWLP's provisions, including in their reply report.
- [11] Although submitters questioned numerous aspects of the content of the pSWLP, issue was not generally taken with its style and layout. We consider that the format of the pSWLP is generally

---

<sup>4</sup> Commissioners McCallum, Rodway, and van Voorthuysen were appointed on 3 August 2016. Commissioner Ellison was appointed on 14 September 2016. Commissioner Roy was appointed on 14 December 2016.

suitable for its purpose, and can be adapted for incorporating the various amendments that we are recommending.

- [12] We are grateful for all the requests and suggestions by submitters and their witnesses; and by the section 42A report authors. We acknowledge that the requested and suggested amendments, including those we do not recommend, and the evidence relating to them, have substantially assisted us in our deliberations and in reaching the recommendations to the Council that we make in this report. The submissions and reports have all contributed to an effective and fair process for which Part 1 of Schedule 1 of the RMA provides.

***This report***

- [13] In the main body of this report we state in narrative form our findings about the law and superior instruments applicable to the process; about the character of Ngāi Tahu values and interests; and about key issues raised by submitters. We also address in detail issues regarding physiographic zones, farming, dairy farming, intensive winter grazing, cultivation, effluent and stormwater management, stock exclusion from surface water bodies, taking and using water, the Manapōuri Power Scheme, historic heritage, definitions, the content of Farm Environmental Management Plans (FEMPs) as set out in Appendix N to the Plan, and the proposed Independently Audited Self-Management scheme.
- [14] Further, we consider the extent to which the pSWLP, amended as we recommend, would give effect to relevant directions of applicable higher order instruments. As directed by section 32AA of the RMA, we also evaluate our recommended amendments to the pSWLP.
- [15] The decisions we recommend on the points raised in the submissions are set out in detail in Appendix A to this report. In Appendix B1 we show the content of the pSWLP incorporating our recommended amendments to it. Appendix C is a list of the reports and other documents that we have referred to, in addition to the submissions and evidence presented by the submitters.
- [16] To avoid unnecessary duplication and repetition we affirm that, except to the extent that we expressly address matters in this report, we adopt the advice and reasoning in the section 42A reports<sup>5</sup>, and in the answers and replies given to us by its authors. Those reports and documents should be read as forming part of this report. We refer to this again in Chapter 21.

---

<sup>5</sup> Comprising documents 15 to 27 inclusive as listed in Appendix C to this Report .

## Chapter 2

### The Resource Management Act

#### **Introduction**

[17] In this chapter, we discuss provisions of the RMA that are relevant to the pSWLP and our consideration of the submissions on it.

#### **The purpose and principles of the RMA**

[18] First, we understand that we are to refer to the version of the RMA that was current at the time that the pSWLP was notified in 2016, namely the Act as it was prior to the commencement of the Resource Legislation Amendment Act 2017.<sup>6</sup>

[19] Part 2 of the RMA states its purpose and principles. The overall objective of the Act,<sup>7</sup> and the cornerstone of Part 2, is section 5(1), which states the purpose of the Act is “to promote the sustainable management of natural and physical resources.” Section 5(2) describes the meaning of the term ‘sustainable management’:

In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, and at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

[20] Section 5 contemplates environmental preservation and protection as an element of sustainable management of natural and physical resources;<sup>8</sup> and protecting the environment from adverse effects of use and development is an aspect (though not the only one) of sustainable management.<sup>9</sup> The other sections of Part 2 (sections 6, 7 and 8) provide general principles elaborating on how Section 5 is to be applied.<sup>10</sup>

[21] Section 6 of the RMA identifies matters of national importance, and directs us to recognise and provide for them. All of the matters listed in section 6 are relevant to the pSWLP. We understand that the word ‘inappropriate’ in sections 6(a), (b) and (f) should be interpreted “against the backdrop of what is sought to be protected or preserved.”<sup>11</sup> Section 7 directs that, in achieving the purpose of the Act, we are to have particular regard to eleven matters, many of which are relevant to the pSWLP.

---

<sup>6</sup> Opening Legal Submissions of Counsel for the Southland Regional Council, 17 May 2017, paragraph 26.

<sup>7</sup> *Environmental Defence Society v NZ King Salmon* [2014] NZSC 38 [151].

<sup>8</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [146].

<sup>9</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [148].

<sup>10</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [8], [149].

<sup>11</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [105].

[22] Section 8, the final section in Part 2 of the Act, directs us to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). We understand that this does not extend to principles that are not consistent with the scheme of the RMA.

[23] Important as Part 2 is, we understand that where specific, unqualified provisions are contained in a superior instrument (compared to the pSWLP)<sup>12</sup> by which Part 2 is given effect (the lawfulness and the meaning of which are not in dispute, and which “cover the field”), we are not able to “refer back” to Part 2 to diminish the effect of the superior instrument.<sup>13</sup>

### ***Functions of regional councils***

[24] Section 30 of the RMA lists Council’s functions and the following ones may be relevant to the pSWLP:

- establishing and implementing objectives, policies and methods to achieve integrated management of the natural and physical resources of the region:<sup>14</sup>
- preparing objectives and policies in relation to any actual or potential effects of the use, development or protection of land which are of regional significance:<sup>15</sup>
- control of the use of land for the purpose of soil conservation, maintenance and enhancement of the quality of water in water bodies, maintenance of the quantity of water in water bodies; maintenance and enhancement of ecosystems in water bodies; avoidance or mitigation of natural hazards:<sup>16</sup>
- investigation of land for identifying and monitoring contaminated land:<sup>17</sup>
- control of the taking, use, damming, and diversion of water, and control of the quantity, level and flow of water in any water body, including setting any maximum or minimum levels or flows of water and control of the range, or rate of change, of levels or flows of water:<sup>18</sup>
- control of discharges of contaminants into or onto land, air or water and discharges of water into water:<sup>19</sup>
- if appropriate, establishment of rules in a regional plan to allocate the taking or use of water, or the capacity of water to assimilate a discharge of a contaminant:<sup>20</sup>
- in relation to any bed of any water body, the control of the planting of any plant in, on, or under that land for the purpose of soil conservation, maintenance and enhancement of the

---

<sup>12</sup> Such as a national policy statement or a regional policy statement.

<sup>13</sup> *Environmental Defence Society v NZ King Salmon*, cited above, [80], [88].

<sup>14</sup> RMA, s30(1)(a).

<sup>15</sup> RMA, s30(1)(b).

<sup>16</sup> RMA, s30(1)(c).

<sup>17</sup> RMA, s30(1)(ca).

<sup>18</sup> RMA, s30(1)(e).

<sup>19</sup> RMA, s30(1)(f).

<sup>20</sup> RMA, s30(1)(fa).

quality of water in that water body; maintenance of the quantity of water in that water body; and avoidance or mitigation of natural hazards:<sup>21</sup>

- establishment, and implementation, of objectives, policies and methods for maintaining indigenous biological diversity:<sup>22</sup>
- strategic integration of infrastructure with land use through objectives, policies and methods.<sup>23</sup>

[25] Section 30(4) addresses the allocation of natural resources under section 30(1)(fa) or (fb). It restricts allocating amounts of resources that have already been allocated;<sup>24</sup> allows allocating a resource in anticipation of expiry of existing consents;<sup>25</sup> authorises allocating a resource among competing types of activities;<sup>26</sup> and enables the allocation of water if the allocation does not affect activities authorised by section 14(3)(b) to (e).<sup>27</sup>

### ***Contents of regional plans***

[26] Section 63(1) of the RMA states the purpose of a regional plan as being “to assist a regional council to carry out any of its functions in order to achieve the purpose of this Act.” Section 65(1) enables the Council to prepare the pSWLP for certain functions specified in section 30.<sup>28</sup> Section 65(2) directs that the pSWLP is to be prepared in accordance with Schedule 1. Section 66(1) directs that the Council is to prepare the pSWLP in accordance with its functions under section 30, the provisions of Part 2, its duties under section 32, and any regulations. Section 66(2) stipulates that the Council is to have regard to any proposed regional policy statement,<sup>29</sup> management plans and strategies prepared under other Acts, to the extent that their content has a bearing on resource management issues of the region,<sup>30</sup> and the extent to which it needs to be consistent with regional policy statements and plans of adjacent regional councils.<sup>31</sup> Section 66(2A) directs that the Council is to take into account any relevant planning document recognised by an iwi authority, if lodged with the Council, to the extent that its content has a bearing on the resource management issues of the region.

[27] Section 67(1) of the RMA requires that the pSWLP state the objectives for the region; the policies to implement the objectives; and the rules (if any) to implement the policies. Section 67(2) lists other matters that may be included in the pSWLP. Section 67(3) directs that the

---

<sup>21</sup> RMA, s30(1)(g).

<sup>22</sup> RMA, s30(1)(ga).

<sup>23</sup> RMA, s30(1)(gb).

<sup>24</sup> RMA, s30(4)(a) and (b).

<sup>25</sup> RMA, s30(4)(c) and (d).

<sup>26</sup> RMA, s30(4)(e).

<sup>27</sup> RMA, s30(4)(f).

<sup>28</sup> Being the functions in section 30(1)(c), (ca), (e), (f), (fa), (g), or (ga).

<sup>29</sup> We note that during the hearing of submissions the pSRPS was a relevant consideration; however, the SRPS 2017 is now operative and is the relevant document for our recommendations on the pSWLP.

<sup>30</sup> RMA, s66(2)(c)(i).

<sup>31</sup> RMA, s66(2)(d).



pSWLP is to give effect to any national policy statement, any New Zealand coastal policy statement; and any regional policy statement (in this case the operative SRPS). Section 67(4) stipulates that the pSWLP is not to be inconsistent with a water conservation order, or any other regional plan for the region. Section 67(5) adds that if Council has allocated a natural resource under certain provisions of section 30, the plan is to record how it has done so.<sup>32</sup> Section 67(6) allows the pSWLP to incorporate material by reference under Part 3 of Schedule 1.

- [28] Section 68 of the RMA enables the Council to make rules for carrying out certain functions, and for achieving the objectives and policies of the pSWLP; and prescribes that in making a rule, it is to have regard to the actual or potential effects (particularly an adverse effect) on the environment of activities; and, relevantly in relation to the pSWLP, contains specific prescriptions for rules relating to levels or flows or rates of use of water, and minimum standards of water quality. We note that section 68(5) provides that a rule may apply to only part of a region and may make different provisions for different parts of the region. This is relevant to the use of physiographic zones and freshwater management units within the pSWLP.
- [29] Section 69 addresses provisions on water quality, including prohibiting standards that may result in a reduction of the quality of water unless it is consistent with the purpose of the Act to do so. Section 70 applies to rules about discharges. Section 70(1) applies to rules that allow discharges as a permitted activity; and section 70(2) applies to rules that require adoption of the best practicable option.
- [30] We have carefully considered the application of the above sections when addressing submissions on the pSWLP.

### ***Procedure for preparing regional plans***

- [31] The procedure for preparing a regional plan is that prescribed in Schedule 1 to the RMA<sup>33</sup>. Clause 5(1) requires the Council to prepare an evaluation report in accordance with section 32, and have particular regard to that report when deciding whether to proceed with the plan. Clause 10 gives directions on decisions on the provisions and matters raised in submissions,<sup>34</sup> with reasons for accepting or rejecting them.<sup>35</sup> Subclause 10(2) provides for Council's decisions on submissions to make necessary consequential alterations arising from the submissions and any other relevant matter arising from them. Subclause 10(4) stipulates that Council's decision is to include a further evaluation in accordance with section 32AA;<sup>36</sup> and it is to have particular regard to the further evaluation when making its decision.<sup>37</sup> Clause 16(2) enables the Council to make

---

<sup>32</sup> The provisions of section 30 referred to in s67(5) are s30(1)(fa) or (fb), and s30(4).

<sup>33</sup> RMA, s 65(3).

<sup>34</sup> RMA, Sched 1, cl 10(1).

<sup>35</sup> RMA, Sched 1, cl 10(2).

<sup>36</sup> RMA, Sched 1, cl 10(2)(ab).

<sup>37</sup> RMA, Sched 1, cl 10(4)(aaa).

amendments to the pSWLP that “alter any information, where such an alteration is of minor effect” and to “correct any minor errors.” We refer to Clauses 10 and 16 where appropriate in Appendices A and B to this report.

- [32] The Council must give its decisions on the matters raised in the submissions, however subclause 10(3) provides that it is not required to address each submission individually. So, in the main text of this report we address the major issues arising from the submissions, including those where we have deviated from the recommendations of the section 42A report authors; and in Appendix A we have grouped some submissions according to specific provisions of the pSWLP. As previously noted, in Appendix B1 we have identified what amendments (if any) to the notified provisions we recommend to the Council.
- [33] Although not expressly stated in the Act, we understand that our consideration of submissions is to proceed on the basis that there is no presumption in favour of the notified provisions of the pSWLP; nor is there any onus on submitters to show that the notified contents of the pSWLP are inappropriate.<sup>38</sup> Rather, our duty is to consider the submissions and evidence, and make recommendations as to what the most appropriate and suitable provisions of the pSWLP are. That is what we have done.

### ***Evaluation report***

- [34] Section 32 of the RMA sets out the requirements for preparing and publishing evaluation reports. The Council has prepared a report under Section 32<sup>39</sup> and we have read that report. Under section 32AA, a further evaluation is required for any recommended amendments to the pSWLP since the original evaluation report was completed. Such a further evaluation does not have to be published as a separate report if it is referred to in the decision-making record (namely in this report) in sufficient detail to demonstrate that it was undertaken in compliance with that section.<sup>40</sup> We discuss that further in Chapter 21 of this report.

### ***Classes of activity***

- [35] Finally, we refer to section 77A of the RMA, which empowers the Council to categorise activities as belonging to one of six classes of activity, including a prohibited activity. The attributes of each of those classes of activity are described in section 87A.

---

<sup>38</sup> *Wellington Club v Carson* [1972] NZLR 698 (SC); applied to the RMA in *Leith v Auckland City Council* [1995] NZRMA 400.

<sup>39</sup> Evaluation Report: Proposed Southland Water and Land Plan, Prepared under Section 32 of the Resource Management Act 1991, 3 June 2016.

<sup>40</sup> RMA, s32AA(1)(d)(ii).

### Chapter 3 Higher Order and other Relevant Instruments

#### ***Applicable statutory regulations***

- [36] The principal statutory regulations brought to our attention as being potentially relevant to the pSWLP are as follows.

*Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007*

- [37] The Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 regulate the granting of water permits and discharge permits upstream of abstraction points. Relevantly, regulation 10 imposes restrictions on rules allowing permitted activities upstream of drinking-water abstraction points in certain stated conditions. Regulation 13(a) enables rules that are more stringent than required by the regulations. We adopt the contents of the section 32 report<sup>41</sup> and the section 42A report<sup>42</sup> in respect of these regulations and find that the pSWLP as we recommend it be amended would be in accordance with them.

*Resource Management (Measurement and Reporting of Water Takes) Regulations 2010*

- [38] The Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 require the keeping of records of fresh water taken under a water permit, and providing to the Council annually the records and (if required) evidence of verification of their accuracy. The regulations do not stipulate matters to be contained in regional plans, and are not directly relevant to the pSWLP.

*Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011*

- [39] Important as they are, the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 concern the functions of territorial authorities, and are not directly applicable to the pSWLP.

*Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017*

- [40] The Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 provide a comprehensive regulatory framework for the management of all

---

<sup>41</sup> Section 2.2.3.

<sup>42</sup> Hearing Report: Proposed Southland Water and Land Plan, Prepared under Section 42A of the Resource Management Act 1991, April 2017, ('the section 42A report'), paragraph 7.1066.

aspects of plantation forestry. We have concluded that the most effective way of responding to these regulations is to state that nothing in the pSWLP controls an aspect of plantation forestry activities that are specifically regulated by the National Environmental Standards for Plantation Forestry, unless Regulation 6 applies (which allows rules in a regional plan to be more stringent than the regulations in certain circumstances).

### ***National Policy Statements***

- [41] As we mentioned in Chapter 3, the pSWLP is required to give effect to any operative national policy statement and to any New Zealand coastal policy statement.<sup>43</sup> We consider that the principal operative national policy statements relevant to the pSWLP are those relating to renewable electricity generation and to freshwater management. For the sake of completeness, we have accepted the recommendation of the section 42A authors that other national policy statements dealing with urban development capacity and electricity transmission should also be listed in the Plan.

#### *National Policy Statement for Renewable Electricity Generation 2011*

- [42] The National Policy Statement for Renewable Electricity Generation 2011 ('the NPSREG') contains one (unnumbered) objective and several policies to enable the sustainable management of renewable electricity generation. The objective is:

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

- [43] Relevantly, Policy E2 is that regional plans are to include objectives, policies and methods (including rules in plans) to provide for the development, operation, maintenance, and upgrading of new and existing hydro-electricity generation activities to the extent applicable to the region.
- [44] We have ensured that our recommendations on the submissions received on the pSWLP give effect to the objectives and policies of the NPSREG. This is particularly relevant to pSWLP Objective 10, Policy 26 and additional rules sought by Meridian Energy for the Manapōuri Power Scheme. We note that the Preamble of the NPSREG states that this national policy statement does not apply to the allocation and prioritisation of freshwater as these are matters for regional councils to address in a catchment or regional context and this may be subject to the development of national guidance in the future.

---

<sup>43</sup> RMA, s55(2B), and s67(3)(a) and (b).

