



DECISION REPORT TWO OF FIVE

Proposed Gisborne Regional Freshwater Plan

RESOURCE MANAGEMENT ACT 1991

HEARING OF SUBMISSIONS DECISION OF HEARING PANEL

TOPICS:	Water Quantity Provisions
HEARING PANEL:	Mark Farnsworth MNZM (Chair) Deputy Mayor Rehette Stoltz Cr Craig Bauld Peter Callander Antoine Coffin
HEARING DATES:	11-12 October 2016

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1.0 Panel Appointment

- 1.1** The Gisborne District Council ('Council'), under section 37A of the Resource Management Act 1991 (RMA) S.37A, appointed Independent Commissioners Mark Farnsworth (Chair); Peter Callander and Antoine Coffin, and Deputy Mayor Rehette Stoltz and Councillor Craig Bauld to the Proposed Gisborne Regional Freshwater Plan (the 'Freshwater Plan') Hearings Panel. The Panel were authorised to hear and make a recommendation on submissions and further submissions on the Freshwater Plan.
- 1.2** This second session of hearings was convened to consider submissions and further submission on the Freshwater Plan relating to the 'water quantity' provisions in Part C – Section 4 of the Plan.
- 1.3** In preparing this decision the following abbreviations have been used:

AEE	Assessment of Environmental Effects
Council	Gisborne District Council
DOC	Department of Conservation
FANZ	Fertiliser Association of New Zealand
FFNZ	Federated Farmer of New Zealand
FWAG	Freshwater Advisory Group
FMU	Freshwater Management Unit
HNZ	Horticulture New Zealand
Inc	Incorporated
Ltd	Limited
MALF	Mean Annual Low Flow
NOF	National Objectives Framework
NPSFM	National Policy Statement for Freshwater Management 2014
NZCPS	New Zealand Coastal Policy Statement 2010
RMA	Resource Management Act 1991
RMAA	Resource Management Amendment Act 2013
RPS	Regional Policy Statement
RiVAS	River Values Assessment System
TRONPnui	Te Runanganui o Ngati Porou

2.0 Officers' Reports

- 2.1** The Panel received a comprehensive Section 42A Report¹ which considered submissions on the 'water quantity' provisions in the Plan. This was prepared by Kurt Ridling Dennis Crone, Sarah Thompson and Lois Easton (Strategic Planning and Environmental and Science Services, Gisborne District Council) and Jerome Wyeth (4Sight Consulting Ltd) and reviewed by David Wilson, Strategic Planning Manager at Gisborne District Council².
- 2.2** The Section 42A Report:³
- Provides an overview of original and further submissions that relate to the water quantity provisions of the Freshwater Plan;
 - Provides an analysis of decisions requested in submissions and makes recommendations as to whether or not those submission points should be accepted or rejected, either in part or full; and
 - Concludes with recommendations for changes to the provisions of the Freshwater Plan.
- 2.3** A full list of submitters and further submitters and the Section 42A recommendations can be found pages 85 -123 of the Section 42A Report.

¹ *Gisborne Regional Freshwater Plan- Section 42A Report – Water Quantity; 20 September 2016.*

² *ibid at [1.3]*

³ *Gisborne Regional Freshwater Plan- Section 42A Report – Water Quality; September 2016, pages 10-13.*

3.0 Conflict of Interest Declaration

- 3.1** The Panel chair noted that there was potential for a perception of the conflict of interest to arise with regard to the submission of the New Zealand Fire Service (NZFS)⁴ due to his long history of involvement in rural fire matters (1974 – 1995), including a period where he was the chair of Northland’s Rural Fire Co-ordinating Committee and as a Principal Rural Fire Officer. The Chair indicated that he would stand aside from making any recommendation of the NZFS submission.

4.0 Hearing

- 4.1** Commissioner Antoine Coffin opened the hearing with a karakia.
- 4.2** At the commencement of the hearing Mr David Wilson for Council provided a useful overview of the key issues raised by Council staff and their recommendations, and a summary of issues in contention with submitters.
- 4.3** During the hearing process the following submitters appeared before the Panel to speak in support of their submission points on the water quantity provisions in the Freshwater Plan:

Tuesday 11 October (in order of appearance)

- Matawai Farmers Group⁵– represented by:
 - Lilian Sherman; and
 - Kenneth Shaw
- Statements of evidence had been provided from:
 - Lilian Sherman
 - Kenneth Shaw
- Helm Orchards⁶– represented by Stephen Helm
- Stephen Helm evidence tabled at hearing
- Mangatu Blocks and Wi Pere Trust⁷ – represented by Alan Haronga who had provided a presentation statement.
- New Zealand Fire Service⁸– represented by:
 - Perri Dufy; and
 - Charlie Turei
- Statements of evidence had been provided from:
 - Perri Nicole Duffy; and
 - Charlie Turei.
- Gisborne District Council represented by Neville West and Marcus Koll.
- Statements of evidence had been provided from:
 - West; and
 - Marcus Koll.

Wednesday 12 October (in order of appearance)

- Rongowhakaata Iwi Trust⁹ – represented by;
 - Murray Palmer;
 - Te Rina Whaanga;
 - Jody Wylie; and
 - Moera Brown
- Key themes for Rongowhakaata was tabled at hearing

⁴ Submission No 32

⁵ Further Submission No 17

⁶ Submission??

⁷ Submission No 22

⁸ Submission No 32

⁹ Submission No 36

- Department of Conservation¹⁰ – represented by:
 - Teall Crossen Legal Counsel;
 - Adam Canning; and
 - James Witham
- Statements of Evidence had been provided from:
 - Adam Canning; and
 - James Witham, Planner, DOC.
- Legal evidence from Teall Crossen tabled at hearing
- Joint with Hort NZ LeaderBrand¹¹ – represented by:
 - Richard Burke;
 - Gordon McPhail; and
 - Nick Pollock
- LeaderBrand submission tabled at hearing
- Horticulture New Zealand (HortNZ)¹² - represented by:
 - Christopher Keenan, Special Adviser, Natural Resources to HortNZ;
 - Vance Hodgson, Director of Hodgson Planning Consultants Ltd; and
- Nicholas Conland, Environmental Consultant.
- Statements of evidence had been provided by:
 - Vance Hodgson;
 - Nicholas Conland; and
 - Angela Halliday.
- TRONPnui¹³ – represented by:
 - Tina Porou, and
 - Herewini Te Koha CEO of Ngati Porou.
- Statement of evidence had been provided by:
 - Tina Porou
- Federated Farmers of New Zealand¹⁴ – represent by: Debra Bidlake
- Eastern Fish and Game Council¹⁵ represented by Eden Herbert.
- Statement of submission by Eastland Fish and Game Council was tabled at hearing

Tabled evidence / representations

- New Zealand Defence Force – Rebecca Davies Senior Environmental Officer.