*National Policy Statement for Freshwater Management 2014 (Updated in 2017)*

- [45] The National Policy Statement for Freshwater Management 2014 ('the NPSFM') was amended by Government in August 2017. We understand that we are to refer to the 2017 version in making our decisions on the pSWLP.
- [46] The preamble to the NPSFM identifies the importance of freshwater to economic, cultural and social well-being, and the need for national direction in the management of freshwater resources. Relevantly, it recognises catchment-level variation between different freshwater bodies, and different demands on the resource across regions, including managing land use and development activities that affect fresh water so that growth is achieved with a lower environmental footprint. The preamble also describes accounting for all freshwater takes and sources of relevant contaminants as vital. It contains specific references to 'national bottom lines' not being standards to aim for and describes a national target of 90% of specified rivers and lakes being safe for primary contact by 2040.
- [47] A part on Te Mana o te Wai notes that the health and well-being of our freshwater bodies is vital for the health and well-being of our land, our resources (including fisheries, flora and fauna) and our communities. Te Mana o te Wai incorporates the values of tangata whenua and the wider community in relation to each water body.
- [48] As provided for by Part E of the NPSFM, the Council has adopted a staged implementation programme.<sup>44</sup> Under that programme, specified NPSFM Policies<sup>45</sup> will be progressively given effect to on a FMU basis over the period July 2018 to July 2020, with the NPSFM intended to be fully implemented by 2025. Accordingly, we confine our discussion to the objectives and relevant policies of the NPSFM. We have not comprehensively addressed Objectives A3, A4 and B5 and Policies A5 to A7 and B8 of the NPSFM, which were inserted by the 2017 amendments, as we understand those matters will be addressed by the Council as part of its FMU processes.
- [49] Relevantly, Objectives are contained in the NPSFM for Te Mana o te Wai (Objective AA1), water quality (Objectives A1 and A2), water quantity (B1 to B4), and for integrated management (Objective C1).
- [50] Objective AA1 is to consider and recognise Te Mana o te Wai in the management of fresh water. Policy AA1 directs the Council to consider and recognise Te Mana o te Wai in preparing the pSWLP. We address the values and interests of Ngāi Tahu in Chapter 4 of this report and we note Objective AA1 and Policy AA1 to be particularly relevant for pSWLP Objectives 3, 4, 5 and 15 and Policies 1, 2 and 3.

---

<sup>44</sup> Environment Southland's Progressive Implementation Programme for Implementing the Policies of the National Policy Statement for Freshwater Management 2014.

<sup>45</sup> Being Policies A1, A2, A3, B1, B2, B5, B6, CA1, CA2, CA3 and CA4 of the NPSFM.

- [51] Objective A1 is to safeguard the life-supporting capacity of freshwater and the health of people and communities in sustainably managing the use and development of land and discharges of contaminants. Objective A2 is maintaining or improving the overall quality of fresh water within a freshwater management unit (FMU) while protecting significant values of outstanding freshwater bodies and wetlands, and improving the quality in waterbodies degraded to over-allocation. Objective A3 is to improve the quality of water within a FMU so it is suitable for primary contact more often.
- [52] Objectives A1, A2 and A3 are particularly relevant to our consideration of pSWLP Objectives 6 to 9A, 13B, 14 and 17 and the policies that flow from them, including Policies 13 to 18.
- [53] Objectives A4 and B5 are to enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits. Policies A7 and B8 require the Council to consider how to enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits when giving effect to the NPSFM. While the pSWLP does not generally set water quality limits, these objectives and policies are nevertheless relevant to those submissions seeking a greater recognition of social and economic matters in the pSWLP and our consideration of Objectives 2, 10 and 13 of the Plan. Objectives A4 and B5, and Policies A7 and B8, are also relevant for submissions seeking additional provisions to recognise the importance of regionally significant, nationally significant and critical infrastructure.
- [54] Objective B1 is to safeguard the life-supporting capacity, ecosystem processes and indigenous species of freshwater in sustainably managing the taking, using, damming and diverting of fresh water. Objective B2 is avoiding any further over-allocation of fresh water and phasing out existing over-allocation. Objective B3 is improving and maximising the efficient allocation and efficient use of water. Objective B4 is protecting significant values of wetlands and of outstanding freshwater bodies. Policy B3 directs the pSWLP to state criteria by which transfers of water permits are decided. Policy B4 directs that the pSWLP identify methods to encourage the efficient use of water.
- [55] We have been informed that while the surface water resources of the Waiau River catchment are fully allocated, no water resources in Southland are currently over-allocated. Nevertheless, Objectives B1, B2, B3 and B4 are particularly relevant to our consideration of Objectives 7, 8, 9, 11 and 12 and the policies that flow from them, including Policies 20 to 43 of the Plan.
- [56] Objective C1 is to improve integrated management of fresh water and use and development of land in whole catchments, including interactions between fresh water, land, associated ecosystems, and the coastal environment. Objective C1 is particularly relevant to Objective 1 of

the Plan. To achieve that objective, Policy C1 directs the Council to manage freshwater, land use, and development in an integrated and sustainable way so as to avoid, remedy, or mitigate adverse effects, including cumulative effects. We have considered these matters when addressing land uses and discharges, including those that can impact on the coastal marine area.

- [57] Objective CA1 is a nationally consistent approach to establishing freshwater objectives for national values, and any other values, that recognise regional and local circumstances. Policy CA1 is that all regional councils are to identify freshwater management units for all freshwater bodies in every region. In that regard we note that Policy 46 of the pSWLP identifies FMUs for the Southland region.
- [58] Objective CB1 titled 'Monitoring plans', and related policies CB1 to CB3, is to provide an approach to monitoring progress towards achieving freshwater objectives and values. Objective CC1 titled 'Accounting for freshwater takes and contaminants' is to improve information on those matters. We note that requiring nutrient budgets as part of a FEMP would provide useful information and better enable the Council to give effect to Objective CC1.
- [59] Part D of the NPSFM relates to tangata whenua roles and interests. Objective D1 states "To provide for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water and associated ecosystems, and decision-making regarding freshwater planning..." Policy D1 is for local authorities to take reasonable steps to involve iwi and hapū in the management of freshwater and ecosystems, to work with them to identify values and interests, and reflect them in management and decision-making. We note that aspects of Objective D1 address a 'process' matter not directly relevant to our consideration of submissions on the pSWLP.
- [60] We have ensured that our recommendations on the submissions received on the pSWLP give effect to the objectives, and the relevant policies, of the NPSFM. Where relevant, we discuss particular NPSFM objectives and policies in the remainder of this report and in Appendix A.

*New Zealand Coastal Policy Statement 2010*

- [61] The New Zealand Coastal Policy Statement 2010 ('the NZCPS') states seven objectives, of which Objectives 1 and 6 are particularly relevant to the pSWLP.
- [62] Objective 1 is to safeguard the integrity, form, functioning, and resilience of the coastal environment, and sustaining its ecosystems, including in estuaries and on land. It specifically refers to maintaining or enhancing natural biological and physical processes in the coastal environment, recognising their dynamic, complex and interdependent nature; and protecting representative or significant natural ecosystems and sites of biological importance and

maintaining the diversity of indigenous coastal flora and fauna. This is particularly relevant in Southland as many of the major river systems discharge to coastal estuaries.

[63] Objective 6 is to enable people and communities to provide for their social, economic and cultural wellbeing and their health and safety through use and development. Relevantly, this objective includes recognising that protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits.

[64] The NZCPS also states policies for achieving the purpose of the RMA in the coastal environment.<sup>46</sup> Those policies acknowledge that the extent and characteristics of the coastal environment vary from locality to locality including (among other things):

- areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and their margins;<sup>47</sup>
- coastal vegetation and the habitat of coastal species including migratory birds;<sup>48</sup>
- elements and features that contribute to the natural character, landscape, visual qualities or amenity values.<sup>49</sup>

[65] Many of the policies of the NZCPS are relevant to the content of the pSWLP and the submissions received because the coastal environment extends landwards of the coastal marine area ('CMA'). In selecting the following policies as particularly relevant, we have not overlooked others that may also be relevant, and understand that the NZCPS should be read as a whole. We have done that.

[66] Policy 2, on the place of tangata whenua in relation to the coastal environment, includes:

- recognising that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment;<sup>50</sup>
- involving tangata whenua in preparation of regional plans by effective consultation in accordance with tikanga Māori;<sup>51</sup>
- incorporating mātauranga Māori in regional plans;<sup>52</sup>
- taking into account any relevant iwi resource management plan and other recognised and relevant planning document;<sup>53</sup>
- providing opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands and fisheries in the coastal environment;<sup>54</sup>

---

<sup>46</sup> RMA, s56.

<sup>47</sup> NZCPS, Policy 1(2)(c).

<sup>48</sup> NZCPS, Policy 1(2)(e).

<sup>49</sup> NZCPS, Policy 1(2)(f).

<sup>50</sup> NZCPS, Policy 2(a).

<sup>51</sup> NZCPS, Policy 2(b).

<sup>52</sup> NZCPS, Policy 2(c).

<sup>53</sup> NZCPS, Policy 2(e).

<sup>54</sup> NZCPS, Policy 2(f).



- recognising the importance of Māori cultural and heritage values.<sup>55</sup>

- [67] Policy 4 is relevant to the pSWLP. It is providing for integrated management of natural and physical resources in the coastal environment and activities that affect it. The policy directs co-ordinated management of activities in the coastal environment, including, relevantly, land-use activities that are likely to affect water quality in the coastal environment, and significant adverse cumulative effects.<sup>56</sup> We considered this to be particularly relevant to the objectives and policies of the pSWLP that seek to address the effects on water quality arising from agricultural land use.
- [68] Policy 11 is to protect indigenous biodiversity in the coastal environment. This policy includes avoiding adverse effects of activities on various classes of vulnerable taxa and species; and avoiding significant adverse effects on certain other classes. We consider this is particularly relevant to those provisions within the pSWLP that seek to protect the values of natural wetlands.
- [69] Policy 23 is directed to discharging of contaminants to water in the coastal environment. Relevantly, it calls for particular regard to be had to the sensitivity of the receiving environment; the nature of the contaminants discharged; the risks to the environment if limits on concentrations are exceeded; the capacity of the receiving environment to assimilate the contaminants; and minimising adverse effects on the life-supporting capacity of the water. Again, we consider this to be relevant to the management of the effects of land use on river water quality and its subsequent effect on Southland's estuaries and harbours.
- [70] We have ensured that our recommendations on the submissions received on the pSWLP give effect to the objectives and policies of the NZCPS, particularly where provisions of the Plan are relevant for water and soil resources residing within the coastal environment.

### ***Southland Regional Policy Statement***

- [71] Throughout the hearing we focused our attention on the proposed Southland Regional Policy Statement ('the pSRPS') as it was the more contemporary document replacing the antecedent Southland Regional Policy Statement 1997. The Southland Regional Policy Statement 1997 was revoked on 9 October 2017 and the pSRPS was made operative on that same day. We now refer to the Southland Regional Policy Statement 2017 as the SRPS.
- [72] The SRPS contains seventeen topic specific resource chapters, all of which are relevant to the contents of the pSWLP to a greater or lesser degree. Rather than listing the numerous objectives

---

<sup>55</sup> NZCPS, Policy 2(g).

<sup>56</sup> NZCPS, Policy 4(a) and (c).

and policies of those chapters at great length here, we simply record that we have ensured that our recommendations on the submissions give effect to the provisions of the SRPS.

- [73] In elaboration of that approach, in the narrative sections of this report we refer to specific provisions of the SRPS where it is appropriate to do so. We note that the Section 42A Report also did that and we have in many cases adopted the recommendations and reasoning of the section 42A authors, including therefore their conclusions on giving effect to the SRPS.

### ***Regional Plans***

- [74] In considering the submissions on the pSWLP and the recommendations we make on them, we bear in mind that it is not to be inconsistent with any other regional plan for the region.<sup>57</sup> We consider that this does not extend to the operative Regional Water Plan or the Regional Effluent Land Application Plan given our understanding that the pSWLP is intended to replace those plans.

#### *Regional Coastal Plan 2013*

- [75] The Regional Coastal Plan is not directly relevant as it is confined to the CMA.<sup>58</sup> Unlike the approach taken in some other regions, the Southland Regional Coastal Plan does not extend into the coastal environment.

#### *Regional Air Plan 2016*

- [76] The Regional Air Plan includes rules for home heating, outdoor burning, the application of agrichemicals and fertilisers, fire training, and air discharges from industrial and trade premises. We have ensured that our recommendations on the submissions received on the pSWLP on those matters are not inconsistent with the provisions of the Regional Air Plan.

### ***Water Conservation Orders***

- [77] Two water conservation orders apply to waterbodies within the Southland Region. They are the Water Conservation (Mataura River) Order 1997 and the Water Conservation (Oreti River) Order 2008. The section 42A report describes the general effects of those orders.<sup>59</sup> We have ensured that our recommendations are not inconsistent with the contents of these Orders.

### ***Iwi authority-approved plans***

- [78] Two planning documents are recognised by iwi authorities in the Southland Region and may be relevant to our consideration of the pSWLP and the submissions on it. They are the Te Rūnanga

---

<sup>57</sup> RMA, s67(4)(b).

<sup>58</sup> Regional Coastal Plan, section 1.5.1.

<sup>59</sup> Section 42A report, paragraphs 2.120, 3.82, 4.47, 10.133, 10.147 and 10.55 to 10.57.

o Ngāi Tahu Freshwater Policy Statement (1999); and Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (Te Tangi a Tauira).

- [79] These documents state Ngāi Tahu cultural values; seek integration of tangata whenua values and cultural objectives into the planning provisions of the pSWLP; and assert the right of Ngāi Tahu to participate in the management of natural resources and advocate for continuous improvement in the quantity and quality of natural resources. These matters are addressed in Chapter 4 of this report, and in our consideration of the submissions of Ngāi Tahu. Further, we have taken them into account throughout our consideration of all other submissions where they are directly or indirectly relevant.

#### ***Management plans under other Acts***

- [80] On the Council's duty to have regard to management plans under other Acts, we have had regard to the Southland Sports Fish and Game Management Plan which applies in the Southland Region. That plan establishes a framework which provides direction for Fish and Game to manage, maintain and enhance the sports fish and game resource in the recreational interests of anglers and hunters.

#### ***Instruments of adjacent regional councils***

- [81] Under section 66(2)(d) of the RMA, we are to have regard to the extent to which the pSWLP needs to be consistent with planning instruments of the adjacent West Coast and Otago Regional Councils. Neither of those councils made a submission on the pSWLP. While some submitters referred to the approach taken by the Otago Regional Council to some matters addressed by the pSWLP, none claimed that the pSWLP should be specifically amended to address any inconsistency with a planning instrument of those councils. We are not aware of any need for the pSWLP to do so.

## Chapter 4

### Ngāi Tahu

#### **Introduction**

[82] In this chapter, we discuss matters relevant to Waihopai Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Ōraka Aparima, and Hokonui Rūnaka (Papatipu Rūnanga) and Te Rūnanga o Ngāi Tahu (collectively referred to as Ngāi Tahu).

#### **RMA ss6(e), 7(a) and 8**

[83] As we briefly canvassed in Chapter 2 of this report, Part 2 of the RMA includes the following important directions in respect of Māori values and interests:

- Section 6(e) directs that all persons exercising functions and powers under the Act are to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga;
- Section 7(a) directs that all persons exercising functions and powers under the RMA are to have particular regard to kaitiakitanga;
- Section 8 directs all people exercising functions and powers under the RMA are to take into account the principles of the Treaty of Waitangi.

#### **Te Rūnanga o Ngāi Tahu Act (1996) and the Ngāi Tahu Claims Settlement Act (1998)**

[84] These two Acts recognise Ngāi Tahu Whānui as tangata whenua for the larger part of the South Island and the entire Southland region. They are relevant when applying sections 6(e), 7(a) and 8 of the RMA, and in giving effect to relevant sections in the SRPS and NPSFM.

[85] The interests of tangata whenua are represented by the four Papatipu Rūnanga located in the Southland region, these being Waihopai Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Ōraka Aparima, and Hokonui Rūnaka. The iwi authority, Te Rūnanga o Ngāi Tahu, exercises the statutory powers invested in it to act in the interests of Ngāi Tahu Whānui on matters of natural resource management across the tribal territory, including Southland.

[86] The Ngāi Tahu Claims Settlement Act 1998 provides for the following in the Southland region:

- Statutory Acknowledgements<sup>60</sup> over a number of lakes, rivers and wetlands, each of which includes a statement describing the Ngāi Tahu relationship and association with each waterbody and catchment; and
- Nohoanga (camp sites)<sup>61</sup> in the Southland region (ten), located adjacent to waterbodies and chosen for their proximity to traditional mahinga kai places and resources; and

---

<sup>60</sup> pSWLP, Appendix B1 – Ngāi Tahu Statutory Acknowledgement Areas.

- Taonga species schedule of bird, plant, fish and marine mammal / or Ngāi Tahu ki Murihiku Taonga Species, Appendix M.<sup>62</sup>

[87] We recognise that the Statutory Acknowledgements, Nohoanga (and the taonga species schedule) are statutory tools and do not reflect the full extent of the values and interests that Ngāi Tahu have for their ancestral land, water, sites and taonga species in the Southland region. Rather they provide information on the cultural association with particular water bodies, resources and values.

***Traditional relationship and values in relation to natural and physical resources***

[88] Chapter 3 of the SRPS identifies the relevant Rūnanga that represent tangata whenua in Southland. Chapter 3 of the SRPS also sets out the resource management issues of significance to Ngāi Tahu and the objectives, policies and methods to resolve those issues consistent with outcomes desired by Ngāi Tahu as tangata whenua of the region.

[89] The explanation to SRPS Objective TW.3 explains that tangata whenua engagement with the natural environment (land, coast, water, air and biodiversity) is a critical part of their identity. Further, that the ongoing ability to maintain traditional and customary mahinga kai practices in places and on ancestral lands is an integral part of their cultural wellbeing and permanence. We understand that mahinga kai relates not just to the harvesting of species of fish and other food resources but also to the health of the resource and its associated habitat.<sup>63</sup>

***Section 32 and Iwi Resource Management Plans***

[90] The Section 32 Report states that in preparing the pSWLP there were two iwi management plans taken into account and which contributed to a table<sup>64</sup> of key water quality issues and environmental outcomes sought by Ngāi Tahu. As discussed in Chapter 3 of this report, those plans, recognised by the iwi authority Te Rūnanga o Ngāi Tahu as operable within the Southland region, were:

- Te Rūnanga o Ngāi Tahu Freshwater Policy (applies to the whole of the Ngāi Tahu rohe which includes the Southland region in its entirety); and
- Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 - (Te Tangi a Te Taura - The Cry of The People).