4.3.1 The following documents were tabled to support of submissions made:

- Reasonable Stock Water Requirements Guidelines for Resource Consent Applications: Technical report prepared for Horizons Regional Council prepared by Gordon Stewart, and Dr Robert Rout, December 2007.
- Horizons Regional Council – Part 8 Water Hearing, Volume 1 - Part 8, Chapters 6, 13, 15 and 16 and Schedules AA, AB, B, C and D. Decisions of the Hearing Panel.
- Beef + Lamb New Zealand Economic Service 5-Sep-16 Sheep and Beef Farm Survey - Performance Indicators Per Farm Analysis Notes tab Class 3 N.I. Hard Hill Country - East Coast.
- Gisborne Municipal Water Supply – powerpoint presentation notes.

4.3.2 Other documents the Panel received in relation to his hearing:

- Appendix 1 to Debra Bidlake – Letter from Solicitor Richard Gardner;
- Bay of Plenty Regional Council, Proposed PC9 Region-wide Water Quantity Plan Change: (Track change version);
- Environment Court Decision No [2011] NZEnvC 380;
- Nga Whakaaetanga ā Ture mo Te Tairāwhiti, Statutory Acknowledgements for the Gisborne District;

¹⁰ Submission No 5

¹¹ Further Submission 14

¹² Submission No 19

¹³ Submission No 38

¹⁴ Submission No 9

¹⁵ Submission No 11

- Methodology and analysis tool to identify tangata whenua cultural flows for the Te Arai river Catchment;
- Tangata Whenua Perspectives of Wastewater;
- The costs and benefits of an allocation of freshwater to iwi;
- The incentives to accept or reject a rights regime for fresh water;
- Ecological impacts and planning history, An environmental history of the Turanganui-a-kiwa casebook area;
- Māori claims to ownership of freshwater;
- Establishment of Mataitai Reserve;
- New Zealand's Approach to Integrated Freshwater Management with a Focus on Indigenous Interests;
- Resource Management Journal November 2015; and
- Property rights and Māori: a right to own a river?

5.0 Analysis of Submissions

5.1 SCREENING PROCESS

- 5.1.1 In making decisions on the relief sought in submissions and further submissions, factors that influenced the Panel's decision included:
- Minor corrections and additions that will assist Plan users;
 - Suggested changes/recommendation that give effect to NPSFM; and
 - Suggested changes/recommendations that are fully justified by a section 32AA type analysis demonstrating superiority to the Council's proposed provisions as supported by its section 32 analysis.
- 5.1.2 The Panel also set aside changes sought by submitters during the hearing process that went beyond the scope of submissions or the notified Freshwater Plan. Relief sought in submissions has also been rejected by the Panel where the submitters failed to provide sufficient justification or cogent reasons to support the relief sought, and could not rely on other similar submissions or Council Section 42A Report recommendations.

5.2 SUMMARY OF EVIDENCE & REPRESENTATIONS

- 5.2.1 Briefs of expert evidence, and a number representation statements, had been pre-circulated prior to the hearing dates in accordance with the Panel's Second Direction of 20 September 2016. All material pre-circulated or tabled on the day of the hearing can be found on the Council's web page at <http://www.gdc.govt.nz/gisborne-regional-freshwater-plan/>. In this summary, it is not our intention to provide a detailed account of all of the matters covered in each of the briefs/statements, rather this summary highlights the points of difference the submitters have with the recommendations of the Section 42A Report, and focuses on the amendments, additions and deletions the submitters are requesting.

5.3 MATAWAI FARMERS GROUP

- 5.3.1 Ms Lilian Sherman, a professional engineer, provided us with a brief overview of the Matawai Farmers Group ('the Group'). She addressed the following matters:
- 5.3.2 The definition of 'intensively farmed stock' noting¹⁶ that the Group opposed the inclusion of cattle contained for break-feeding of feed crops in this definition. The Freshwater Plan as notified, under Policy 4.1.1 and Rule 4.1.4, intensively farmed stock requires stock exclusions and stock crossings. The Group requested that the words contained for break-feeding of feed crops be removed from the definition or the definition is qualified by including the proportion of the farm used for break-feeding¹⁷.

¹⁶ Lilian Sherman EIC at [12 – 18]

¹⁷ A percentage figure was supplied Lilian Sherman EIC at [18]

5.3.3 The taking of stock water under RMA section 14(3)(b). The submitter advised that¹⁸ the Group is opposed to Policy 4.1.1 and Rule 4.1.4 which proposes that the taking and use of water is not a permitted activity for “Intensively Farmed Stock”. Ms Sherman expressed a view that these provisions contravene an individual right to take reasonable stock water provided there is no adverse effect. It was also noted that this may disadvantage those farmers who have excluded stock from waterways.

5.3.4 The GDC proposed permitted stock water take of 10m³/day (Rule 4.1.4) for intensively farmed stock is also opposed. A station carrying 400 cows and 3000 sheep would require approximately 55m³/day. The Group supported the Section 42A recommendation.

5.3.5 Mr Ken Shaw, in supporting the evidence of Ms Sherman provided us with an overview of his farming system.

5.4 HELM ORCHARDS LIMITED

5.4.1 Mr Stephen Helm, a director of Helm Orchards Ltd, spoke to Helm Orchards Ltd further submission. He submitted that Council staff base any decision to restrict irrigation water take from Te Ari River from river flow close to Whakaterere, Manutuke and not just the flow readings taken at Pykes weir¹⁹; justification was provided.

5.5 MANGATU BLOCKS INCORPORATION AND WI PERE TRUST

5.5.1 Mr Alan Haronga, (Chair of both Mangatu Blocks Incorporation and Wi Pere Trust) asked²⁰ for an amendment be made to Policy 4.1.7 to allow for a temporary take for construction purposes (for off river storage facility and other activities).

5.6 NEW ZEALAND FIRE SERVICE COMMISSION (NZFSC)

5.6.1 Ms Perri Duffy, a Planner for Beca Limited appearing on behalf of NZFSC, spoke to her evidence covering the following points:

5.6.2 Key submission points²¹:

- Water supplies for training for firefighting are a relevant consideration under a regional plan; and
- The benefits of including the provisions for firefighting training outweigh the potential environmental effects, which typically arise from taking water from waterbodies with limited water or taking significant volumes of water which affect the flows of the waterbody.

5.6.3 We were told²² that as water for firefighting training is not provided for within the Freshwater Plan it would currently require consent as a noncomplying activity. Whilst the resource consent process provides an alternative pathway for enabling activities it does not necessarily result in a case by case assessment and may not necessarily be the best means of addressing an issue. The inclusion of the proposed rule (as a permitted activity) enabling water takes for firefighting training purposes will not unduly complicate the Freshwater Plan. In addition, the inclusion would provide clarity for the Plan user including Council and the Commission²³. Three permitted activity standards are proposed to accompany the rule. These relate to: maximum time/duration for water take; not exceeding the rate of flow that exists; and avoiding water take during periods of low flow, especially during mean annual low flow²⁴. A cost benefit analysis was provided²⁵ to justify the points made. Wording for NZFS’s proposed amendment were provided²⁶.

5.6.4 Mr Charlie Turei, the Area Commander – Tairāwhiti NZFSC provided us with an overview of:

- The role of the Commissions and the NZFSC²⁷;
- Equipment training²⁸;
- Training in the Gisborne area²⁹; and
- Location for training³⁰.

¹⁸ *Ibid* at [19 – 26]

¹⁹ *Stephen Helm tabled representation*

²⁰ *Alan Haronga EiC at [1.2]*

²¹ *Perri Duffy EiC at [14]*

²² *Ibid* at [24]

²³ *Ibid* at [17]

²⁴ *Ibid* at [25]

²⁵ *Ibid* at [28 – 30]

²⁶ *Ibid* at [31 – 33]

²⁷ *Charlie Turei EiC at [14 – 19]*

²⁸ *Ibid* at [20 – 26]

²⁹ *Ibid* at [27 – 34]

³⁰ *Ibid* at [35 – 37]

5.6.5 Mr Turei concluded³¹ by noting that the Commission was seeking amendments to the PGRFP to provide for operational requirements which in turn provides the community with the protection of life and property from fire.

5.7 GISBORNE DISTRICT COUNCIL (GDC) – WATER UTILITIES SECTION

Mr Marcus Koll Gisborne District Council's Water Supply Team Leader provided us with an overview of the way Gisborne's water supply system works.

5.7.1 Mr Neville West addressed the water supply issues identified in the Section 42A Report namely:

- Rural vs industrial restrictions and priority for domestic and sanitation purposes only - Policy 4.1.2;
- Minimum flows in the Te ari River at the municipal supply intake;
- Gisborne municipal supply – Rule 4.1.9;
- Water metering of domestic and industrial users – new method; and
- New and expanded methods.

5.7.2 Mr West sought the following wording changes:

- Policy 4.1.2a change '1 July 2016' to '1 July 2017'; and
- Policy 4.1.2a add the following words – unless for a short duration emergency while water restrictions are put in place and as agreed by the consenting authority.

5.8 RONGOWHAKAATA IWI TRUST

5.8.1 Rongawhakaata Iwi Trust tabled a detailed submission entitled – key themes for Rongowhakaata in relation to the Freshwater Plan Section 4 'Water quantity and allocation'. Members of the Trust took turns to address the key themes in their submission. In their opening, it was noted that little recognition had been given to their original and subsequent submissions or facilitated participation in the Freshwater Plan process to date and they were going to discuss that in their representation. Matters addressed included:

5.8.2 Municipal and community water supplies

The Trust recommended³² that a 'priority ranking' needs to be established for industry based on their importance to the region's socio-economic framework and community well-being. A request was made to change the wording of Policy 4.1.xx –

The taking and use of water for Gisborne Municipal Supply from the Te Ari River bush intake shall be able to continue as a priority use without a minimum flow until 2016 when a minimum shall be set provided"

- *Modification of the intake structure to allow a small year-round flow and access by native fish to the upper catchment is undertaken by 1 May 2020; and*
- *Sufficient hydrological, cultural and ecological monitoring is undertaken and co-governed by GDC and mana whenua from 2017 – 2026 to allow a minimum flow to be set in 2026 that provides for the river values.*

5.8.3 A request was made to change³³ Method 4.1.6 by adding the following words:

The Council in consultation with mana whenua will establish.....alongside the fisheries and cultural flows and values of the Te Ari River from 2017 – 2026.....

5.8.4 The Trust opposes the removal of 'intensively farmed stock' from Policy 4.1.1b³⁴.

5.8.5 The Trust opposes³⁵ the Section 42A Report proposed amendment to Rule 4.1.4 as it is considered that intensively farmed livestock should be excluded from the Rule as a permitted activity as it is potentially unsustainable.

³¹ Ibid at [39]

³² Rongowhakaata EIC at [3.1.6 – 3.1.7]

³³ Ibid at [3.1.7]

³⁴ Ibid at [3.2.2]

³⁵ Ibid at [3.3]

- 5.8.6 The Trust asked that clarification is provided between general notification for a consent application or a plan change, and notification to mana whenua and iwi³⁶.
- 5.8.7 The Trust strongly³⁷ believes that there needs to be a mechanism that addresses equitable allocation of water. The current situation fails to take into account mana whenua rights, interests and responsibilities. The Trust opposes extending water permit consents past the 5-year threshold.
- 5.8.8 The Trust noted that the addition of a 'tangata whenua values' criteria in Policy 4.13 is not carried through into the matters of discretion³⁸.
- 5.8.9 The Trust suggests that a responsive mechanism for water allocation could be via a 'kaitiaki flow allocation'. This would require a new policy as follows³⁹:

Through the freshwater plan development process, GDC and tangata whenua shall co-develop policies, rule and methods for the establishment of a (rongwhakaata) Kaitiaki Water Allocation system as part of the relevant Freshwater Management total allocation.