[91] The first Plan reflects a holistic framework that seeks continuous improvement in water quality and quantity standards and includes objectives, policies and strategies on water management.

---

<sup>61</sup> pSWLP, Appendix B1 – Ngāi Tahu Statutory Acknowledgement Areas (under the heading “Nohoanga”).

<sup>62</sup> pSWLP, Appendix M, Taonga Species list.

<sup>63</sup> Ngāi Tahu Memorandum of Counsel, response to questions, paragraph 16.

<sup>64</sup> Section 32 Evaluation Report for pSWLP, Table 2.2.5(a) – Key issues concerning water quality and the outcomes sought by Ngāi Tahu, page 15.

The second Plan identifies key issues concerning water quality and the environmental outcomes sought by Ngāi Tahu whānau and hapū who are tangata whenua in the Southland region.

[92] The Section 32 Report also refers to a Charter of Understanding - He Huaraki ma Ngā Uri Whakatipu,<sup>65</sup> between the southern councils (including Environment Southland) and Ngāi Tahu ki Murihiku. The agreed common goal being the sustainable management of the region's environment and the social, cultural, economic and environmental wellbeing of the community, for now and into the future.

### ***The pSWLP***

[93] The Introduction<sup>66</sup> of the Plan states that the management of natural resources in the region is dealt with in a holistic way and that there is no specific or separate section that deals with tangata whenua matters.<sup>67</sup> Further, that tangata whenua themes and issues have been integrated through the Plan provisions to reinforce the Ngāi Tahu philosophy of ki uta ki tai.

[94] The Plan identifies<sup>68</sup> the principal elements and issues of interest to Ngāi Tahu to include:

- protection of the wairua and mauri of rivers, lakes, wetlands; and
- protection of wāhi tapu and other taonga; and
- avoiding adverse effects on mahinga kai and harvested aquatic species; and
- recognition of the special significance of particular rivers and lakes to Ngāi Tahu.

[95] Objectives 4 and 5 of the Plan identify that Ngāi Tahu values and interests are to be reflected in the management of freshwater and associated ecosystems; and for Ngāi Tahu to have access to mahinga kai resources, nohoanga and mataitai and taiapure.

[96] Policy 1 seeks to enable papatipu rūnanga to undertake kaitiaki responsibilities in freshwater and land management through the timely provision of information. Also, the identification of Ngāi Tahu values and interests and reflection of them in management and decision making in regard freshwater and freshwater ecosystems in Southland.

[97] Policy 2 requires that any assessment of an activity covered by the Plan must take into account any relevant iwi management plan and assess water quality and quantity using Ngāi Tahu indicators of health.

[98] Policy 3 seeks to manage activities that adversely affect taonga species (as listed in Appendix M of the Plan).

---

<sup>65</sup> pSWLP, 4<sup>th</sup> para, page 8.

<sup>66</sup> pSWLP, "Partnership between Environment Southland and Ngāi Tahu ki Murihiku", page 8.

<sup>67</sup> Paragraph 1, page 9 pSWLP.

<sup>68</sup> pSWLP, Introduction page 10, and issues page 16-19.

[99] We have assessed the consistency of the Plan and its effectiveness in achieving an integration of Ngāi Tahu cultural mores and aspirations.

[100] In Chapter 2 of this report we outlined the obligations placed on us by section 67 of the RMA. The requirement to give effect to the higher order instruments (including the NPSFM and the SRPS) means that the pSWLP must give full compliance to them<sup>69</sup> and positively implement them.<sup>70</sup>

#### ***NPSFM 2014***

[101] The NPSFM 2014 contains separate objectives and policies in respect of water quality, water quantity, integrated management and specific objective and policies addressing tangata whenua roles and interests.<sup>71</sup> There is also a preamble that is intended to recognise Te Mana o te Wai, the iwi and hapū kinship relationship with the natural environment and the obligations of kaitiaki to protect freshwater quality.

#### ***NPSFM 2014 as amended in 2017***

[102] As we noted in Chapter 3 of this report, the NPSFM was amended in August 2017 to include an expanded description of “Te Mana o te Wai” and how it relates to freshwater management. “Te Mana o te Wai” is now also included in the body of the NPSFM, in Part AA, rather than in the preamble.

[103] The NPSFM as amended requires that regional councils and their communities, including tangata whenua, work together to understand what values are held for fresh water, and that decisions about freshwater management should be made by putting health and well-being of the water at the forefront of their discussions. Part D, “Tangata Whenua roles and interests” remains unchanged, but is complemented by the express inclusion of “Te Mana o te Wai” as set out in Part AA.

[104] The pSLWP is subject to the NPSFM 2017 amendments and is required to give effect to those directions. Our assessment of the Plan provisions required consideration of the provisions for tangata whenua (among other provisions) and this is reflected in our recommendations.

#### ***Compliance with statutory requirements***

[105] The Te Rūnanga o Ngāi Tahu Act 1996 and the Ngāi Tahu Claims Settlement Act 1998 recognise that Ngāi Tahu are tangata whenua throughout Southland. That is particularly relevant in applying sections 6(e), 7(a) and 8 of the RMA; and also in giving effect to the SRPS. The tangata

---

<sup>69</sup> *GUS Properties v Blenheim Borough SC*, CHCH, M394/75, 24 May 1976.

<sup>70</sup> *Clevedon Cares v Manukau CC* [2010] NZEnv 211 [50].

<sup>71</sup> Objective D1 and Policy D1 (a, b and c).

whenua section of the SRPS identifies objectives and policies of importance to Ngāi Tahu in the management of natural resources, and integration of those interests through the balance of the SRPS.

- [106] Due to those Acts, and Environment Southland's duties to take into account planning documents recognised by an iwi authority, and to give effect to the SRPS, throughout this report we are influenced by the special status of Ngāi Tahu and acknowledge the importance of the objectives, policies and rules of the pSWLP in addressing issues identified in its introduction and issues sections.
- [107] Objectives 3 to 5 of the pSWLP enable Ngāi Tahu access to, and sustainable use of, commercial and non-commercial mahinga kai resources, nohoanga, mataitai and taiapure. The pSWLP's Ngāi Tahu Policies (1 to 3) enable Ngāi Tahu papatipu rūnanga to participate in and undertake a kaitiaki function in freshwater and land management in Southland. We find those provisions to be appropriate and consistent with the higher order instruments, and recognised iwi management plans. We reject submissions seeking to delete or 'water down' these important provisions.
- [108] We set out our recommendations on individual submission points on specific provisions in Appendix A of this report, including those made by Ngāi Tahu. We consider that our recommendations recognise and provide for the relationship of Māori and their culture and traditions with certain resources, having particular regard to kaitiakitanga, and taking into account the recognised iwi management plans.
- [109] We note that in their legal submissions to us Ngāi Tahu sought to ensure that the provisions of the Plan were not made more permissive. In response to our questions we understand that submission to relate more to the outcomes sought to be achieved by the Plan (namely the Region-wide Objectives and Policies) as opposed to the means of achieving them (such as the precise wording of particular rules or categories of consent for specific activities). Consequently, while we recommend amendments to a number of the notified rules (as discussed in subsequent chapters of this report), we do not consider that those amendments have resulted in the Plan becoming more permissive. Rather, we consider that the rules we recommend achieve the objectives of the Plan in a more appropriate manner than the notified versions.



## Chapter 5

### Scope for Amending the pSWLP

#### ***Introduction***

[110] Schedule 1 of the RMA provides that anyone may make a submission asking for amendment to the pSWLP and once a summary of those requested amendments is published eligible persons can make further submissions opposing or supporting requested amendments. The Council (or its delegate which in this case was the Panel) hears the submitters and comes to reasoned decisions on the requested amendments. The Schedule 1 process has two major benefits. It can lead to amendments that improve the effectiveness and efficiency of the pSWLP; and in fairness to those whose interests may be adversely affected, it allows for them to oppose requested amendments.

[111] In this chapter, we briefly discuss the scope of the Council's lawful authority to make decisions on submissions.

#### *Classes of questions on scope*

[112] We understand there are three classes on which questions of the Council's scope for decision-making may arise. The first is where the original submission does not indicate that a specific amendment to the Plan is being requested. The second is where an amendment being asked for by a submitter is not 'on' the Plan. The third is where an amendment being asked for is not within what was requested in an original submission. We now consider each of these classes.

#### *Requested amendments to be specific*

[113] Submissions can be stated in such general terms that it is not evident whether a specific amendment to the pSWLP is being asked for at all. If such a submission is included in the summary of decisions requested, as required by Schedule 1 clause 7, then people eligible to lodge further submissions would not necessarily be able to identify whether their interests can be advanced by making a further submission supporting or opposing it. Without such a submission being more specifically expressed, the Council may not be able to exercise its function of accepting or rejecting it, let alone giving coherent reasons for doing so.

#### *Amendments to be 'on' the pSWLP*

[114] We understand that it is well established law that a submitter's request must be 'on' the pSWLP. This means that a submission must reasonably fall within the ambit of the pSWLP. An indication of where this is not the case is when the matters addressed by the submission are not assessed in the section 32 report.

*Amendments to be within what was requested in submissions*

[115] Amendments being asked for in evidence or legal submissions must be within what was requested in an original submission. Whether an amendment goes beyond what is reasonably and fairly raised in submissions will usually be a question of degree to be judged by the terms of the pSWLP and the content of submissions. We understand that this should be approached in a realistic workable fashion rather than from the perspective of legal nicety, and requires that the whole relief package detailed in submissions be considered. We also understand that an amendment can be anywhere on the line between the provisions in the proposed Plan and the provisions sought by a submission. Consequential changes can flow upwards or downwards from whatever point on the first line is chosen.

***Specific submissions or amendments sought that are beyond scope***

[116] In Appendix A to this report we identify submission points that we consider to be beyond scope, either because they are stated in general terms or because they are not 'on' the pSWLP.

[117] For completeness, we record that we also consider on their merits and record in Appendix A to this report those amendments sought by submissions that we find are within scope.

## Chapter 6 Physiographic Zones

### **Background**

[118] The Section 42A Report summarised the rationale behind the use of physiographic zones as follows:

- (i) variation in landscape attributes govern variation in the processes that govern water composition and quality, and
- (ii) these processes are ubiquitous to all areas of the planet and all manner of land uses. Identifying and mapping the natural attributes of the environment that govern spatial variance in water composition and quality (in areas of intensive land use) is the basis of the physiographic zone approach.<sup>72</sup>

[119] As noted in Council's opening legal submissions, the physiographic zones differ in the way sediment, microbes (e.g. *E.coli*) and nutrients, such as nitrogen and phosphorus, accumulate and move through the soil, aquifers and into rivers.<sup>73</sup> Policies 4 to 12 of the Plan as notified described appropriate good management practices and primary contaminant transport mechanisms for each zone, together with whether or not new dairy farming or intensive winter grazing should occur therein.

### **Submissions**

[120] There were many submissions on the use of physiographic zones. Some submitters supported the zones, for example counsel for Dairy Holdings Limited advised "The [Section 42A] Report has outlined the scientific basis for the Physiographic Zones, which appears to be robust."<sup>74</sup> Mr McFarlane, the Beef and Lamb South Island environment extension manager stated:

"The physiographic zone information is valuable, and an excellent way to help farmers identify and manage transport pathways, and highly applicable at certain scales .... In my opinion physiographic zones are an excellent basis for informing a conversation with farmers, to help guide the development of farm environment plans and assist with the development of management options. However, I would see real value in some way of enabling physiographic zones to be updated and amended if farmer knowledge and ground-truthing shows something different to the physiographic maps."

[121] Other submitters questioned the science underpinning the physiographic zones, or requested that all references to physiographic zones be omitted from the Plan because in their view they were not accurate at a farm scale and were not verified on the ground. Others considered that having consent classifications based on the physiographic zones pre-empted the FMU limit setting process. Some individual submitters challenged the physiographic zones that had been

---

<sup>72</sup> Paragraph 3.87, pages 46 and 47.

<sup>73</sup> Paragraph 18, page 4.

<sup>74</sup> Legal submissions on behalf of Dairy Holdings Limited, 25 May 2017, paragraph 67.

identified for their properties, and either requested a review of the zones for their property or the establishment of a process by which the zoning could be reviewed in the future.

### **Assessment**

[122] Having carefully considered the technical evidence on this matter we agree with and adopt the Section 42A authors' advice that the science underpinning the physiographic zones has been through a robust and adequate analysis and external review process. We conclude that the underpinning science is fit for purpose at the scale at which the zones were developed, which we note was a regional scale.

[123] However, by the conclusion of the hearing the weight of evidence was that the physiographic zones were not always sufficiently accurate at a farm scale to enable them to be used in land use rules. In that regard, the Section 42A Reply Report stated:<sup>75</sup>

"In light of the issues raised by submitters, it has become apparent that the physiographic zones are not a suitable tool in and of themselves that are able to dictate the appropriate activity status in respect of farming land use activities at a property specific level, in particular parts of the Region. Therefore, the Council Officers are recommending changes to the rule framework so that the physiographic zones are not the basis to distinguish between the activity status of particular land uses across the region. Rather, the Officers are recommending that the physiographic zones be used as part of the material available to inform the resource consent process on a case-by-case basis. Accordingly, the maps delineating between different physiographic zones need not be inserted in the pSWLP ..."

[124] We accept the section 42A authors' advice and recommend that the physiographic zone maps be omitted from the Plan.

[125] We also recommend that the physiographic zones are not referenced in rules. Having said that, we note that some of the rules as notified prohibited activities in the Alpine Zone. Throughout the hearing that approach appeared uncontroversial. Accordingly, we recommend that references to the Alpine Zone be replaced by references to land above 800 metres above mean sea level, because the Alpine Zone was defined in the Section 32 Report as being land above that elevation.

[126] We are satisfied that physiographic zone-specific policies, such as Policies 9 Old Maitara and 11 Peat Wetlands, can appropriately direct that specific land use activities should generally not be allowed if they would result in an increase in contaminant losses to water. That policy approach is subtly, but importantly, different from the notified policy approach. Accordingly, we recommend that Policies 9(3) and 11(3) that referred to 'strongly discouraging' additional dairy farming or intensive winter grazing are amended to read:

---

<sup>75</sup> Proposed Southland Water and Land Plan, Officer's Reply for Council Reply Hearing, 03 November 2017, paragraphs 4.23 and 4.24.

decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the proposed activity

[127] Several submitters requested that the Policy 9(3) and Policy 11(3) restrictions relating to the Old Mataura and Peat Wetlands physiographic zones should also be applied in the Oxidising, Central Plains and Riverine zones. In that regard, the Section 32 Report advised<sup>76</sup> that “In addition to the Old Mataura and Peat Wetlands zones, the Oxidising, Central Plains and Riverine zones are [also] particularly susceptible to nutrient loss.” However, the pSWLP did not impose restrictions on additional dairying or intensive winter grazing in those latter zones due to concerns about ‘undermining the public acceptance’ of the Plan. We queried whether that was a relevant matter to consider when giving effect to Objectives A1 and A2 of the NPSFM. Counsel for Council advised that public acceptance was not a relevant consideration.<sup>77</sup>

[128] In the Section 42A Reply Report the authors recommended extending the restrictions on additional dairy farming or intensive winter grazing to the Oxidising, Central Plains and Riverine zones. In light of the Section 32 Report and its supporting technical documents, we find that recommendation to be appropriate and consider that the wording for Policies 9 (3) and 11(3) set out above should also be used for the Physiographic Zone Policies relating to the Central Plains, Oxidising, and Riverine physiographic zones. In making that finding we note that those policy provisions would not result in a prohibition on additional dairy farming or intensive winter grazing. Instead, consistent with the apparently widely accepted aim of the Plan to ‘hold the line’ on water quality, the policies would prompt decision-makers to avoid enabling specific farming activities that would lead to increased losses of contaminants in areas known to be particularly susceptible to nutrient loss. We consider that to be a prudent approach pending the development of FMU specific freshwater objectives and limits.

[129] The section 42A authors recommended that Policies 6, 7 and 8 be merged as the policy direction in each was identical. We agree that would be an improvement and we recommend accordingly.

[130] In terms of the issue raised by Mr McFarlane and of concern to numerous submitters, namely the physiographic zoning applying to individual properties, we note that the Section 42A authors recommended a new Policy 12A that would recognise the need to have regard to site specific information when undertaking activities, preparing FEMPs and assessing resource consent applications. We note that a new policy along those lines was supported by several primary sector groups including Beef and Lamb.<sup>78</sup>

---

<sup>76</sup> Section 32 Report, section 6.3.6, page 110.

<sup>77</sup> Proposed Southland Water and Land Plan, First set of Responses to Questions of Hearing Commissioners on Council s42A Report, paragraph 7.445, page 30.

<sup>78</sup> Evidence of Corina Jordan, paragraph 50, page 23.

[131] Consequently, and notwithstanding the fact that we consider that the pSWLP rules should not refer to the physiographic zones, we find that recommended new Policy 12A would be a helpful improvement to the Plan, but we suggest it be worded more explicitly as follows:

**Policy 12A – Improved physiographic zone information**

Where site specific information is available that better identifies or delineates the relevant physiographic zones or contaminant loss pathways for a landholding or site, that information must be taken into account when undertaking activities, preparing Farm Environmental Management Plans, or when determining resource consent applications for that landholding or site.