The Trust provided justification for their submission that there need to be a water allocation model which provides for Rongowhakaata iwi and hapu rights, interests and responsibilities in relation to freshwater.

5.9 THE DIRECTOR-GENERAL OF CONSERVATION

- 5.9.1 Ms Teall Crossen, Legal Counsel for the Director-General of Conservation, spoke to her legal submission. Key matters addressed included:

- A requirement to perform all the functions set out in RMA section 30⁴⁰;
- Proposed amendments to address Gisborne's Municipal water supply⁴¹;
- Over allocation⁴²; and
- Definitions⁴³.

- 5.9.2 Mr Adam Canning, a Doctoral Researcher in Freshwater Ecology in the Institute of Agriculture and Environment – Ecology at Massey University spoke to his evidence on behalf of the Director-General of Conservation. Under the heading of 'surface water flows and ecosystem health' Mr Canning provided the Panel with information on:

- Ecosystem health;
- Typology of Surface water flows;
- Flows, stream morphology and habitat;
- Ecological community stability, predator-prey dynamics and flows;
- Periphyton growth and flows;
- Stream temperature and flows;
- Flows and freshwater fish migration and breeding; and
- Natural causes of variation in flows.

- 5.9.3 Under the heading of 'threats to natural flow regime/flow variability', information was provided on:

- Over-allocation;
- Flat lining allocation;
- Dams;
- Abstraction;
- Climate change; and
- Flood protection.

³⁶ Ibid at [3.5.1]

³⁷ Ibid at [3.7.1]

³⁸ Ibid at [3.7.3]

³⁹ Ibid at [6]

⁴⁰ Teal Crossen Legal Submission at [5 - 8]

⁴¹ Ibid at [14 - 20]

⁴² Ibid at [21 - 22]

⁴³ Ibid at [23 - 24]

5.9.4 Mr Canning reviewed and critiqued the reports used to determine how flows of freshwater are managed in the Freshwater Plan in relation to the Te Arai River. Mr Canning considered that an interim minimum flow and fish passage could still be implemented until there is sufficient data to set a longer-term flow⁴⁴.

5.9.5 Mr Canning told us that:

- Ideally minimum flows should not go below the MALF as flows at MALF already put the community under great stress. Ultimately, the closer flow regimes are to natural states, the less the disruption to the community will be and the less the community and ecosystem processes will change⁴⁵.
- He did not support not having a minimum flow in Te Arai River until 2026. The proposed policy implies that there is insufficient data to set a suitable flow regime in the river. The NIWA report suggests that an interim minimum flow limit of Te Arai River be set at 0.061 cumecs (based on 90% of MALF⁴⁶).

5.9.6 Mr Canning provide the following definitions:

Floods: Flows greater than 3 times the median flow of a surface waterbody⁴⁷.

Mean annual low flows (MALF): The 7-day mean annual low flow. In any year, the 7-day low flow is the lowest average flow over 7 consecutive days for every 7 consecutive day period in the year. The 7-day mean annual low flow can be determined by adding the lowest 7-day low flows for every year of record and dividing by the number of years of record. This must be inclusive of all known takes of water from the waterbody to estimate naturalised flow⁴⁸.

5.9.7 Mr James Witham, RMA planner for DOC, addressed the following matters:

5.9.7.1 Gisborne Municipal Water Supply

Issue 2: Minimum flows in the Te Arai River at municipal supply intake and Issue

Mr Witham told⁴⁹ us that the section 32 analysis of the approach to managing municipal water is confusing and flawed. In his view, it is appropriate to consider over allocation resulting from the municipal takes differently to takes of other kinds, particularly given the potential impacts on the health and wellbeing of the Gisborne Community. However, the NPSFM clearly sets out what is required in terms of over allocation - that is; no new over allocation, phase out existing over allocations. Mr Witham reviewed the matters in the policy recommended in the Section 42A Report addressing requirements for demand management plans, and was not satisfied that this will achieve the statutory imperatives of the NPSFM and provided a series of recommendations:

- He supported the intent of the new policy 4.1x, he considered that the provisions that an appropriate minimum should be 90% of MALF (Policy 4.1.4).
- Policy 4.1.2 and new Policy 4.1.x should be amended to reflect the expiration of the exemption from minimum flows once these have been set as part of conditions in 2026.
- There needs to be a consequential amendment to Rule 4.1.9 (to which the Director-General also made a submission) making this action a requirement of the restricted discretionary activity status, and ensure that failure to undertake the work would therefore result in the future application being considered as a non-complying activity. This is required in order, for the policy to have meaning and be effective.
- Policy 4.1x(b) as currently drafted does not meet the statutory imperatives in terms of achieving the safeguarding of the life supporting capacity of water or the avoidance and reduction of over allocation.
- A target of 90% of MALF is an appropriate interim target until the Waipaoa Catchment Plan is put in place.

⁴⁴ Adam Canning EIC at [54]

⁴⁵ Ibid at [54]

⁴⁶ Ibid at [55 – 56]

⁴⁷ Ibid at [59]

⁴⁸ Ibid at [61]

⁴⁹ Ibid at [9 -23]

5.9.7.2 *Management of water permits - Common Expiry dates – Policy 4.1.3⁵⁰*

Policy 4.1.3 which promotes the use of common expiry dates for water permits in the same water quantity zone was supported. Witham suggested the following criteria will assist to identify the most appropriate catchments and is an efficient and effective method to achieve the requirements of the NPSFM, as not all catchments will require this approach:

- Are over allocated, to address reasonable use
- Have competing priorities for uses that could result in over allocation;
- Have existing or emerging significant adverse effects on the values identified for the zone on a catchment wide basis.

5.9.7.3 *Where no catchment limits have been set – Policy 4.1.4 (flat lining)*

The Section 42A Report rejects the relief sought by the Director-General of Conservation Witham disagreed⁵¹, in part, with this assessment and the recommendations of the Section 42A he considered that two criteria extra should be added to Policy 4.1.4:

5.9.7.4 *Policy 4.1.13 assessment criteria (biodiversity, fish and intakes, and hydrology)*

Mr Witham⁵² noted that the submission of the Director-General sought three additions to policy 4.1.13 With regard to (i) - the habitats of 'Threatened' and 'At Risk' species - the Section 42A Report appears to accept the submission of the Director-General (along with a submission from Forest and Bird); however, the tracked change versions of the provision do not reflect this.

Mr Witham also considered that Policy 4.1.13 should be amended to include additional assessment criteria - wording was provided.

5.9.7.5 *Additional policies – Salt water intrusion⁵³*

Mr Witham noted that the language proposed for Policy 4.1.13 is vague and confusing, with no clear direction. This is either effective, or efficient. Given the potential costs of the contamination of groundwater with saline water, including the rendering of water unsuitable for irrigation or drinking water, it was his opinion that avoidance of a landward encroachment is an appropriate response and Policy 4.1.13 should be amended accordingly.

5.9.7.6 *Rules 4.1.6 – 4.1.8 matters of discretion (default limits, fish and intakes, hydrology)⁵⁴*

Mr Witham drew our attention to the matters of discretion for Rules 4.1.6-4.1.8 where the Section 42A Report appears to accept the submission of the Director – General addressing the ceasing of takes where there are no catchment plans; however, the tracked change version of the provisions does not reflect this.

5.9.7.7 **Over-allocation**

Issue 1: Managing full and over allocation – Policy 4.1.7 and Issue 2: Permit durations for over-allocated waterbodies⁵⁵

Mr Witham noted that the Director-General sought to ensure that over - allocation of a waterbody was appropriately being reduced over time prior to longer consent durations being considered in Policy 4.1.8.32 he disagreed in part with the recommendations of the Section 42A Report.³³ While he did agree that the amendments reducing over – allocation in Policy 4.1.7 could, in part, address this issue, the amended language recommended relies on five year durations and renewals to reduce 'actual' over allocation. As such, this could lead to an unfair proportion of reductions for some parties with shorter consent durations, and potentially lock in over allocation for longer periods of time for those with longer duration consents. To ensure the effectiveness of the policy, Mr Witham supported a qualifier addressing over allocation. Alternatively, a requirement for the permit to be reviewed at least every five years in line with policy 4.1.7c as amended by the Section 42A Report.

⁵⁰ *Ibid* at [24 – 26]

⁵¹ *Ibid* at [27 – 30]

⁵² *Ibid* at [31]

⁵³ *Ibid* at [37 -40]

⁵⁴ *Ibid* at [41 – 45]

⁵⁵ *Ibid* at [45 -49]

5.9.7.8 *Transfers of water*⁵⁶

Mr Witham opined that the transfers of water in over allocated catchments should not be viewed favourably and should not occur until such time as existing allocations have been reviewed and paper over allocation has been eliminated and actual over allocation reduced

5.10 LEADERBRAND LIMITED

Mr Gordon McPhail and Richard Burke appeared on behalf of LeaderBrand provided us with an overview⁵⁷ of their operation in the Gisborne District. They emphasised, a number of times, that water quantity, accessibility and future resourcing are critical to LeaderBrand.

5.11 HORTICULTURE NEW ZEALAND (HORTNZ)

5.11.1 Mr Nic Conland, an environmental consultant acting on behalf of HortNZ, addressed the following issues:

5.11.1.1 *The science supporting the use of the Policy 4.1.4 and 4.1.11 framework.*

HortNZ sought amendments to Policy 4.1.4 to provide guidance on setting minimum flow conditions at 90% of Mean Annual Low Flow (MALF) unless there is data available to demonstrate that a lower minimum flow is appropriate. Where there is a scientific basis for a minimum flow to be set below MALF, or where, outside schedule 1, below 90% of the MALF, a minimum flow level could be agreed which satisfied the approach for balancing the freshwater values set out in the section 32 report. HortNZ consider removing the option to consider flows below the MALF unnecessarily constrains the flexibility for growers while we wait for formulation of the catchment plans.

HortNZ sought amendments to Policy 4.1.4 to provide for survival water below minimum flows to include drought susceptible annual crops for human consumption. A suggested amendment to Policy 4.1.11 (b) is offered as below:

b. The water shall be available for rootstock protection is calculated from the difference between the MALF (Q1) and the 1:10 year MALF (Q10) up to two weeks after minimum flows are reached; and

5.11.2 Mr Vance Hodgson, a director of Hodgson Planning Consultants acting on behalf of HortNZ, spoke to his brief of evidence, emphasising:

5.11.2.1 *Root Stock Survival Water*

HortNZ has sought recognition of the need for survival water for drought susceptible crops for human consumption. The submission suggested that this is likely to be covered by the lowest priority in Policy 4.1.10(d). Essential use for continued operation of a business or industry, but could be better addressed through Policy 4.1.11 after rootstock survival water (examples were provided).

5.12 TE RUNANGANUI O NGATI POROU (TRONPnui)

5.12.1 Ms Tina Porou in speaking to TRONPnui submission noted:

“Te Runanganui is disappointed particularly given our recent commitments to each other regarding the JMA that the Council has rejected every submission Te Runanganui made in the context of water quantity”⁵⁸.

Ms Porou addressed the following issues, questioning why the Council had turned down the relief sought by TRONPnui in each of the matters:

5.12.1.1 *Gisborne Municipal Water Supply*⁵⁹

Ms Porou offered us the viewpoint that considering the lack of information in the Ngati Porou catchments regarding water takes generally, a metering system would enable the council to understand the water actually used within the Ngati Porou water catchments. Council should require a programme of metering and monitoring across Ngati Porou catchments that includes permitted takes and discharges to better understand the actual water use in those areas

⁵⁶ *Ibid* at [52 – 59]

⁵⁷ *Powerpoint presentation*

⁵⁸ *Tina Porou EIC* at [14]

⁵⁹ *Ibid* at [16 – 19]

5.12.1.2 *Management of water permits*⁶⁰

TRONPnui disagrees with the Council's position in the Section 42A Report. They reaffirm our position. The Council has very limited data on our catchments. To allow longer terms with no clear understanding of the water allocation limits is irresponsible and encourages behaviours that have seen the over allocation in the Waipaoa catchment occur.