[132] We heard from several submitters that land classified as ‘Peat Wetlands’ on their properties was not actually wetland, but was pasture. That illustrates to us that the name of that particular zone is potentially misleading, and we suggest that Council considers renaming that zone in the future.

[133] Finally, we note that the use of the physiographic zones in the Plan now does not preclude different geographic distinctions being used in Plan provisions developed under the subsequent FMU freshwater objectives and limit setting process.

[134] Proportionate to the scale and significance of the pSWLP’s provisions relating to physiographic zones, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to retain the use of those zones or not; and we have identified that the continued use of the zones in policies that refer to avoiding adverse effects is reasonably practicable; and have consequently assessed that retaining them in the pSWLP for that purpose would more fully serve the provisions of the Act and its subordinate instruments than not retaining them.

## Chapter 7 Objectives

### **Background**

[135] The pSWLP as notified contained eighteen objectives. In answer to our questions, the section 42A authors confirmed that the process set out in Policy CA2 of the NPSFM (identifying values, attributes and assigning an attribute state or limit to formulate a freshwater objective) had not been followed for Objectives 1 to 18 of the pSWLP. Consequently, those objectives are not freshwater objectives as defined in the NPSFM. NPSFM compliant freshwater objectives will be developed as part of the Council's FMU process in accordance with its Progressive Implementation Programme.<sup>79</sup> We recommend a note to that effect is inserted in the Plan prior to Objective 1.

[136] In terms of assessing the submissions on the pSWLP objectives, our task is to examine the extent to which the objectives are the most appropriate way to achieve the purpose of the RMA<sup>80</sup> (along with meeting the other statutory tests discussed in Chapters 2 and 3 of this report). As was discussed in Chapter 2 of this report, the well-known purpose of the RMA is to promote the sustainable management of natural and physical resources.

### **Submissions**

[137] There were many submissions on the notified objectives. These were assessed in both the initial Section 42A Report and the Section 42A Reply Report and the authors recommended a wide range of amendments. We adopt those recommendations and the reasons for them as set out in the section 42A reports, other than as discussed below, where we also expand on several important matters. Our decisions in respect of particular submission points on the objectives are set out in Appendix A to this report.

### **Assessment**

[138] Objective 6 as notified required that there be no reduction in the quality of freshwater. Several submitters considered that to be an unachievable objective. We agree. For example, if a discharge does not breach the Appendix E water quality standards after reasonable mixing it may nevertheless result in an albeit minor reduction in existing water quality. We consider that Objective 6 should instead refer to "... overall water quality ..." as was sought by several submitters including Fonterra, the Alliance Group Limited and the region's territorial authorities amongst others. We find that gives better effect to NPSFM Objective A2, which as amended in

---

<sup>79</sup> Proposed Southland Water and Land Plan, First set of Responses to Questions of Hearing Commissioners on Council s42A Report, page 5.

<sup>80</sup> Section 32(1)(a) of the RMA.

2017 now refers to “the overall quality of freshwater within a freshwater management unit ...”. We favour that approach, notwithstanding that the objectives and policies of Chapter 4 of the SRPS do not refer to “overall water quality”, noting the NPSFM to be the superior document.

- [139] We also accept the submissions from Fonterra and FANZ, amongst others, that Objectives 7 and 8 should be amended to clarify that NPSFM compliant freshwater objectives are yet to be developed and the concepts of degradation and over-allocation cannot have a full and proper meaning until NPSFM compliant freshwater objectives have been established for Southland’s Freshwater Management Units. We recommend amendments to Objectives 7 and 8 accordingly. However, we do not consider that Objective 6 needs to refer to the Council’s future FMU process or to ‘over allocation’ as was sought by some submitters. Objective 6 is an aspirational objective that, subject to the recommended amendment we discussed in the preceding paragraph, is clear upon its plain reading as notified.
- [140] Reflecting on the submissions of Ravensdown and Fish and Game, we also recommend that Objective 8 is amended to clarify that groundwater not meeting the outcomes specified in Objective 8(a) because of the effects of land use or discharge activities is to be progressively improved to meet both the NZDWS and any freshwater objectives and freshwater quality limits established under the Freshwater Management Unit processes.
- [141] A number of submitters; including Transpower, NZTA and the region’s territorial authorities; submitted that the pSWLP’s lack of an objective enabling infrastructure did not give appropriate effect to the purpose of the RMA, the NPSREG, the NPSET and the Southland RPS. We agree. We recommend a new Objective 9B specifying that the effective development, operation, maintenance and upgrading of Southland’s regionally significant, nationally significant and critical infrastructure is provided for. We consider that new Objective 9B gives effect to Objectives A4 and B5 of the NPSFM by better enabling communities to provide for their economic well-being, including productive economic opportunities.
- [142] As a consequential amendment, we recommend new Policy 26A that will assist with achieving the new Objective 9B. The pSWLP would be less effective in achieving the new objective in the absence of such a policy.
- [143] Objective 10 as notified addressed the Manapōuri Power Scheme (MPS) in the Waiau catchment. Meridian Energy submitted that Objective 10 should be amended to recognise that the MPS forms part of the existing environment. We agree that the MPS structures form part of the existing environment and we recommend an amendment to Objective 10 to recognise that fact. We consider that gives better effect to the NPSREG and the Southland RPS. In making that recommendation we record that we do not find it appropriate to refer to the MPS takes and



discharges in Objective 10 as forming a part of the existing environment, noting that those activities will be revisited when replacement consents for the MPS are determined in 2031.

[144] We consider that Objective 16 should be amended to include restrictions on public access where significant indigenous biodiversity values are at risk, as was sought by the Director General of Conservation amongst others. The objective, when amended in that manner, will give better effect to section 6(c) of the RMA and Objective BRL2 of the Southland RPS.

[145] Proportionate to the scale and significance of the pSWLP's objectives, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make the further amendments to the objectives of the Plan as outlined above or not; and we have identified that making those amendments would more appropriately achieve the purpose of the RMA.

## Chapter 8

### Farming

#### **Background**

[146] The pSWLP as notified addressed farming land use activities under Policy 16 and Rules 20 to 25 and 70. We note that other policies and rules deal with discrete discharge activities that may occur on farms. However, our focus here is on the more general provisions applying to farming, in particular Policy 16 and Rule 20 and the reasons for them. We deal with Rules 21 to 25 and 70, and the specific activities they regulate, in other chapters of this report. We address the proposed Independently Audited Self-Management (IASM) scheme in Chapter 19 of this report.

[147] The Section 42A Report stated:<sup>81</sup>

“Non-point source agricultural inputs, such as leaching and runoff, are the main source of nutrient contaminants in Southland’s rivers. Monitoring shows that some of the main stem of the Mataura and Aparima River and several lowland tributaries of the Oreti and Aparima rivers do not meet national bottom lines in the NPSFM for benthic periphyton. Results also show that most lowland streams do not meet the RWP or pSWLP standards for macro-invertebrates, and that Total Nitrogen and nitrate concentrations are increasing in areas where nitrogen concentrations are already high.”

“In my opinion, the science and policy behind focussing on what are the greatest contributors to diffuse nutrient contamination of Southland’s water – dairy farming and intensive winter grazing – is sound. This is backed up by a range of both national level and Southland-specific analysis.”

[148] We understand that Council considers agricultural land use to be a significant contributor to Southland’s declining water quality and accordingly regulatory controls are required.

[149] Water quality trends were addressed by several water quality experts including Mr Hodson, Mr Kitto, Mr Heller and Dr Kitson. We have carefully reviewed the evidence of those experts. We find, as was summarised by Mr Hodson in the Section 42A Report,<sup>82</sup> that it is incontrovertible that over the period 2000 to 2016 water quality declined in the region’s river, lakes and estuaries. Amongst other things, this has led to elevated microbial contamination in lowland rivers and streams resulting in a significant increase in the risk to human health; an increase in nitrate nitrite nitrogen levels in the main stem and some tributaries of the Waiau, Ōreti, Mataura and Pourakino Rivers; nuisance growths of benthic periphyton in the lower Mataura and Aparima Rivers and several other lowland streams; macroinvertebrate community health standards not being met at 20% of monitored sites; and approximately 20% of managed aquifers posing a potential risk to ecosystem health in hydraulically connected surface water bodies. In addition, a small percentage of monitored groundwater wells have nitrate nitrogen

---

<sup>81</sup> Paragraph 3.11 and paragraph 7.545.

<sup>82</sup> Section 3.10.

concentrations in excess of drinking water standards. We note that Mr Hodson reaffirmed these water quality conclusions in the Section 42A Reply Report.<sup>83</sup>

- [150] Some of the experts were of the view that water quality had improved, or had at least become stable, in recent years. On that matter we prefer the evidence of Dr Kitson and Mr Hodson which is that conclusions based on the premise of ‘stable trend’ or ‘no trends’ in recent water quality data should be disregarded and that the dominant conclusion for trend tests for the recent five-year period is that they are indeterminate. We agree that the large proportion of indeterminate test results over that recent period suggests that more data (i.e. a longer time period) would be more likely to provide a confident determination of trend direction.<sup>84</sup>
- [151] However, we do not wish to dwell on these technical matters because the pSWLP does not set water quality limits or targets in terms of the NPSFM. That will occur through the pending FMU processes. All the pSWLP does regarding water quality standards is, by way of Appendix E, roll over the antecedent receiving environment standards from the RWP. In that regard, we agree with the advice of Mr Hodson and stress the importance of remembering that the Appendix E standards are intended to be applied to discharges following reasonable mixing and not as standards for broader State of Environment classification and reporting purposes.<sup>85</sup>
- [152] On the evidence we find that the predominant cause of the decline in water quality in the Southland region is agricultural land use. We note that a number of individual farmer submitters shared that view. For example, Jonathan and Sarah Crooks stated that “... some land use activities or people’s behaviours in Southland are certainly accelerating water quality degradation and that some activities should require consent to operate”.
- [153] Accordingly, we accept that it is appropriate to more closely manage farming activities. Having said that, we acknowledge that stormwater and wastewater discharges from urban areas also contribute to water quality degradation and those discharges also need to be prudently managed. We deal with those discharges in Chapter 12 of this report.
- [154] The Section 42A Report stated that the pSWLP as notified managed farming according to both the physiographic zone within which the activity is located and the type of activity, allowing different controls to be imposed within different zones, based on how susceptible each zone was to nutrient losses. It also allowed less restrictive controls to be imposed on lower risk activities and increased scrutiny to be placed on higher risk activities.<sup>86</sup> Importantly, the report advised that the farming policies and rules, when applied in conjunction with the other rules of

---

<sup>83</sup> Appendix A – State and Trend, page 124.

<sup>84</sup> Dr Kitson, Response to Clarification of Evidence of Mr Heller, Dated 5 October 2017 On Behalf of Federated Farmers of New Zealand Incorporated (Southland Provincial District), 17 October 2017; and Section 42A Reply Report Appendix A.

<sup>85</sup> Section 42A Reply Report, Appendix E – Appendix E Changes, page 162.

<sup>86</sup> Paragraph 7.352, page 230.

the pSWLP, were intended to halt any further decline in water quality in Southland until the FMU processes take effect.<sup>87</sup> As we have noted previously, that approach has been colloquially referred to as 'holding the line' and received wide spread support from submitters.

[155] We observe that the pSWLP strongly encourages the adoption of 'good management practices' on farms to minimise the loss of contaminants including nitrogen, phosphorous, sediment and faecal bacteria to the wider receiving environment. The Plan consequently, in many instances, requires the preparation and implementation of Farm Environmental Management Plans (FEMPs). Often farming activities can continue without resource consent provided a FEMP is prepared and implemented within certain timeframes, and where resource consent is required, a less restrictive activity status applies where a FEMP is prepared and implemented.<sup>88</sup>

[156] The Section 32 Report stated that the pSWLP objectives most relevant to farming, in terms of managing nutrient losses, were Objectives 1, 2, 6, 8, 13 and 18 of the Plan. We agree that those are the relevant objectives.

### ***Submissions***

[157] There were many submissions both in support of and in opposition to Policy 16, Rule 20 and other rules requiring FEMPs as a condition of remaining a permitted activity. Some individual farmer submitters appeared to resent being required to prepare a FEMP at all, considering it to be an intrusion on their rights to manage their farm as they saw fit. Other submitters; particularly those who had already prepared Environment Southland 'Focus Activity Farm Plans' or Beef and Lamb 'Land and Environment Plans'; considered the preparation of FEMPs to be beneficial, but they objected to having activities covered by the FEMP also requiring a resource consent. They saw this as a form of unnecessary 'double dipping'.

[158] Some institutional submitters, including for example Beef and Lamb, strongly supported FEMPs, noting that they offered a way to tailor mitigations and good management practice to the unique set of circumstances for each farm considering a range of variables such as climate, soil, topography and stock class.<sup>89</sup> We discuss the detail of Appendix N, which sets out the content of FEMPs, in Chapter 18 of this report.

[159] Some submitters opposed the way in which Rule 20 as notified established FEMP preparation compliance dates based on physiographic zones.

---

<sup>87</sup> Paragraph 7.353, page 230.

<sup>88</sup> Section 42A Report, paragraph 7.354, page 230.

<sup>89</sup> Evidence of T McFarlane, Page 5.

## **Assessment**

- [160] The Section 42A Report noted that Policy 16 was carefully crafted to ensure that farming activities did not continue to contribute to the decline of water quality in the Southland Region, consistent with the requirement of higher-order instruments such as the NPSFM.
- [161] The section 42A authors comprehensively assessed the submissions on Policy 16.<sup>90</sup> We generally agree with and adopt that assessment except as discussed below. In particular, we recommend rejecting submissions that oppose the preparation and implementation of FEMPs. We understand that the use of FEMPs is a well-proven approach nationally and FEMPs (of one form or another) are used extensively and successfully in many other regions including the Waikato, Manawatu-Wanganui, Hawke's Bay and Canterbury. The preparation of a FEMP is an excellent means of documenting good management practice specific to individual farms.
- [162] We consider that Policy 16 should be amended to better reflect the 'holding the line' approach to water quality that underpins the Plan. Some submitters, including Dairy NZ and Fonterra, made helpful suggestions in that regard, clarifying that the policy and rule framework was 'interim' until freshwater objectives are developed under the FMU process. We note that the Section 42A Reply Report endorsed those submitters' sentiments and recommended further amendments accordingly. We have generally adopted those amendments subject to some minor wording improvements.
- [163] Specifically, we consider that Policy 16(1) should be expanded to include guidance to decision-makers regarding applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities once FMU based freshwater objectives have been set. Such applications should not generally be granted where freshwater objectives are not currently being met and, where those objectives are being met, applications should only be granted if overall water quality will be maintained. We recommend a new Policy 16(1)(c) accordingly.
- [164] We also recommend that the phrase in Policy 16(1)(b) "... is already degraded to the point of being overallocated ..." is augmented by a new Policy 16(1)(c) that more directly relates to the water quality standards currently contained in Appendices C and E of the Plan.
- [165] Some submitters were concerned that if they required a resource consent for intensive winter grazing or cultivation, then they would have to apply for multiple consents or for a new consent every year. We do not consider such an outcome would be consistent with Objective A4 of the NPSFM. We recommend a new Policy 16(3), which amongst other things, provides for multiple farming activities to be covered by one consent and for such consents to be generally granted

---

<sup>90</sup> Section 42A report, paragraphs 7.402 to 7.425, pages 236 to 244.

for at least five years. We note that a five-year consent duration was often preferred by submitters whom we queried about that matter.

[166] Regarding Rule 20, the initial Section 42A Report noted that for those farms occupying multiple physiographic zones, the approach in Rule 20 as notified was overly complex. The authors recommended amending Rule 20 so that FEMPs would be staged by FMU, with timeframes aligned with FMU processes and commencing after the pSWLP is expected to be operative. The Section 42A Reply Report recommended an even more simplified approach whereby all FEMPs would be required by 1 May 2019. We adopt that latter recommendation for the reasons set out by the section 42A authors, noting that in our view that timeframe is sufficient for FEMPs to be prepared, particularly given the strong industry sector support for preparing them that was conveyed to us during the hearing. We also understand that both Council and industry sector groups will be able to prepare 'templates' to assist with FEMP preparation.

[167] Regarding the issue of farms requiring both a FEMP and a resource consent for certain activities, we note and agree with the view of the section 42A authors<sup>91</sup> that a FEMP is not a resource consent to farm. For lower risk farming activities, the FEMP does not require Council review or approval, while for higher risk farming activities, it does as part of a resource consent application. That allows Council involvement to be balanced according to environmental risk. Should a farmer not wish to prepare an FEMP, that is provided for, with a generally more restrictive activity classification. We find that approach to be appropriate.

[168] We discuss the land use rules affecting farming activities further in Chapters 9 to 13 of this report.

[169] Proportionate to the scale and significance of the pSWLP's general provisions dealing with farming activities, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make the further amendments outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would more fully serve the provisions of the Act and subordinate instruments than not making them, including the extent of additional opportunities for economic growth and employment.

---

<sup>91</sup> Ibid, paragraph 7.488, pages 255 and 256.

## Chapter 9 Dairy Farming

### **Background**

[170] The relevant pSWLP objectives are those applying to farming generally, namely Objectives 1, 2, 6, 8, 13 and 18 of the Plan.

[171] The pSWLP as notified prohibited the use of land for the dairy farming of cows in the Alpine Physiographic Zone and strongly discouraged the granting of resource consents for the additional use of land for the dairy farming of cows in the Old Matura and Peat Wetlands physiographic zones.<sup>92</sup> In addition, new dairy farming in close proximity to sensitive waterbodies listed in Appendix Q was strongly discouraged, as was new or further intensified dairy farming of cows where the adverse effects on waterbodies could not be fully mitigated.<sup>93</sup> This policy direction was given effect to by Rules 21 and 22.