5.12.1.3 *Over-allocation*

Ms Porou noted:

- TRONPnui does not support the first in first served approach for addressing full or over-allocation. TRONPnui is resolute that a first in first serve allocation system must not be imposed on our catchments without first understanding limits and without creating a framework that seeks to address Ngati Porou rights and interests in freshwater.
- TRONPnui disagrees with the Council's position in the Section 42A Report. The discussion on freshwater allocation is a complex one and as discussed with Council staff during the negotiation of the JMA it was envisaged that the co-creation of a framework that better fit the Ngati Porou unique economic circumstances and our cultural and environmental perspectives.
- It is irresponsible for the Council to merely say that because we have not offered a solution that the first in first serve allocation framework should apply. Neither have we been given a genuine opportunity to work through these issues in a way that gives effect to our Treaty rights and interests nor in a way which gives effect to Te Mana o te Wai as envisaged in the NPSFM.
- Te Mana o te Wai, this is simply where the first right to water goes to the water. Once cultural and environmental flows have been determined led by Matauranga Māori and supported by good western science, allocation can take place on the remaining flows.
- Ngati Porou catchments are currently under allocated, but introducing a system that is proven in other catchments to unfairly give advantage to existing users, that has led to over allocation and does not give effect to Tangata Whenua rights and interests leads the Runanganui to strongly oppose the implementation of this system, merely because it is what everyone else does.
- TRONPnui recommends that all permit applications come to the JMA for decision making in the interim until the Council and Ngati Porou can invest adequate time to co-creating a system that works to achieve our mutual water quality and allocation aspirations.
- Council has failed to engage on water matters. TRONPnui is open to sharing our examples and options that we are developing. However it is complex. This cannot be done quickly.

5.13 FEDERATED FARMERS OF NEW ZEALAND

5.13.1 Ms Debra Bidlake, a Senior Regional Policy Advisor for Federated Farmers, spoke to her evidence. Key points in her submission are outlined below:

5.13.1.1 *Permitted takes – stock drinking water – Retention of Rule 4.1.4*⁶¹

Federated Farmers is concerned that the proposed plain puts in place a blanket restriction on the rate/volume of water which can be taken for stock drinking water. She opined that water takes for the reasonable needs of an individual's animals for drinking water, are a protected use under section 14(3)(b) of the RMA such that the Council cannot intervene unless the take is a) unreasonable; or b) there are, or are likely to be, adverse environmental effects arising from that take, both of which must be based upon a based upon a case-by case assessment of the take and corresponding water resource. Rule 4.1.4 should be either deleted or the reference to stock drinking water deleted as Ms Bidlake was unable to find any evidence upon which the section 42A officer is basing their assessment that the taking of water for stock drinking purposes is having either singularly or cumulatively effects which warrant the restrictions being proposed by Rule 4.1.4. Rather it would appear to be the opposite.

⁶⁰ *Ibid* at [16 – 19]

⁶¹ *Debbie Bidlake EIC* at [3]

5.13.1.2 Permitted Takes - Increasing 10m³ maximum permitted take – Rule 4.1.3⁶²

The section 32 report explains that the rationale for having a 10m³ limit in Rule 4.1.3 is to ensure that individually and cumulatively “small takes” (over and above domestic and stock water) will have no more than minor impacts on the environmental flow and allocation regime and as such can continue as permitted activities. Small takes include those required for road maintenance and construction, agricultural spraying and fertiliser and agrichemicals. Federated Farmers agrees that the proposed 10m³ per day limit is acceptable, but consider that conditions (a) and (b) should be removed.

5.13.1.3 Miscellaneous - Water Storage Facility – Rule 4.1.5⁶³

Ms Bidlake observed that Rule 4.1.5 enables the taking or use of water from lawfully established water storage facilities where the facility is not within the bed of a permanently flowing river there is no s 32 analysis of this rule. She also considered that ‘bundling’ like rules together makes for an efficient and effective plan (i.e. this rule should be moved to section 6 of the proposed Freshwater Plan), I do note the s 42A officers rationale for not wanting to move this rule. Thus, in my opinion an alternative option could be to provide an advice note in section 6 of the Proposed Freshwater Plan referring readers to Rule 4.1.5.

5.13.1.4 Managing Water Permits – where no catchment limits set – Policy 4.1.4⁶⁴

Ms Bidlake observed that in terms of Policy 4.1.4 she had been unable to find where this policy is discussed in the s 32 Report. She also noted that it is clear from Objective B2 and Policy B5 of the NPSFM that a council is unable to make a decision on a water permit which would result in over-allocation. But Policy 4.1.4 is silent on an interim overall allocation regime for a water resource to avoid becoming over allocated before the catchment specific plan has been prepared.

She opined that, by not having some form of interim allocation limits the Council runs the risk of over allocating a catchment because it has nothing against which to judge whether a water permit application will or will not result in a catchment becoming over allocated. The approach proposed by Federated Farmers where the policy sets out how to determine both interim overall allocation limits for surface and groundwater along with a methodology for setting minimum flows. The flow and allocation limits that Federated Farmers proposed were based on the draft National Environmental Standards on Ecological Flows and Water Level the reason for proposing an interim allocation regime is so that the water resources within the Gisborne Region don’t inadvertently become over allocated, but also to ensure that Council is able to discharge its duty under section 67(3) of the RMA.

Policy 4.1.4 should be replaced with the following:

Where no water quantity limits have been set through a catchment plan, the following interim limits shall apply:

- a Surface water and connected groundwater:

 - i. allocation shall be 30% of 7 day Mean Annual Low Flow*
 - ii. minimum flow shall be set at no less than 70% of 7 day Mean Annual Low Flow**
- b. Ground water shall be allocated at up to 50% of rainfall recharge.*

The Section 32 Report doesn’t appear to discuss the rationale for the 5 year permit duration in Policy 4.1.4(b). Federated Farmers’ submission expressed concern about the 5-year permit duration in Policy 4.1.4(b) because it felt 5 years provides insufficient certainty for businesses to make reasonable business decisions and as such may provide a disincentive to invest. In Ms Bidlake’s opinion, the only way that the Council can avoid ‘paper’ over allocation is to: a) ensure there is a clear ‘reasonable use’ test where the applicant of the water permit has to show that the rate/volume being applied for is reasonable for the end use; and b) avoid the paper over allocation occurring in the first place, which in my opinion only strengthens the need to have an interim allocation regime that enables the Council to decline applications that are inconsistent with interim limits.