[172] The net effect of Rules 21 and 22 was that the existing use of land for the dairy farming of cows was a permitted activity subject to conditions including limitations on intensification and the requirement for a FEMP or IASM membership. New or expanded dairy farming was a non-complying activity in the Old Matura and Peat Wetlands physiographic zones and a discretionary activity elsewhere, other than in the Alpine Physiographic Zone where it was a prohibited activity.

[173] We understand that under the antecedent RWP dairy conversions are a discretionary activity.

### **Submissions**

[174] The pSWLP provisions addressing dairy farming attracted many submissions, mostly in opposition. Submitters appearing before us often considered the provisions to be unfair, inequitable, having a detrimental effect on land and property values in the affected physiographic zones, or that they were not necessary given recent water quality trend information.

### **Assessment**

[175] The Section 32 Report noted that information on the effects of contaminant discharges from dairy farming was both certain and sufficient to warrant regulatory intervention.<sup>94</sup> We discussed the decline in Southland's water quality and water quality trends in Chapter 8 of this report. On the evidence we find that the predominant cause of the decline in water quality in the Southland

---

<sup>92</sup> Polices 4, 9 and 11.

<sup>93</sup> Policy 16.

<sup>94</sup> Section 6.3.7

Region is land use intensification primarily associated with the dairy industry. In that regard, we note that counsel for Fonterra submitted:<sup>95</sup>

“... like many regions, water quality in the Southland Region is under pressure from a range of activities, including in particular from agricultural intensification.”

- [176] Accordingly, we accept that it is appropriate to closely manage the dairy farming of cows.
- [177] The Section 42A Reply Report recommended merging Rules 20 to 23 dealing with farming, existing and new or expanded farming of dairy cows, and intensive winter grazing. We find that to be an improved and more integrated approach. We discuss dairy farming in this chapter of this report and intensive winter grazing in Chapter 10.
- [178] As is now recommended, dairy farming would be authorised by Rules 20(a)(ii), 20(c) and 20(d). Under Rule 20(a) it will be permitted if it was established prior to June 2016, there has been no increase cow numbers or size of the dairy platform since that time, and a FEMP is prepared by May 2019. We find that to be appropriate and consistent with the ‘holding the line’ approach for water quality discussed earlier in this report. We also note that such an approach for existing dairy farming was strongly supported by several industry representative submitters, including Dairy NZ and Fonterra.
- [179] New or expanded dairy farming will be a restricted discretionary activity under Rule 20(c), subject to a strict caveat that nitrogen, phosphorus, sediment and microbiological contaminants discharged annually from a landholding can be no greater than that which was discharged annually on average over the previous five years. Again, we find that to be appropriate and consistent with a ‘holding the line’ approach for water quality.
- [180] We also note that, importantly, in combination with Policies 4 to 12 as we now recommend they are worded, Rule 20(c) means that new or expanded dairy farming will be not be precluded if it can operate in a way that ensures no increase in contaminant losses in areas susceptible to such losses. Numerous submitters, both lay and expert, informed us that such an outcome was achievable. We consider the approach now recommended gives effect to Objectives A1, A2 and A4 of the NPSFM insofar as overall water quality will be maintained, whilst allowing the economic opportunities associated with new or expanded dairy farming to be realised.
- [181] The less restrictive regulatory regime we now recommend addresses the concerns of many submitters regarding the perceived ‘unfairness’ or inequity of the notified provisions (insofar as they affected land values or precluded economic opportunities for landowners who had not converted to dairy farming but who might wish to in the future), whilst still allowing the purpose of the RMA and the objectives of the Plan to be met.

---

<sup>95</sup> Legal Submissions for Fonterra Co-Operative Group Limited in Respect of Submissions on Proposed Plan (29 August 2017), Paragraph 1.2.



[182] Proportionate to the scale and significance of the pSWLP's provisions dealing with the use of land for the dairy farming of cows, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make the further amendments outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would better achieve the objectives of the Plan and more fully serve the provisions of the Act and its subordinate instruments than not making them, including the extent of additional opportunities for economic growth and employment.

## Chapter 10 Intensive Winter Grazing

### ***Background***

[183] The Section 42A Report noted that due to low pasture growth during winter months and large areas of poorly drained soils, intensive winter grazing formed an integral part of pasture based livestock systems in Southland. The evidence we heard from many farmer submitters reinforced that fact. Intensive winter grazing typically involves relatively high stocking rates and either significant or total de-vegetation of the paddock where the grazing takes place. This can result in significant amounts of contaminants, particularly sediment, entering surface water bodies, primarily as a result of overland flow.<sup>96</sup>

[184] In the notified pSWLP intensive winter grazing was dealt with in Rule 23. The relevant pSWLP objectives are those applying to farming generally, namely Objectives 1, 2, 6, 8, 13 and 18 of the Plan.

### ***Submissions***

[185] There were many submissions on Rule 23, the vast majority of them in opposition. The main issues of concern included the Glossary definition of 'intensive winter grazing', the permitted activity area thresholds applying in different physiographic zones, the need to gain a resource consent to utilise areas exceeding the permitted activity thresholds, and setbacks required from surface water bodies.

### ***Assessment***

[186] As we have observed, the Section 42A Reply Report recommended merging Rule 23 as notified with Rules 20, 21 and 22 and we consider that to be appropriate.

[187] The Section 42A Report recommended that the Glossary definition of 'intensive winter grazing' be amended to exclude pasture and cereal crops because a forage crop paddock is generally completely de-vegetated after grazing whereas that is not typically the case for cereal crops or pasture. The residual vegetation remaining after cereal crops and pasture are grazed reduces the potential for contaminant loss.<sup>97</sup> We agree, and based on the evidence we heard from submitters, we conclude that the definition of intensive winter grazing should more clearly relate to forage crops, including brassicas, beet and root vegetable crops, while excluding pasture and cereal crops.

---

<sup>96</sup> Initial Section 42A Report, paragraph 7.573, page 277.

<sup>97</sup> Paragraph 7.580, page 279.

[188] The notified 20 hectare and 50 hectare physiographic zone specific permitted activity thresholds for intensive winter grazing were the focus of much opposition from submitters. Following an assessment of the issues raised, the section 42A authors recommended that the notified thresholds be replaced by a single threshold applying across all physiographic zones that would allow up to 15% of the area of a landholding, or 100 hectares, whichever is the lesser, to be grazed. The authors advised:<sup>98</sup>

“Officers consider this to be a measured response to the potentially significant issue of contaminant loss from intensive winter grazing practices, particularly intensive winter grazing practices that are poorly managed .... An upper limit is considered appropriate, as a large area of intensive winter grazing, potentially in a catchment already suffering water quality issues, or in a location that has higher risk, ought to be managed through a resource consent process to ensure the pSWLP outcomes will still be achieved....”

[189] The section 42A authors advised that the recommended approach outlined above would capture 534 properties whereas the notified provisions would have captured 308 properties.

[190] We note that the aim of a permitted activity threshold is to capture, through a consenting process, activities that have the potential to generate adverse effects if not appropriately managed. Having regard to the submissions received and the evidence presented, we agree that a threshold comprising a flat percentage of a landholding would be clear, fair and simple to implement and a more effective means of achieving the objectives of the Plan. We also agree that an upper limit (or cap) on the area of land able to be used for intensive winter grazing as permitted activity should be imposed. Based on the evidence we heard from submitters regarding their typical areas of winter crop, we accept that a 100 hectare upper cap on the area of intensive winter grazing allowed to occur as a permitted activity before a resource consent is required is both practicable and appropriate for Southland.

[191] Rule 23(b)(viii) as notified required a range of slope dependent setbacks from surface water bodies, as did Rule 20(a)(iii) as recommended in the Section 42A Reply Report. We acknowledge that the provision of vegetated setbacks from rivers and streams, within which intensive winter grazing does not occur, can effectively trap sediment lost from the grazed land and minimise the amount of sediment entering the surface water body. There seemed to be no dispute about that.

[192] However, because of the difficulty of consistently measuring and interpreting land slopes in paddocks adjacent to water bodies, the majority of the Panel do not consider a requirement for variable setbacks based on land slope to be either reasonably practicable or appropriate. Our extensive site visit confirmed the fact that land slopes adjacent to rivers and streams can vary

---

<sup>98</sup> Section 42A Reply Report, paragraphs 4.181 and 4.182.

widely within short distances within a single paddock. The majority of the Panel conclude that a different approach is required.<sup>99</sup>

- [193] As notified, apart from the setbacks discussed above, Rule 23 did not contain any specific or explicit requirement to implement particular ‘good management practices’ for intensive winter grazing.<sup>100</sup> Some submitters, including Federated Farmers of NZ and the Lower Aparima Catchment Group (LACG) amongst others, suggested that ‘good management practices’ should be articulated and included in the Plan so that farmers could clearly understand what was required of them. The LACG believed that a significant proportion of farmers and land users were not following ‘good management practices’ and that represented ‘low hanging fruit’ in terms of improving water quality. We find those arguments to be persuasive. We consider that a small number of accepted ‘good management practices’ can be clearly expressed in language that will be readily understood and consistently implemented by farmers and their contractors. We have found guidance for appropriate wording in the submissions, Council’s own published Factsheets titled “Preparing for Winter” and “Critical Source Areas”, and the advisory documents produced by other agencies including DairyNZ.
- [194] Accordingly, as was recommended by the Section 42A Reply Report authors, we consider that Rule 20(a)(iii) (former Rule 23) should be amended to require adherence to ‘good management practices’ relating to grazing stock down a slope (as opposed to up the slope), back fencing grazed areas for cattle, providing transportable water troughs so that stock do not need to access natural surface water bodies, placing supplementary feed in portable feeders, grazing swales (critical source areas) last and limiting the mob size of cattle and deer being fed. The written and visual evidence from submitters illustrated to us that many of Southland’s farmers already implement these desirable practices.
- [195] We contemplated the inclusion of a ‘good management practice’ targeting nitrogen loss. However, we concur with the verbal evidence of Richard Kyte, the Southland Regional Leader for DairyNZ, that any such practices would involve farming system change or the provision of costly infrastructure and such matters are best addressed through Council’s pending FMU processes.
- [196] In terms of managing the potential adverse effects of sediment runoff from intensive winter grazing on surface water bodies, the majority of the Panel conclude that a uniform 5 metre setback from water bodies is sufficient if the above listed ‘good management practices’ are implemented.

---

<sup>99</sup> Commissioner Rodway prefers the approach to setbacks recommended in the Section 42A Reply Report for the reasons therein.

<sup>100</sup> Condition (b)(i) did require a FEMP to be prepared and implemented.

- [197] We say that because the evidence was that increasing a setback from 5 metres to 10 metres would only increase the predicted sediment removal efficiency by around 10%.<sup>101</sup> We do not consider that small gain in sediment removal efficiency justifies removing additional land from production.
- [198] However, we consider a different approach is required if the ‘good management practices’ are not implemented. In that case we conclude a 20 metre setback is required. The reason being that the evidence was that the predicted removal efficiency for sediment, and other contaminants of concern including nitrogen and phosphorus, was optimised at a setback width of 20 metres.<sup>102</sup>
- [199] On that basis, we find there is no need to make provision for intensive winter grazing within the setbacks as a controlled activity, as was recommended to us in the initial Section 42A Report.<sup>103</sup>
- [200] Some submitters raised the issue of section 70 of the RMA. That section requires us to be satisfied that a permitted activity rule authorising discharges of contaminants will not give rise to a specified range of adverse effects on water quality. We consider that can be addressed by including in Rule 24 (which permits the discharge of contaminants from activities authorised under the Plan’s land use rules for farming activities) a new condition that addresses the RMA section 70 matters. We note that clause 26 of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, which is a permitted activity rule for sediment originating from earthworks, takes a similar approach.
- [201] In Chapter 6 we concluded that the physiographic zones should not be referred to in the pSWLP rules. Accordingly, we recommend that all references to physiographic zones are omitted from Rule 20(a)(iii). However, we recommend for the sake of consistency that the notified prohibition on intensive winter grazing in the Alpine physiographic zone is amended to refer to land with an elevation greater than 800 metres above mean sea level.
- [202] Intensive winter grazing activities that cannot meet the permitted activity conditions will now be considered as restricted discretionary activities under recommended new Rule 20(c). We find that to be appropriate as there may be instances where Council wishes to decline applications for such activities. However, we consider that a prerequisite for any such application should be that the land in question is covered by a FEMP. This will give assurance to the decision-makers that management of the proposed intensive winter grazing has been robustly considered.

---

<sup>101</sup> Memorandum from Roger Hodson to the Independent Hearing Panel for the Proposed Southland Water and Land Plan, 12 July 2017 and the paper attached to that Memorandum: Review of Vegetated Buffers and a Meta-analysis of Their Mitigation Efficacy in Reducing Nonpoint Source Pollution, Xuyang Zhang, Xingmei Liu, Minghua Zhang, and Randy A. Dahlgren University of California–Davis Melissa, Eitzel University of California–Berkeley, January 2010, Table 4, page 82.

<sup>102</sup> Ibid.

<sup>103</sup> Recommended Rule 23 (b1).

[203] The final wording we recommend is contained in Appendix B1 and B2 to this Report.

[204] Proportionate to the scale and significance of the pSWLP's general provisions dealing with intensive winter grazing, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make the further amendments outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would more fully serve the provisions of the Act and its subordinate instruments than not making them, including the extent of additional opportunities for economic growth and employment.

## Chapter 11 Cultivation

### **Background**

- [205] The Section 32 Report noted that the pSWLP manages cultivation on sloping ground primarily through setbacks from waterways, with setback distances increasing with increasing slope. The aim is to prevent soil loss into waterways as this has benefits for soil conservation, water quality, and near-stream habitats and ecosystems.<sup>104</sup> We understand that the primary purpose of the management regime is the maintenance or improvement of surface water quality.
- [206] The Section 32 Report noted that although cultivation was not explicitly regulated under the antecedent RWP, that earlier plan required that intensive winter grazing did not occur within 3 metres of a water body, creating a 'pseudo cultivation setback' for fodder crops.<sup>105</sup> The report also stated that the pSWLP cultivation provisions (primarily Policy 16 and Rule 25) assisted with achieving Objectives 1, 2, 6, 13, 14, 17 and 18 of the pSWLP. We agree that those are the relevant objectives.

### **Submissions**

- [207] There were many submissions both in support of and in opposition to the notified cultivation provisions. The main opposition related to the imposed setbacks from water bodies and restrictions on the cultivation of land with a slope greater than 20 degrees, or at an elevation greater than 700 metres above mean sea level, particularly for areas that had been cultivated previously. The concern with the setbacks was that their imposition would remove large areas of land from productive use, and create areas infested with weeds such as broom and gorse. Some submitters were opposed to the restrictions on cultivation applying to low impact activities such as herbicide spraying followed by over sowing (colloquially referred to as 'spray and pray') and minimum tillage techniques (direct drilling). Concern was also expressed about the practical ability to measure slope in the field, and the fact that the slope of land adjacent to a stream often varies widely within a single paddock.
- [208] The Section 42A Reply Report recommended several amendments to the notified provisions, including simplification of the setbacks and allowing any form of cultivation on slopes up to 20 degrees as a permitted activity. The authors recommended that the setbacks from water bodies be 3 metres for land with a slope of less than 7 degrees and 20 metres for land steeper than that. Non-compliance with the setbacks was recommended to be a permitted activity subject to conditions, including a minimum setback of 3 metres and restricting the cultivation to that required for pasture renewal or pasture establishment.

---

<sup>104</sup> Section 6.1.1, page 50.

<sup>105</sup> Section 6.1.4.2, page 52.

[209] Regarding the variation of slope within a paddock, the initial Section 42A Report authors recommended that the slope should be the average slope and that up to 5% of the cultivation area could exceed that average slope. That recommendation was not maintained in the Section 42A Reply Report and we agree its implementation would have been problematic and lacking certainty.

### **Assessment**

[210] We heard a great deal of evidence on these matters from submitters.

[211] We are satisfied that no further amendments to Policy 16 are necessary over and above those we discussed in Chapter 8 of this report.

[212] Turning to Rule 25, we agree with the section 42A authors that the risk of soil erosion under cultivation generally increases with increasing land slope. There seemed to be no dispute about that. As discussed in Chapter 10 of this decision report, we also acknowledge that the provision of vegetated setbacks from rivers and streams, within which cultivation does not occur, can effectively trap sediment lost from the cultivated land and minimise the amount of sediment entering the surface water body.

[213] However, as we noted in Chapter 10, because of the difficulty in consistently measuring and interpreting land slopes in paddocks adjacent to water bodies, the majority of the Panel do not consider a requirement for variable setbacks based on land slope to be either reasonably practicable or appropriate.<sup>106</sup> We were also reminded by many submitters that overly wide setbacks take valuable land out of production. For example, the LACG advised us that for every kilometre of waterway an increased setback of 2 metres would equate to 0.2 hectares of land. On that same basis a 20 metre setback would equate to 2.0 hectares of land per kilometre of stream. As with intensive winter grazing, the majority of the Panel conclude that a uniform 5 metre setback from water bodies is sufficient for areas being cultivated.

[214] Having reached that conclusion, we agree with many submitters that there is a practical need to enable the setback area to be occasionally cultivated for pasture renewal or pasture establishment, but not for establishing crops for intensive winter grazing. We recommend the amendment of notified Rule 25(b) accordingly.

[215] Regarding cultivation of steep slopes, Rule 25 as notified permitted cultivation on land having a slope less than 20 degrees. We have previously discussed the difficulty of measuring slope on land adjacent to rivers and streams. There seemed to be less concern from submitters about the ability to measure slope on areas remote from those surface water bodies. We were provided

---

<sup>106</sup> Commissioner Rodway preferred the approach to setbacks recommended in the Section 42A Reply Report for the reasons therein.



with visual evidence of cultivated slopes being measured, including by way of smartphone applications.