⁶² Ibid at [4]

⁶³ Ibid at [5]

⁶⁴ Ibid at [7]

5.13.1.5 *Managing Water Permits – Water Takes from Wetlands and Outstanding Waterbodies – Policy 4.1.5*⁶⁵

Policy 4.1.5 also appears not to have any explanation of this policy in the Water Quantity and Allocation section of s 32 analysis Report. Federated Farmers agrees that it is important to manage adverse effects on the values of those wetlands that have been identified as significant. However, in respect of Policy 4.1.1 and Rule 4.1.4, Federated Farmers are of the view, that the taking of water for an individual's reasonable domestic needs and animal drinking water is protected by section 14(3)(b) of the RMA and should be provided for in the Freshwater Plan. In some instances it may be entirely appropriate for the Council to enable a water take from an outstanding waterbody or wetland, providing those takes are judged against the values which are being protected. In other regions, some quite significant water takes occur in outstanding waterbodies. Federated Farmers is of the view, that such takes should be a discretionary, rather than non-complying activity.

5.13.1.6 *Managing Water Permits – Assessment Criteria – Policy 4.1.13*⁶⁶

With regard to Policy 4.1.13 the section 32 Report doesn't directly discuss the assessment criteria other than stressing the importance of reasonable use requirements and metering data to address over allocation. NZFF considers that the assessment criteria in Policy 4.1.13 could be moved to a schedule to avoid duplicating the matters for control in Rule 4.1.6(a) – (p). In my view, this issue amounts to a stylistic difference of opinion regarding how a plan should be drafted rather than a substantive disagreement about what matters should be contained within the Proposed GRFP.

5.14 EASTERN FISH AND GAME COUNCIL

Mr Eben Herbert spoke to Eastern Fish and Game Council's written evidence. Mr Herbert provided us with an overview of the importance of the sports fishery and game bird resource in the Gisborne area.

5.15 NEW ZEALAND DEFENCE FORCE (NZDF)

5.16 Ms Rebecca Davies told us by letter that NZDF may undertake temporary military training activities in the Gisborne District from time-to-time. NZDF request that there is a specific permitted activity rule in the Freshwater Plan, supported by appropriate policies, to enable these training activities to take place.

6.0 Panel Requests for Further Information or Clarification

6.1 DEPARTMENT OF CONSERVATION

6.1.1 Mr Witham, a RMA Planner for DOC, provided the Panel with supplementary evidence which addressed the following:

- A reiteration that an allocation for root stock protection is appropriate (in principle) if it is underpinned by a robust analysis to ensure they achieve the environmental imperatives of the NPSFM.
- The Waikato Regional Plan uses Q5 as opposed to MALF; there is no compelling evidence as to why one method is more appropriate than the other in achieving the purpose of the Act or giving effect to NPSFM.
- Cannot find a policy or rule in the Auckland Unitary Plan that sets out any requirement for minimum flow or an allocation of 70% of MALF.
- Federated Farmers evidence (Ms Bidlake) sought significant amendments to the default provisions of water regimes without specific management by the Plan. The reduction of the default flow from 90% of MALF to 70% is not justified by appropriate ecological evidence.

6.1.2 Mr Adam Canning, a Doctoral Researcher in Freshwater Ecology in the Institute of Agriculture and Environment – Ecology at Massey University also tabled supplementary evidence on behalf of DOC, which addressed reasonable mixing zones. This evidence stated that the default reasonable mixing zone for effluent should be taken as 300m downstream.

⁶⁵ *Ibid* at [8]

⁶⁶ *Ibid* at [9]

6.2 GISBORNE DISTRICT COUNCIL – WATER UTILITIES

6.2.1 Mr Marcus Koll, Council’s Water Supply Team Leader, provided us with answers to the information sought by the panel:

Question: *Are there legal restrictions / implications if industrial use of water was restricted during low flow periods?*

Response: The Water Supply Bylaw 2015 adequately protects Water Utilities from potential legal implications by industrial customers during low flow periods. Council has no individual supply agreements with any commercial / industrial customers.

Question: *Have industrial users paid / prepaid for water storage and are entitled to have access to that storage during low flow periods?*

Response: Commercial / industrial customers are paying for Mangapoike water storage during normal as well as peak water demand. The approach is to manage each of these low probability events on a case by case basis.

Question: *Can the water supply be operated so that industrial users have effective restrictions placed on them?*

Response: Effective restrictions would be practically achieved through water meters (already in place) and the frequency of monitoring them either by telemetry, submitting data file or submitting readings. Failure to comply would be ceasing of supply.

Question: *Is there a need for water restriction protocols to be jointly developed between GDC and GDCWU so that the provisions of the plan can be implemented in practice?*

Response: Protocols for restrictions and level of restrictions are already in place, the protocol missing is when to invoke what level of restriction. We see this is achieved through decisions made by the Emergency Water Supply Sub-Committee, representing both, regional and district functions.

6.3 TE RUNANGANUI O NGĀTI POROU (TRONPnui)

6.3.1 In response to further information request – a further statement of Tina Porou on behalf of TRONPnui was provided to the Panel.

6.3.2 In summary, TRONPnui continues to consider that an interim policy and rule regime is necessary for the catchments in the Ngati Porou rohe, to ensure that the first in first serve Waipaoa Catchment rules are not applied to freshwater planning in the Ngati Porou rohe.

6.3.3 To address that, TRONPnui proposed the following:

- *That a provision is included in the Panel’s decisions version of the Freshwater Plan to that maintains the status quo (i.e. pre notification) for the Ngati Porou rohe for 18 months with the Joint Management Agreement (the JMA) being the vehicle for any consent applications in the interim; and*
- *A commitment from the Council to engage with Ngati Porou over 18 months to implement plan to develop the required allocation principles, based on data from the Ngati Porou rohe, to inform the hapu plans and the ultimate catchment plans in the Ngati Porou rohe.*

7.0 Panel Decisions

7.1 Clause 10 of Schedule 1 to the Act sets out the requirements for decisions on proposed policy statements and plans under the RMA.