- [216] A number of submitters sought an increase to the permitted activity threshold of 20 degrees, stating that they had historically cultivated slopes steeper than that (often in the order of 25 to 35 degrees) without taking health and safety risks or inducing soil erosion. We were not persuaded by those submissions. We are satisfied, for the reasons set out by the section 42A authors, that cultivation on slopes in excess of 20 degrees should be scrutinized through a consent process, which we anticipate will be informed by a FEMP for the landholding concerned.
- [217] We recommend that cultivation by any method on slopes up to 20 degrees is permitted. Cultivation by any method on steeper land will require a restricted discretionary activity resource consent. That includes both non-tillage techniques (direct drilling) and herbicide spraying followed by over sowing ('spray and pray'). We have recommended amendments to the Glossary definition of 'cultivation' accordingly. However, in response to numerous submissions, we consider that spraying for the sole purpose of controlling pest plants (including gorse and broom) should be allowed on land of any slope and also within the cultivation setback from water bodies. We therefore recommend that such spraying is excluded from the definition of 'cultivation'.
- [218] We also recommend that for the sake of clarity, and for consistency with Rule 20(a)(iii) (formerly Rule 23), the notified prohibition on cultivation in the Alpine physiographic zone is amended to a prohibition on land with an elevation greater than 800 metres above mean sea level.
- [219] The final wording we recommend for Rule 25 is contained in Appendix B1 to this Report.
- [220] Proportionate to the scale and significance of the pSWLP's cultivation provisions, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make the further amendments outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would more fully serve the provisions of the Act and its subordinate instruments than not making them, including the extent of additional opportunities for economic growth and employment.

## Chapter 12

### Effluent, Wastewater and Stormwater Management

#### **Background**

[221] Effluent management in the pSWLP as notified was addressed by Policy 17, sixteen rules<sup>107</sup> and several definitions. The initial Section 42A Report described the SRPS provisions relating to effluent management.<sup>108</sup> We note that apart from seeking the maintenance or enhancement of water quality, the SRPS provisions generally favour the land disposal of effluent over discharges to water and recognise the importance of effluent treatment and disposal infrastructure. The initial Section 42A Report advised that Objectives 6 and 8 of the pSWLP were relevant. We agree with that.

[222] In the pSWLP stormwater is managed under Rule 15 and there are no policies specific to stormwater.

#### **Submissions**

[223] There were a range of submissions on the Plan's effluent and stormwater management provisions, some seeking to make the provisions more lenient and some seeking to make them more restrictive.

#### **Assessment**

[224] For the large part, most of the notified effluent management provisions were uncontroversial and we generally adopt the section 42A authors' recommendations on the submissions lodged against those provisions for the reasons given by the authors. The exceptions are municipal wastewater and stormwater network discharges, agricultural effluent storage facilities (more commonly referred to as on-farm effluent ponds), and feed pads and feed lots. We discuss these matters below.

[225] We recommend that Policy 17 is amended so that it clearly relates to both agricultural effluent storage facilities and discharges from them, whether those discharges are incidental (by way of minor leaks or seepage from storage ponds for example) or are from effluent discharge systems (such as travelling effluent irrigators on dairy farms for example).

---

<sup>107</sup> Rule 26 – Discharges from on-site wastewater systems; Rule 27 - Discharges from pit toilets; Rule 28 – Discharges of liquid from waterless composting toilet systems; Rule 29 – Discharges of aerobically composted human excreta; Rule 30 – Discharges from mobile toilets; Rule 31 – Dump stations; Rule 32 – Effluent Storage; Rule 33 – Community sewerage schemes; Rule 34 – Industrial and trade processes; Rule 35 – Discharge of agricultural effluent to land; Rule 36 – Horticulture wash-water; Rule 37 – Agricultural dips; Rule 38 – Animal and vegetative waste; Rule 39 – Other agricultural effluent disposal; Rule 40 – Silage; and Rule 41 – Silage leachate.

<sup>108</sup> Section 42A Report, paragraphs 7.723 to 7.729.

- [226] We agree with the section 42A authors' recommendation that a new Policy 17A is inserted to provide policy guidance to decision-makers regarding community sewerage schemes and domestic on-site wastewater systems. In that regard, we find that the existence of engineered overflow discharges from community sewerage schemes should be acknowledged. However, we consider those schemes should ideally not overflow in other than wet weather conditions, and any existing wet weather overflows should be progressively reduced in both frequency and volume. The schemes should also be designed and operated in accordance with recognised industry standards. We agree that domestic on-site wastewater system should be designed, located and maintained in accordance with Sections 5 and 6 of the New Zealand Standard AS/NZS 1547:2012-On-site Domestic Wastewater Management.
- [227] The section 42A authors recommended a new Rule 33A which would classify the discharge of effluent from community sewerage schemes into water as a non-complying activity. The territorial authority submitters had sought that those discharges be discretionary activities. We note that under Rule 33 as notified the discharge of effluent from community sewerage schemes onto or into land is already a discretionary activity.
- [228] We accept that discharges of effluent directly to surface water should not generally be condoned. However, because community sewerage scheme infrastructure is an essential service provided under the Local Government Act 2002, we queried the section 42A authors on whether a 'policy pathway' existed in terms of section 104D(1)(b) of the RMA for such discharges. In the absence of such a 'pathway' it would be difficult to grant consents for the community sewerage scheme infrastructure, and that would be an incongruous outcome.
- [229] In response, the authors referred us to new recommended new Objective 9B and Policies 17A and 26A, concluding that whilst a community sewerage scheme discharge to water might have adverse effects that were minor (or more than minor), that did not mean that the scheme could not pass through the policy gateway in section 104D(1)(b). The authors noted that a community sewerage scheme could be designed in a way that minimised adverse effects on water quality if there were no practicable options for a discharge to land.<sup>109</sup> On that basis we are satisfied that discharges of effluent from community sewerage schemes into water will be able to be assessed on their merits if the circumstances of a particular situation dictate that to be appropriate.
- [230] We received submissions and evidence from the territorial authorities requesting that discharges from reticulated stormwater network systems be categorised as discretionary activities. Those networks are also an essential service provided under the Local Government Act 2002.

---

<sup>109</sup> Proposed Southland Water and Land Regional Plan, Responses to Questions of Hearing Commissioners on Council Reply Report and proposed Southland Water and Land Regional Plan, page 10.

- [231] Under the Plan as notified those discharges would have been non-complying activities under Rule 6 because stormwater will at times contain raw sewage, including as a result of wet weather overflows from sewerage systems and illegal cross-connections from household toilets. We find the territorial authorities' request to be reasonable because stormwater discharges are generally more benign than discharges from community sewerage schemes and therefore applications for stormwater network discharges should be able to be assessed on their merits without having to first pass a section 104D non-complying activity 'gateway test'. In that regard we agree that, in the context of this particular issue, the recent case law referred to by counsel for the territorial authorities (stating that a prior threshold under section 104D can amount to a further restriction on a potential consent which does not necessarily add anything to the assessment under section 104 RMA) is pertinent.<sup>110</sup>
- [232] We recommend the inclusion of new Rule 15(ab) accordingly.
- [233] In making our recommendations on community wastewater scheme and stormwater network discharges we do not intend to imply that territorial authority network operators should be exempt from an obligation to improve water quality where it is currently degraded. On the contrary, we record that we consider that the territorial authority network operators have an important role to play in achieving that outcome.
- [234] In response to submissions the section 42A authors recommended four new land use rules (Rules 32(a) to 32(bb)) focused solely on the construction of new facilities for the storage of agricultural effluent, together with new permitted activity and discretionary activity rules (Rules 32A(a) and 32A(b)) for existing agricultural effluent storage facilities. To qualify as a permitted activity, new agricultural effluent storage facilities would be required to have an impermeable concrete or synthetic lining. In the absence of that occurring, under a new controlled activity rule (Rule 32(b)) the design of the facility would need to be certified by a Chartered Professional Engineer as being in accordance with specified industry guidelines. We agree such rules are appropriate for the reasons stated by the section 42A authors and the submitters on this topic.
- [235] Rule 32(b) as initially recommended by the section 42A authors required a 'pond drop test' to be completed within twelve months of the storage's construction. Many submitters opposed that requirement, due both to the practical difficulties of undertaking the test and because of it not being necessary if a leak detection system was built into the storage system. We note that a pond drop test is inappropriate for an entry condition to a rule relating to new storage facilities, as a pond drop test can only be completed once the facility is constructed. Instead, we recommend that applicants be required to lodge an operational management plan that deals

---

<sup>110</sup> *Royal Forest & Bird Protection Society of New Zealand Inc v Whakatane District Council [2017] NZEnvC 51.*

with a number of matters including the possible undertaking of pond drop tests once the facility is constructed and in use.

[236] With regard to new Rule 32D (the use of land for existing agricultural effluent storage), we consider that the rule should refer to facilities that have been lawfully carried out without resource consents as well as those authorised by resource consents. For storage facilities lawfully carried out without resource consents, we consider that if the facility is fully lined with an impermeable synthetic liner (or is of concrete construction or is built above ground level) and it has a leak detection system which is inspected not less than monthly (and there is no evidence of any leakage), then a pond drop test need only be undertaken once every ten years. That acknowledges the concerns of many submitters who were of the view that more regular pond drop tests for such facilities were both costly and unnecessary.

[237] The majority of the Panel are of the view that existing agricultural effluent storage facilities that do not have an impermeable synthetic liner (or are not of concrete construction or are not built above ground level) should be subject to pond drop tests (undertaken by a Suitably Qualified Person) once every three years.<sup>111</sup> We recommend Rule 32D(a)(ii) accordingly.

[238] We recommend the insertion of new Rule 32A clarifying the consent status of any reconstruction (as opposed to routine maintenance) of effluent storage facilities. We recommend that separate rules are provided for the construction, maintenance and use of new agricultural effluent storage facilities (Rule 32B) and for the construction, maintenance and use of new non-agricultural effluent storage facilities (Rule 32C). This avoids the need for separate consents for each of those three activities. We also recommend that Rules 32B to 32D explicitly authorise any incidental discharges directly onto or into land from effluent storage facilities (such as seepage through the base or walls of ponds), because that is not covered by Rule 34 (industrial and trade processes) or Rule 35 (agricultural effluent). To further simplify the provisions, we also recommend that the definition of “agricultural effluent storage facilities” is amended to include reference to ancillary structures.

[239] We note that the use of existing non-agricultural effluent storage facilities remains a permitted section 9 land use by virtue of there being no rules restricting the use of land for that purpose.

[240] In response to submissions, the section 42A authors recommended that the requirement for a ‘pond drop test’ be omitted from Rule 33 (community sewerage schemes). We agree for the reasons outlined to us by the authors and the territorial authority submitters, and recommend that for the sake of consistency that requirement is also omitted from Rule 34 (industrial and trade processes).

---

<sup>111</sup> Commissioner Roy considered that a pond drop test frequency of once every five years was more appropriate in that situation.

- [241] Rule 35 is a permitted activity rule dealing with the discharge of agricultural effluent to land. As notified, Rule 35(a)(i)(3)(b)(ii) restricted the number of permitted activity feed pads to one per landholding. That restriction was opposed by many submitters. We agree that such a restriction is unnecessary as the issue of concern is the environmental performance of the feed pads rather than their number. We heard from submitters that properly designed and managed feed pads (or wintering pads or standoff pads) can reduce the amount of pugging that occurs on pastures over the winter months. We agree and consequently we recommend the removal of the notified restrictions on the number of feed pads allowed on a landholding, subject to suitable conditions.
- [242] The Section 42A Reply Report recommended a new permitted activity land use Rule 35A(a) for feed pads or feed lots. We find that to be appropriate as the use of feed pads should be encouraged for the reasons outlined above. The new rule includes limits on the numbers of stock that can use a feed pad and those limits are consistent with existing good practice as conveyed to us by many submitters whom we queried on that matter. The new rule also includes routine setbacks from sensitive areas and a requirement that the feed pad either has a sealed and impermeable base or it is formed with bark, sawdust or wood chips. Again, that mirrors existing good practice as conveyed to us by submitters. We are satisfied that the inclusion of new Rule 35A(a) is an improvement that will assist with achieving the objectives of the Plan. In saying that, we stress that the new rule does not restrict the number of feed pads or feed lots that can occur on a landholding.
- [243] Feed pads that cannot meet the permitted activity conditions will be discretionary activities under new Rule 35A(b) which we consider to be appropriate as decision-makers may wish to decline consent for poorly designed or located facilities.
- [244] Rule 35(b)(iii) as notified (a restricted discretionary rule for activities that breach the Rule 35(a) permitted activity conditions) imposed a requirement for a pond drop test on any pond, tank or structure used to store agricultural effluent as a condition. We consider that to be an unnecessary duplication of Rules 32B and new Rule 32D and recommend its omission.
- [245] Rule 40 is a permitted activity land use rule for the storage of silage, but it is not a discharge rule. Instead Rule 41 deals with the discharge of silage leachate onto or into land. We therefore recommend removing conditions from Rule 40 that deal with the discharge of leachate and including those conditions in Rule 41 instead.
- [246] In that regard, we acknowledge that silage leachate can cause significant adverse effects on surface water quality that should be avoided where possible. However, we also acknowledge the practical difficulty of completely avoiding the discharge of silage leachate to surface and groundwater, as was pointed out to us by many submitters. We prefer the approach suggested by some submitters, including Fonterra, that a more practically achievable condition be included

requiring there to be no discharge of leachate directly to groundwater via a pipe, soak pit or other soil bypass mechanism and that there is no overland flow or ponding of silage leachate outside of the silage storage facility. We find that to be a more effective means of dealing with potential adverse effects and of achieving the objectives of the pSWLP. We recommend an amendment to Rule 41(a) accordingly.

[247] Proportionate to the scale and significance of the pSWLP's provisions relating to effluent and stormwater management, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to amend the provisions or not; and we have identified that amending the provisions as recommended by us is reasonably practicable; and find that the amended provisions would more fully serve the provisions of the Act and subordinate instruments.

## Chapter 13 Stock Exclusion

### **Background**

[248] The Section 32 Report stated that the benefits of stock exclusion include preventing direct deposition of contaminants to waterways, and damage to stream banks, beds, riparian margins and riverine habitats. It noted that stock exclusion was a good management practice that could be applied in most instances. The report also stated that the pSWLP stock exclusion provisions (primarily Policy 18 and Rule 70) assisted with achieving Objectives 1, 2, 6, 13, 14, 17 and 18 of the Plan. We agree that those are the relevant objectives.

[249] Subsequent to notification of the pSWLP the Government released its Clean Water consultation document<sup>112</sup>, which included draft regulations to exclude dairy and beef cattle, farmed deer, and farmed pigs from water bodies in a staged manner. We are not required to consider the draft regulations.<sup>113</sup> However, we consider the requirements in the draft regulations provide an appropriate starting point for stock exclusion in Southland. The Section 42A Report recommended substantial amendments to the notified version of Rule 70 to align it with the draft regulations described in the Clean Water consultation document. We consider that to be prudent.

### **Submissions**

[250] There were many submissions both in support of and in opposition to the notified pSWLP stock exclusion provisions. Given the central Government initiative outlined above, and for the reasons in the Section 42A Report, we conclude that omitting the stock exclusion provisions from the pSWLP would not be an appropriate option.

[251] Rule 70 as notified did not impose restrictions on sheep as they generally avoid contact with surface water and cause less damage to river banks than heavier stock such as cattle and deer. That approach was supported by numerous submissions and opposed by some. We note that the Government's draft regulations do not impose restrictions on sheep.

### **Assessment**

[252] The Section 42A Report appropriately recommended that Policy 18 be amended to require the management of sheep in critical source areas and in those catchments where *E.coli* levels fail to meet the NPSFM National Objectives Framework secondary contact bottom line. From the

---

<sup>112</sup> Clean Water, 90% of rivers swimmable by 2040, New Zealand Government, February 2017.

<sup>113</sup> Compared to operative regulations. Under section 66(1)(f) of the RMA a regional plan must be prepared in accordance with regulations.



Section 42A Report<sup>114</sup> we understand those catchments to be the Otautau Stream at Waikouro; the Opouriki Stream at Tweedie Road; and Winton Stream at Lochiel. The 'management' of sheep would be achieved primarily through the preparation and implementation of FEMPs.

- [253] However, Policy 18 requires stock access to be managed in the way that avoids significant adverse effects on aquatic and riparian habitats. Consequently, we consider that all livestock, including sheep, should be excluded from riparian areas having acknowledged high biodiversity values.
- [254] In that regard, given that Rule 70 implements Policy 18, we are satisfied that stock, including sheep, should be excluded from the roosting and nesting areas of the black fronted tern, black billed gull, and banded and black fronted dotterel in rivers (including ephemeral rivers); and the sensitive water bodies listed in Appendix A of the pSWLP. We recommend Rules 70(a) and 70(b) accordingly. We observe that there was little opposition in the submissions and evidence to such restrictions. For certainty, we consider that stock should be excluded from those high biodiversity value areas by way of a prohibited activity rule.
- [255] However, we do not consider that Rule 70 should address "tidal river habitat up to the spring tide level" as was recommended by the Section 42A Reply Report, because that habitat, while clearly supporting a range of biodiversity values including whitebait spawning habitat, resides in the coastal marine area and so it is managed by the Southland Regional Coastal Plan.
- [256] We agree that occasional managed stock crossings of rivers should be permitted, other than for dairy cattle on a dairy platform or a dairy support unit. We recommend Rule 70(c) accordingly. We have singled out dairy cattle as an exception because they would be likely to cross the rivers twice a day during the milking season, which could generate substantial adverse effects. On a dairy support unit, the cattle would be likely stocked at relatively high densities. In the case of dairy cattle, we suggest that bridges or culverts are employed to avoid those adverse effects.
- [257] Our consideration of the above matters led us to conclude that the Plan needs to be very clear on how farming activities in ephemeral rivers are dealt with in the rules. Rivers can be permanently flowing, intermittently flowing or ephemeral. In some cases, farming activities in ephemeral river beds (including stock access) should be permitted 'as of right', in other cases farming activities in ephemeral river beds should only be permitted subject to conditions, and some cases those activities should require a resource consent or be prohibited. Accordingly, we recommend new permitted activity Rule 20(aa) dealing with farming activities. Rule 20(aa) makes farming activities (intensive winter grazing, cultivation and stock access) in ephemeral rivers an unconditional permitted activity unless Rules 20, 25 or 70 or any other rule in the Plan states otherwise.

---

<sup>114</sup> Paragraph 10.301, page 552.

- [258] We have also reviewed the Plan more generally to assess how ephemeral rivers should be treated in each rule and recommend amendments accordingly.
- [259] The Section 42A Reply Report recommended the inclusion of a table in Rule 70(e) that categorised access to water bodies by cattle, deer or pigs as a permitted activity prior to a range of dates for land having various listed slopes. After those dates stock access to those water bodies would be a discretionary activity on that land. This closely mirrors the approach taken in the Government's Clean Water consultation document. We consider it to be suitable. However, we find that in order to cater for extensively farmed areas on rolling, undulating and steeper land in Southland where stream side fencing would be impractical or prohibitively expensive, beef cattle and deer need not be excluded from water bodies unless the average stocking rate on the land directly adjacent to the water body exceeds 6 stock units per hectare. We were persuaded by the verbal and pictorial evidence presented by submitters that grazing stock at low stocking rates had resulted in few if any adverse effects on water quality and river bank stability in the past.
- [260] We therefore recommend an amendment to the version of the table that was included in the Section 42A Reply Report.
- [261] The versions of Policy 18 and Rule 70 that we recommend are set out in Appendix B1 of this report.
- [262] We acknowledge that Council may well have to revisit Policy 18 and Rule 70 should Government promulgate final stock exclusion regulations.
- [263] Proportionate to the scale and significance of the pSWLP's livestock exclusion provisions, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make the further amendments outlined above or not; and we have identified that those amendments are reasonably practicable; they implement the pSWLP objectives while taking into account the nature of Southland's extensively grazed areas of land; and so we assess that making them would more fully serve the provisions of the Act and its subordinate instruments than not making them.

## Chapter 14 Taking and Using Water

### ***Background***

[264] The pSWLP addressed the activities involving the taking and using of water under Policies 20 to 25 and Rules 49 to 54. The Section 32 Report stated that the pSWLP objectives most relevant to the taking and using of water were Objectives 1, 2, 3, 7, 9, 11 and 12 of the Plan. We agree that those are the relevant objectives.

### ***Submissions***

[265] There were a range of submissions both in support of and in opposition to Policies 20 to 25 and Rules 49 to 54. In keeping with the 'exception' based nature of this decision report, we record here that we agree with and adopt the assessment and recommendations of the section 42A authors regarding those submissions other than as we discuss, or enlarge upon, below.

[266] We note that we discuss Meridian Energy's submission relating to the classification of replacement consents for the MPS in Chapter 15 of this report.

### ***Assessment***

[267] The Oil Company<sup>115</sup> submitters requested additional provisions relating to the taking of groundwater for temporary construction dewatering activities. For the reasons provided by those submitters (including the unavoidable need to dewater excavations extending below the water table) we agree that the Plan would be improved by making practical allowance for that activity. Accordingly, we recommend the inclusion of new Rule 54(ca) which provides for the taking of groundwater for temporary construction dewatering activities as a permitted activity subject to a range of conditions largely suggested by the submitters.

[268] On a similar vein, several roading construction submitters, including the region's territorial authorities and the Roding Company Limited, sought provision for the taking of water to fill water carts (tanker trucks) used during road construction and maintenance activities. Again, for the reasons the submitters outlined to us (including the need to use water for dust suppression purposes and the impracticality and cost of obtaining water from urban supplies) we agree that the Plan would be improved by making allowance for that activity. We were persuaded by the evidence of The Roding Company Limited that limiting the take to the main roading construction period (September to March) would be both practicable and appropriate, as would limiting the size of the watercourse from which the water is abstracted. We note from that same evidence that the taking of water would most commonly occur when filling tanker trucks

---

<sup>115</sup> Z Energy, BP Oil NZ and Mobil Oil NZ.

used for dust suppression or the wetting of aggregate placed on roads under construction. Based on the evidence of The Roding Company Limited we consider that a take of no more than 45 minutes duration would be sufficient for that purpose. We also accept the recommendations of the section 42A authors that the rule should be broadened to refer generally to infrastructure construction, maintenance and repair; and that additional conditions relating to the rate and volume of take and avoiding fish entrainment are appropriate. We recommend new Rule 49(ab) accordingly.

[269] Several submitters, including PJ and JM Horrell, were concerned about the fact that surface water resources in the Waiau River catchment are fully allocated because of Meridian Energy's MPS. We understand those concerns, but note that the MPS is legally authorised and its consents do not expire until 2031. It is beyond the scope of this hearing process to revisit the amount of water allocated to the MPS and nor would we wish to do so based solely on the evidence before us. It is also beyond our scope to amend the anticipated completion date for Council's Waiau River catchment FMU process. That latter matter is the responsibility of the Council. We note that the Council's current Progressive Implementation Programme for Implementing the NPSFM has the Waiau River catchment FMU process commencing in late 2018 and finishing in July 2020. Under Policy E1(f) of the NPSFM 2014 (as amended in 2017) that timetable will need to be revisited by the Council before 31 December 2018.

[270] Proportionate to the scale and significance of the pSWLP's general provisions dealing with the taking and using of water, for the purpose of section 32AA(1)(d) of the RMA we record that we have considered the options before us, being whether to make the further amendments outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would more fully serve the provisions of the Act and its subordinate instruments than not making them, including the extent of additional opportunities for economic growth and employment.

## Chapter 15

### Manapōuri Power Scheme

#### **Background**

[271] As we noted in Chapter 14 of this report, the resource consents for Meridian Energy's Manapōuri Power Scheme (MPS) do not expire until 2031.

#### **Submissions**

[272] Meridian submitted that replacement (or renewal) consents for the MPS should be categorised as controlled activities. Under Rule 52 as notified, those replacement consents would be classified as discretionary activities.

#### **Assessment**

[273] Counsel for Meridian<sup>116</sup> submitted that the MPS is now fully integrated and embedded in the National Grid, and forms an important part of New Zealand's national generation portfolio. He advised that the MPS is explicitly authorised by statute, namely the Manapouri – Te Anau Development Act 1963 (MTADA). Furthermore, the ability of the MPS to alter lake and river levels is governed by guidelines made by Order in Council under the provisions of the MTADA. Those guidelines have the force of regulation and have been established by the Minister of Energy on joint recommendation of Meridian and the Guardians of Lakes Manapōuri, Monowai and Te Anau (a statutory body created under the Conservation Act 1987).

[274] Counsel noted that in giving effect to the NPSREG the SRPS recognises the national significance of the MPS. Counsel submitted that allocating the MPS an activity status which, by definition, provides for replacement consents to be refused does not give effect to the NPSREG and the SRPS.

[275] In that regard we note that the Objective of the NPSREG is:

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

[276] NPSREG Policy E2 Hydro-electricity resources is:

Regional policy statements and regional and district plans shall include objectives, policies, and methods (including rules within plans) to provide for the development, operation, maintenance, and upgrading of new and existing hydro-electricity generation activities to the extent applicable to the region or district.

---

<sup>116</sup> Legal submissions, Stephen Christensen, 20 September 2017.

- [277] We consider the statutory context for the MPS to be highly relevant to any decision on the appropriate classification of its replacement consents.
- [278] On a more practical level, counsel for Meridian submitted that if applications for replacement consents were made it is inconceivable that the MPS would not continue to operate as part of New Zealand's electricity system. We agree.
- [279] Finally, counsel noted that it has been established as a matter of law<sup>117</sup> that a controlled activity status is available for hydro-electricity schemes. We acknowledge that in the Canterbury Region replacement consents for such schemes are controlled activities.
- [280] The majority<sup>118</sup> of the Panel are persuaded by the submissions of counsel for Meridian and on balance the majority consider that replacement consents for the MPS should be categorised as controlled activities, subject to a number of conditions including that the applications are for the replacement of expiring resource consents pursuant to Section 124 of the Act; and where the replacement consent is for the taking or use of water, the rate and volume of take is not increasing, the use of water is not changing, and the rate of take and volume complies with any relevant flow and level regimes set out in the Plan.
- [281] We also consider that control should be reserved over several matters, including the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, and how this relates to generation output; any effects on river flows, wetland and lake water levels, aquatic ecosystems, and water quality; and mitigation or remediation measures to address adverse effects on the environment. We find that affording control to future decision-makers over those matters will allow potential adverse effects arising from the operation of the MPS to be properly and fully considered without negating any consent that is granted. In coming to this recommendation, we consider that if future decision-makers were to impose a consent condition reducing the volume of water available to MPS, then that would also be unlikely to frustrate any consent that is granted. Further, controlled activity status for replacement consents for the MPS should not be seen as an indication that we consider the existing level of water abstracted by the MPS to be appropriate. As was touched on in Chapter 14 of this Report, we express no view on that matter.
- [282] In making these findings we acknowledge the advice from the section 42A authors<sup>119</sup> on this matter (they recommended a restricted discretionary activity classification), but the majority of the Panel do not agree that assigning a controlled activity status for replacement consents for

---

<sup>117</sup> *Rangitata Diversion Race Management v Canterbury Regional Council* [2015] NZHC 2174.

<sup>118</sup> Commissioner Rodway agreed with the recommendations of the section 42 authors for the reasons set out in their report.

<sup>119</sup> Section 42A reply Report, paragraphs 4.297 to 4.308.

the MPS would preclude a re-assessment of the appropriateness of the volume of water abstracted by the MPS or the rate of take and subsequent discharge.

[283] Proportionate to the scale and significance of the pSWLP's provisions dealing with the taking and using of water for the MPS, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us regarding the classification of replacement consents for that scheme and we have concluded that most appropriate classification is a controlled activity. We identify that option as reasonably practicable and have assessed that it would more fully serve the provisions of the Act and subordinate instruments (including specifically the NPSREG and the SRPS) than a restricted discretionary or discretionary activity classification. Our assessment includes the extent of additional opportunities for economic growth and employment.

## Chapter 16 Historic Heritage

### ***Background***

[284] The pSWLP as notified referred to historic heritage in numerous provisions, including a permitted activity standard in various rules that required that there be "no recorded historic heritage sites" at the site of the activity.

### ***Submissions***

[285] KiwiRail, amongst others, opposed the inclusion of historic heritage provisions in the Plan rules and sought their deletion.

### ***Assessment***

[286] Counsel for KiwiRail<sup>120</sup> submitted that historic heritage is a Part 2 matter relevant for the consideration of all plans under section 66(1)(b) and consents under section 104 of the RMA. Counsel accepted that it was a function of Council under sections 30(1) (a) and (b) to prepare objectives, policies and methods in relation to the "integrated management of natural and physical resources" (including historic heritage) and objectives and policies (but not methods) in relation to "the actual or potential effects of the use, development or protection of land which are of regional significance".

[287] However, counsel for KiwiRail submitted that there are clear statutory limits in section 30(1)(c) of the RMA on the purposes of rules controlling the use of land. Controlling land use for the purpose of historic heritage is not a listed function of regional councils under section 30(1)(c). By contrast, section 31(1)(b) provides that it is a function of district councils to control "any actual or potential effects of the use, development, and protection of land". Consequently, land use controls designed to protect (or otherwise manage) the historic heritage of a region are to be found in the relevant district plan.

[288] In conclusion, counsel for KiwiRail submitted that providing for historic heritage through a permitted activity standard in land use rules in a regional plan both contravened the limited scope of land use controls a regional council can legitimately include in a regional plan; and led to potential inconsistencies, and duplication of controls, between district and regional plans.

[289] We note that counsel for Southland Regional Council and counsel for Ngāi Tahu also agreed with the submissions of counsel for KiwiRail.

[290] We agree with and accept counsels' submissions.

---

<sup>120</sup> Legal Submissions on Behalf of KiwiRail Holdings Limited, B S Carruthers and A M Cameron, 22 September 2017.



- [291] While we note the assessment of the Plan's historic heritage provisions to be largely a legal matter, we acknowledge that Jane O'Dea, the Heritage Advisor Planning for the Otago and Southland Area Office of Heritage New Zealand Pouhere Taonga, also considered it appropriate to avoid unnecessary regulatory duplication in terms of processes available under the HNZPTA 2014 and district plans. Ms O'Dea supported the inclusion of a note referring to obligations under the HNZTPA 2014.<sup>121</sup>
- [292] We consequently adopt the recommendation of the section 42A authors that the permitted activity standard relating to historic heritage be deleted and replaced with an advice note setting out obligations under the HNZPTA 2014. We also recommend the deletion of all other references to historic heritage and historic heritage values in the objectives, policies and the sections of the Plan dealing with financial contributions and the content of FEMPs (Appendix N). Having recommended the deletion of references to historic heritage from the Plan's rules, we consider there to be no benefit in retaining references to that matter in the objectives and policies of the Plan. In saying that, we note that Chapter 14 of the SRPS already provides adequate policy guidance to decision-makers regarding the protection of historic heritage.
- [293] For the purpose of section 32AA(1)(d) of the RMA we record our view, based on legal advice received, that the framework of the RMA does not enable historic heritage to be dealt with in the land use rules of the pSWLP and so we recommend the deletion of all references in the Plan to historic heritage.

---

<sup>121</sup> Hearing Statement of Jane Mary O'Dea on behalf of Heritage New Zealand Pouhere Taonga, 12 May 2017, paragraphs 4.1.1, 4.2.2 and 4.5.1.

## Chapter 17

### Definitions

#### ***Background***

[294] The pSWLP as notified contained a Glossary with numerous definitions.

#### ***Submissions***

[295] There were a range of submissions on the notified definitions, both in opposition and in support. Some submitters requested or suggested new definitions.

#### ***Assessment***

[296] Some submissions have sought that words or terms defined in the RMA be repeated in the pSWLP. That serves no useful purpose and amounts to unnecessary duplication. However, we consider that a note be inserted at the start of the Glossary that specifies that the words or terms defined in the RMA have the corresponding meaning in the pSWLP, unless otherwise defined in the Glossary.

[297] The section 42A authors recommended several amendments to the definitions. We endorse those recommendations, for the reasons given by the authors, other than as we discuss or enlarge upon below.

[298] We recommend that the following definitions be amended for the reasons set out by the respective submitters and the section 42A authors:

- (i) “bore or well” to omit the words “... or which intercepts groundwater” as sought by Oil Companies. We also recommend that the definition exclude “test pits and stormwater soakholes” as sought by the NZTA;
- (ii) “critical source area” as sought by Beef and Lamb. We note that in response to our questions Mr Gary Morgan, Council’s Principal Land Sustainability Officer, advised that he considered the amended definition to be both more practicable and more easily understood;
- (iii) “cultivation” as sought by numerous submitters to include reference to herbicide spraying followed by over-sowing for pasture or fodder crops (colloquially referred to as ‘spray and pray’) and to exclude any spraying undertaken solely for the control of plant pest species. As a consequence of our recommended amendments to Rule 25, we also recommend the deletion of the definition of “mechanical cultivation”;

- (iv) “intensive winter grazing” to clarify that forage crops include brassica, beets and root vegetable crops as sought by numerous submitters including Eyre Creek Limited and Dairy NZ;
- (v) “on-site wastewater system” as sought by the territorial authorities;
- (vi) “reasonable mixing zone” in order to refer more explicitly to “a zone within which relevant water quality standards may be exceeded ...” and to enable the option of determining the size of the zone through a consent process as sought by the territorial authorities; and
- (vii) “total groundwater allocation” to exclude non-consumptive takes as sought by the Oil Companies.

[299] We recommend a number of new definitions, for the reasons set out by the submitters, including those listed below:

- (i) “critical infrastructure” as sought by the territorial authorities. This is consequential to our recommendation for new provisions relating to infrastructure;
- (ii) “dairy farming of cows” and “dairy platform” as sought by Fonterra;
- (iii) “good management practices” as sought by Dairy Holdings Limited amongst others. However, instead of referring to the Environment Canterbury led document titled “Industry-Agreed Good Management Practices relating to water quality, Version 2” dated 18 September 2015 we prefer referring to the various Good Management Practices Factsheets Water and Land 2020 & Beyond, which are available on the Environment Southland webpage. However, we do find it appropriate to refer to the 2015 Industry Agreed document and to other industry guidance documents brought to our attention by submitters (including “Wintering in Southland and South Otago, A land management guide to good environmental practice” and “Good management practices, A guide to good environmental management on dairy farms”, both published by Dairy NZ) in Appendix N;
- (iv) “nutrient budget” as sought by Ravensdown Limited;
- (v) “non-consumptive take”; as sought by Fonterra Limited;
- (vi) “properly constructed and operated bore” as sought by Fonterra Limited; and

(vii) “sediment trap” as a consequence of our amendment of the rules relating to sediment traps, albeit in a simplified form compared to the recommendation of the section 42A authors.

[300] Proportionate to the scale and significance of the pSWLP’s Glossary definitions, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us, being whether to make amendments to the definitions (including those outlined above) or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would better assist with achieving the objectives of the Plan.

## Chapter 18

### Appendix N

#### ***Background***

[301] Earlier in this report we discussed how the pSWLP requires the preparation and implementation of FEMPs. Appendix N sets out the content of FEMPs. The Section 42A Report stated that FEMPs must include measures to manage riparian zones, cultivation, wintering and effluent application, nutrient budgeting as well as good management practices specific to a property, taking into account the physiographic zones the property is located in, and the key transport pathways for those zones.<sup>122</sup>

[302] Part A of Appendix N provides for the FEMPs to be either individual plans covering the matters set out in Part B of the appendix, or can be based on industry-prepared templates, subject to the template being approved by the Chief Executive of the Southland Regional Council as covering the requisite matters.<sup>123</sup>

#### ***Submissions***

[303] There were numerous submissions both in support of and in opposition to Appendix N. These were adequately summarised in the Section 42A Report and we adopt that summary but do not repeat it here.

#### ***Assessment***

[304] We reject all submissions seeking the deletion of Appendix N, because its inclusion in the pSWLP provides clear and certain guidance as to the content of FEMPs upon which the Plan relies.

[305] In response to submissions the Section 42A Report recommended substantial amendments to Appendix N as notified. This included omitting the requirement for sheep and beef farms to prepare nutrient budgets due to the fact they generally leach low levels of nitrogen. Appropriately, that recommendation was not carried over into the Section 42A Reply Report's recommendations for Part B.4 of Appendix N. We consider that all types of farms should be required to prepare nutrient budgets for the simple fact that they all contribute to catchment nutrient loads. Quantifying those catchment loads is an essential part of accounting for freshwater takes and contaminants under Part CC of the NPSFM 2014. For that reason, we recommend that nutrient budgets are also required for landholdings preparing FEMPs under the permitted activity rules of the Plan.

---

<sup>122</sup> Paragraph 7.355, pages 230 and 231.

<sup>123</sup> Ibid, paragraph 7.469, page 252.

- [306] Having made that finding we note that there is no need to separate Appendix N into Parts B and C as was recommended to us in the Section 42A Reply Report. Once the requirement to prepare a nutrient budget is added to Part C there is no material difference between Parts B and C. Accordingly, we do not recommend that Appendix N contain a Part C applying specifically to permitted activities.
- [307] Turning now to the details of Part B, in the Section 42A Reply Report the authors recommended, amongst other things, that Table 1 and Parts B.6 to B.10 be deleted. Except as discussed below, we generally agree with those recommendations for the reasons set out in the section 42A reports. In particular we support deleting Table 1 for the reasons outlined in Chapter 6 of this report. We support deleting Parts B.6, B.7 and B.8 as notified because those matters can now be dealt with in Part B.5 that details good management practices for the landholding. Part B.9 as notified is unnecessary because we understand that the matters it dealt with are already covered in farm dairy effluent discharge consents. Similarly, Part B.10 as notified is redundant because we understand that the matters it dealt with are already covered in irrigation water abstraction consents. We consider that there is no need to duplicate in the FEMP matters already covered by existing consents and we note that many submitters were of the same view.
- [308] Some submitters recommended amendments to Appendix N that we agree would improve it and provide better linkage to relevant policies and rules. This includes the intent of the amendments recommended by Beef and Lamb to the definition of ‘critical source area’ and Parts B.3 and B.5.<sup>124</sup> We have incorporated the intent of those submissions into the amended wording of Appendix N. We recommend that the amended definition of ‘critical source area’ is located in the Glossary, and that it is not repeated in Appendix N, because that definition has relevance to other parts of the pSWLP.
- [309] We strongly support the recommendations of the section 42A authors to align Part B.5 with the amended contents of farming activity Rules 20, 25 and 70; noting that doing so enables a more integrated approach. We also support the recommendation to refer to good management practices provided on the Southland Regional Council, DairyNZ and Beef and Lamb New Zealand websites and in the document titled “Industry-agreed Good Management Practices relating to water quality, Version 2, 18 September 2015”. We note that numerous submitters sought more specific guidance of this nature.
- [310] Based on the submissions and evidence received we concluded that Appendix N as notified could be greatly clarified, simplified and condensed. In fact, some submitters sought a simple ‘tick box’ template to replace the notified version of Appendix N. We do not think that extreme degree of simplification is appropriate, but we have carefully reviewed Part B of Appendix N as

---

<sup>124</sup> Evidence of Corina Jordan, pages 52 to 58.

finally recommended to us by the section 42A authors (and as discussed above) and we find that it appropriately responds to the submissions and evidence.

[311] Proportionate to the scale and significance of the content of Appendix N, for the purpose of section 32AA(1)(d) of the RMA, we record we have considered the options before us, being whether to make the further amendments outlined above or not; and we have identified that those amendments are reasonably practicable; and have assessed that making them would more effectively achieve the objectives of the Plan while more efficiently enhancing the integrated nature of the Plan's provisions and avoiding duplication of existing resource consent conditions.

[312] The wording we recommend for Appendix N is contained in Appendix B1 to this Report.

## Chapter 19

### IASM

#### **Background**

[313] The pSWLP as notified included reference to an Independently Audited Self-Management (IASM) scheme. The initial Section 42A Report advised that a key element of the pSWLP provisions was the use of management plans to manage nutrient losses from farming activities. That could be either through the preparation and implementation of a Farm Environmental Management Plan (FEMP) or membership of an IASM scheme.<sup>125</sup> The report authors also advised that reference to an IASM scheme was included in the pSWLP after several industry groups approached Council during the engagement process on the Working Draft Water and Land Plan in 2015, requesting an IASM scheme be included to provide them with sufficient time and incentive to develop the concept more fully.<sup>126</sup>

#### **Submissions**

[314] As noted in the initial Section 42A Report,<sup>127</sup> some submitters considered that the provisions around IASM were uncertain as there were few if any details available about the scheme. For example, while MPI sought that the IASM provisions were retained, they also sought amendments to provide additional clarity and certainty, including the requirements for IASM scheme participants to be listed on the IASM Register; and what IASM scheme providers would be required to do to obtain Council's approval of either the scheme or the scheme providers.

#### **Assessment**

[315] The Section 42A Reply Report advised<sup>128</sup> that the detail necessary to formulate a workable IASM regime had not been forthcoming from submitters. The section 42A authors were uncomfortable with the somewhat open-ended nature of the IASM provisions in the Plan. They also considered that the provisions of Appendix N, and the lack of auditing of FEMPs anticipated by the pSWLP provisions, meant that it was unlikely that an industry audited self-management program would convey significant benefit. On that basis, the authors recommend that the IASM provisions be removed from the pSWLP.

[316] We accept the advice of the section 42A authors and recommend amendments to the pSWLP accordingly. In saying that, we note that some industry groups, including the Egg Producers Federation of NZ, requested that Council work with them to develop an appropriate framework

---

<sup>125</sup> Paragraph 7.354.

<sup>126</sup> Paragraph 7.420.

<sup>127</sup> Paragraph 7.398.

<sup>128</sup> Paragraph 4.211.



and implementation method for an IASM scheme. That is an understandable request and one that we anticipate may be acted on by the Council in the future.

[317] Proportionate to the scale and significance of the pSWLP's provisions relating to IASM, for the purpose of section 32AA(1)(d) of the RMA, we record that we have considered the options before us; being whether to delete references in the Plan to the IASM or not; and we have identified that it is not practicable to retain the IASM provisions in the Plan, given the paucity of information on how they would work in practice.

## Chapter 20

### Minor Amendments

[318] Under Clause 10(2)(b) of Part 1 of Schedule 1 to the RMA our recommendations may include matters relating to any consequential alterations necessary to the pSWLP arising from the submissions. Under Clause 16(2) of Part 1 of Schedule 1 to the RMA our recommendations may include amendments to the pSWLP to alter any information, where such an alteration is of minor effect, or may correct any minor errors.

[319] Under those Schedule 1 provisions we have recommended numerous amendments to the pSWLP including amongst other things:

- (i) correcting spelling;
- (ii) correcting grammar;
- (iii) correcting formatting;
- (iv) using macrons in Māori words;
- (v) correcting punctuation, including the use of commas, colons, semicolons, brackets and hyphens;
- (vi) inserting “and” or “or” as appropriate at the end of sub-clauses in policies or rules;
- (vii) removing the words “and” or “or” from the lists of matters of control and discretion in the rules;
- (viii) modernising language, including for example by replacing “shall” and “shall be” with “are”, “must” or “is”;
- (ix) ensuring the words “and” and “or” are used correctly in the provisions;
- (x) correcting the way Māori words are explained in English in the body of the Plan (as helpfully advised by Ngāi Tahu<sup>129</sup>);
- (xi) referring to the NPSFM 2014 as “NPSFM 2014 (as amended in 2017)”;
- (xii) replacing the term “Environment Southland” with the legally correct term “Southland Regional Council”;
- (xiii) deleting references to streams as streams are included in the definition of rivers;
- (xiv) consistently referring to water bodies in the policies and rules in the following manner: a lake, river, artificial watercourse, modified watercourse or natural wetland. We note that it is not appropriate to include all of these water bodies in all of the provisions and we have reviewed each provision to determine which water bodies should be included;
- (xv) deleting references to “tidal estuaries”, “coastal lagoons”, “coastal wetlands”, “salt marshes” and “the coastal marine area” from some of the rules because the Plan does not cover the CMA. While it may be appropriate to refer to those coastal areas in some of the pSWLP objectives and policies (to facilitate integrated management and the

---

<sup>129</sup> Memorandum of Counsel on Behalf of Ngāi Tahu In Response to Questions from Hearings Panel on 27 September 2017, 6 October 2017.

consideration of cumulative effects), any rules applying within those areas must reside in the Southland Regional Coastal Plan;

- (xvi) amending references to “there shall be no disturbance of the tidal river habitat up to the spring tide level” to “there shall be no disturbance of whitebait spawning habitat”, also because the Plan does not cover the CMA. We understand that the original provision was intended to address whitebait spawning habitat;
- (xvii) clarifying if a provision is supposed to relate to a permanently flowing river, an intermittently flowing river, an ephemeral river or some or all of those types of rivers;
- (xviii) amending Rule 55A<sup>130</sup> to read as follows “any activity in the water is kept to a minimum to avoid, as much as possible, discoloration of the river or lake water, including from any temporary sediment-release” because we considered the notified wording (especially the second sentence) to be unsuitable for a condition in a rule;
- (xix) amending the wording of controlled activity and restricted discretionary activity rules to better reflect the wording in section 77B of the RMA (and in Rule 3 of the pSWLP), which is to “reserve control” for a controlled activity and to “restrict discretion” for a restricted discretionary activity;
- (xx) introducing a new Rule 55A that sets out the ‘standard’ conditions that are repeated in Rules 55 to 78. Those ‘standard’ conditions are then deleted from the Rules 55 to 78 and replaced with a single cross-reference to new Rule 55A. This greatly simplifies and condenses the provisions and we note a similar plan drafting approach is taken in other contemporary plans including the Auckland Unitary Plan and the proposed Northland Regional Plan. We record that we have recommended retaining any conditions in Rules 55 to 78 that are clearly unique to particular rules (namely they are not one of the ‘standard’ conditions), but where slightly different wording was used on the same subject matter as the standard conditions we have recommended using the standard wording as that improves the clarity and of the Plan and its internal consistency;
- (xxi) Deleting references in the provisions relating to incidental discharges to air and discharges of odour as those matters do not fall within the scope of the pSWLP and instead should be dealt with in the Regional Air Plan; and
- (xxii) updating map references.

[320] We have also recommended the deletion of Appendix H (which we understand was simply rolled over from the antecedent RWP) because it is factually incorrect, inconsistent with the terminology now used in the pSWLP, and would therefore be unhelpful and misleading for users of the Plan.

---

<sup>130</sup> Note that prior to us inserting Rule 55A(c), this provision first appeared as Rule 51(a)(i)(3).

- [321] In the version of the Plan contained in Appendix B1 to this report we have shown these amendments using the conventional strikeout and underlining, but for the sake of brevity and readability we have not footnoted each of them.
- [322] We have recommended inserting some new provisions and deleting others. Where we insert a provision we have numbered it with a small (a), (aa) or capital A for example. For instance, if we insert a new rule after say Rule 63, we number it Rule 63A. Similarly, if we insert a new condition before condition (vii) we have numbered it (viia). Where we delete a provision we do not alter the sequential numbering in the provisions that follow. For example, where we delete Rule 21, we do not renumber Rule 22 and so on. This will enable submitters to more easily locate the provisions they submitted on. We understand that the numbering of the provisions will be rationalised by the Council in due course.
- [323] Readers of the Appendix B1 (the recommended amendments to the Plan with tracked changes) will notice some footnotes are shaded grey. These footnotes will remain in the Plan when it is operative as they do not relate to submissions, but form part of the Plan text.

## Chapter 21

### Evaluation and Recommendations

#### *Evaluation duties*

- [324] As we have noted previously, in compliance with section 32 and clause 5 of Schedule 1 of the RMA, the Council prepared and publicly notified a pSWLP evaluation report dated 3 June 2016 ('the Section 32 Report').<sup>131</sup> We have had particular regard to the Section 32 Report.<sup>132</sup> Section 32AA of the RMA requires a further evaluation of any changes made to the pSWLP after the initial evaluation report is completed. The further evaluation can be the subject of a separate report, or it can be referred to in the decision-making record.<sup>133</sup> If it is referred to in the decision-making record, it should contain sufficient detail to demonstrate that a further evaluation has been duly undertaken.<sup>134</sup>
- [325] If our recommendations in this report are adopted by the Council, this report (including its appendixes) is intended to form part of the Council's decision-making record. Therefore, in compliance with Schedule 1,<sup>135</sup> and electing the second option in section 32AA(1)(d), we include in this report a further evaluation of the amendments to the pSWLP that we are recommending.
- [326] In considering the amendments to the pSWLP requested in submissions (whether the recommendations are contained in the main body of this report or in Appendix A) we have, to the extent practicable and applicable, applied the criteria contained in section 32. In doing so, we have taken into account all of the information provided to us by the section 42A authors in the various reports and memoranda they prepared for us, as is detailed in Appendix C to this report. The detail of the further evaluation is indicated by the combination of this report including Appendix A. We are satisfied that it corresponds with the relative scale and significance of the anticipated effects of implementing the pSWLP.
- [327] Many of the submission points on the pSWLP related to particular provisions that do not stand alone, but are part of an integrated body of provisions that is intended to be understood, and to be implemented, as a coherent whole. To the extent that they do, we have also evaluated the whole by reference to the section 32 criteria.

---

<sup>131</sup> Evaluation Report: Proposed Southland Water and Land Plan, Prepared under Section 32 of the Resource Management Act 1991, 3 June 2016.

<sup>132</sup> RMA, s66(1)(e).

<sup>133</sup> RMA, s 32AA(1)(d) and (2).

<sup>134</sup> RMA, s 32AA(1)(d)(ii).

<sup>135</sup> RMA, Schedule 1, cl 10(2)(ab).

### ***Reasonably practicable options***

[328] In examining whether the amendments to the pSWLP are the most appropriate ways to achieve the Plan's objectives, we have sought to identify other reasonable and practicable options. In doing that, we have generally confined our consideration to options presented in the submissions or the section 42A reports, and to combinations and refinements of them. We have not attempted to develop substantial options on our own initiative. We consider that doing so would go beyond our role as hearing commissioners, and would deprive submitters of any opportunity to comment on options developed in that way.

### ***Efficiency and effectiveness***

[329] An assessment of the efficiency and effectiveness of amendments to the pSWLP must involve identifying and assessing the benefits and costs of the anticipated effects of implementing them, including opportunities for economic growth and employment.<sup>136</sup> Further, if practicable, the assessment should quantify those benefits and costs;<sup>137</sup> and assess the risk of acting or not acting if there is uncertain or insufficient information about the subject-matter.<sup>138</sup> In those respects, too, we have confined our consideration to the advice provided by the section 42A authors and submitters. We consider that, without expert evidence, it would be generally problematic for us to attempt to quantify benefits and costs of amendments to the Plan provisions (the implementation of which may have environmental, social or cultural effects) in contrast to the benefits and costs of economic effects that can be assessed in money's worth. Accordingly, in those respects we have made assessments that are more broad and conceptual, rather than analytical and calculated.

### ***Most appropriate option***

[330] Scrutinising reasonably practicable options, and assessing the efficiency and effectiveness of amendments to the pSWLP, are part of evaluating the most appropriate way to achieve the objectives of the Plan, together with the need to give effect to the higher-order instruments, including the NPSFM and the SRPS.

### ***Evaluation***

[331] The section 42A reports (including the authors' responses to our questions on them) contained detailed advice to assist us to make further evaluations on amendments to the pSWLP in response to submissions. We have listed those Council reports in Appendix C to this report. We have considered those reports, and except to the extent that in this report we specifically address a particular topic, we accept the recommendations and associated reasons contained in

---

<sup>136</sup> RMA, s 32(2)(a).

<sup>137</sup> RMA, s 32(2)(b).

<sup>138</sup> RMA, s 32(2)(c).

them. With that exception, rather than duplicating their contents, we incorporate the section 42A reports in this report, and adopt their contents together with the reasons contained in Appendix A as the basis for our recommendations on the submissions on the pSWLP.

### ***Conclusion and recommendations***

[332] We have considered and deliberated on the pSWLP; the submissions lodged on it; and the reports, evidence and submissions made and given at our public hearings. In reaching our recommendations, we have sought to comply with all applicable provisions of the RMA; we have had particular regard to the further evaluation of the amendments to the pSWLP we are recommending. The relevant matters we have considered and our reasons for them are summarised in the main body of this report and in Appendix A. We are satisfied that the amendments we recommend are the most appropriate for achieving the objectives of the Plan and for giving effect to the higher-order instruments, including in particular the NPSFM and the Southland RPS.

[333] We therefore recommend the amendments to the Proposed Southland Water and Land Plan contained in the main body of the report and in Appendices A, B1 and B2.

29 January 2018



Edward Ellison



Lloyd McCallum



Maurice Rodway



Eric Roy



Robert van Voorthuysen (Chair)



**Appendix A**  
**Schedule of Recommended Decisions on Submissions**

## **Appendix B1**

**pSWLP – Incorporating Recommended Amendments (tracked changes  
version)**

## **Appendix B2**

**pSWLP – Incorporating Recommended Amendments (clean version)**