(1) *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*

(2) *The decision—*

(a) *must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—*

- (i) *the provisions of the proposed statement or plan to which they relate; or*
- (ii) *the matters to which they relate; and*

(ab) must include a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA; and

(b) may include—

(i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and

(ii) any other matter relevant to the proposed statement or plan arising from the submissions.

(3) To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.

(4) The local authority must—

(aaa) have particular regard to the further evaluation undertaken in accordance with sub-clause (2)(ab) when making its decision; and

(a) give its decision no later than 2 years after notifying the proposed policy statement or plan under clause 5; and

(b) publicly notify the decision within the same time.

(5) On and from the date the decision is publicly notified, the proposed policy statement or plan is amended in accordance with the decision.

7.2 Given the number of submissions points that require addressing, the Panel decided that this report would not give a systematic account of all the issues raised in submission/further submission, evidence and representations. The Freshwater Plan and its accompanying section 32 evaluation are both substantial. In combination with the number of submission and further submission points made, evidence and information presented to the Panel by submitters and their experts, related documents such as the NPSFM and the Council's Section 42A reports, the Panel has had cause to reflect on and devise a decision writing approach that can cut through the volume of material before it.

7.3 In the interests of being time-efficient and producing a decision document for the whole plan that can be reasonably comprehended (in a timely manner), the Panel resolved to focus on the key issues raised that relate to a decision, the decision made, and the key reasons for that decision. In making its decisions, the Panel has adopted the Section 42A Report approach and grouped decisions according to topics.

7.4 DECISION-MAKING PROCESS

7.4.1 The main drivers for the Panel's decisions on policies, rules and other methods in the Freshwater Plan relating to water quantity are the specific requirements and tests set out within the Act, in particular the demonstration or provision of:

- Giving effect to NPSFM;
- Cogent reason(s), where possible supported with actual examples;
- Any deficiencies identified within the Council's section 32 evaluation;
- Requirements of another RMA Plan or Policy Statement, or relevant enactment;
- Proposed objectives and policies being ultra vires;
- Deficiency in the Council's Section 42A Report ; and
- The Panel's own evaluation.

7.4.2 In reaching its decisions the Panel adopted the following process:

- Where submission point(s) did not affect a proposed provision, the provision has been retained (unless changes to dependent related provisions require this and it can be accommodated within scope).
- Where a submission point(s) supports a proposed provision and there are no submissions in opposition, the provision has been retained.
- Where a submission point(s) sought changes to provisions with cogent reasons, there were no submissions in opposition, and the changes were supported by the Council Reporting Officers', the submission point(s) have been accepted and the provision has been amended.
- Where a submission point(s) was not supported by Council Reporting Officers and where the Section 42A Report recommendation was based on legal requirements to give effect to the NPSFM, the submission point has been rejected and the Section 42A Report recommendation adopted.

- Where a submission point(s) was in opposition and/or where there are related submissions on a topic seeking a variety of different outcomes for the same provision(s), key facts, issues and views have been identified and section 32AA analysis completed before a decision is made.

7.5 SECTION 32 AND 32AA EVALUATIONS

7.5.1 All proposed policy statement and plan provisions are subject to section 32 of the RMA. The Resource Management Amendment Act 2013 (RMAA 2013) amended section 32 with the aim of improving the quality of section 32 evaluations. These amendments provide greater detail about the requirements for undertaking and reporting evaluations, particularly for the assessment of benefits and costs, including anticipated opportunities for economic growth and employment. The evaluation must be undertaken up-front and early in the plan development process.

7.5.2 The Ministry for the Environment's Guide⁶⁷ on section 32 notes:

"The Resource Management Amendment Act 2013 introduced new requirements under Section 32 (s32). These new requirements do not change the fundamental purpose of s32, but they do require a more robust, clearly-articulated s32 evaluation, and set out more clearly what is required in s32 reporting. The Resource Legislation Amendment Act 2017 introduced a further requirement for a summary of advice received from iwi and details of any response to that advice.

Section 32 (s32) is integral to ensuring transparent, robust decision-making in Resource Management Act (RMA) plans, plan changes and policy statements (which are defined in s32 as proposals). S32 requires new proposals to be examined for their appropriateness in achieving the purpose of the RMA, and the policies and methods of those proposals to be examined for their efficiency, effectiveness and risk.

The effects of new policies and rules on the community, the economy, and the environment need to be clearly identified and assessed as part of this examination. The analysis must be documented, so stakeholders and decision-makers can understand the reasoning behind policy decisions".

7.5.3 The Freshwater Plan is underpinned by a comprehensive section 32 report the veracity of which was tested by the hearing process.

7.5.4 The Council (and the Hearings Panel) also has an obligation to make a further evaluation under section 32AA as part of the decision-making process in relation to changes to the Freshwater Plan since notification. A further evaluation ensures that any changes that are made to the proposal since the initial evaluation are subject to the same analysis and evaluation.

7.5.5 One inescapable consequence of the section 32AA requirements is that the merit of public submissions must also be subject to the relevant s.32 tests. The Panel identified early in its process that submitters should also make their own case as to the benefits, costs and other characteristics of their proposals (as they saw them) to the Panel. A process that did not include such an expectation of submitters would risk being in breach of the principles of natural justice. For example, it would not be appropriate for Council officers, and indeed the Panel, to imagine benefits or costs associated with a submission's requested relief that materially affected the decision made on that matter, as it not be in keeping with what the submitter considered was relevant or applicable.

7.5.6 The Panel made its expectation clear to experts by providing a directive⁶⁸ on its approach to information that should be provided at the hearings, noting that:

"Where experts are providing the panel with change recommendations the panel has the expectation that:

- *Wording changes will be provided; and*
- *Cogent reasons (a Section 32 like approach) will be provided why the Panel should adopt their recommendation."*

This approach was necessary to ensure that the Panel did not unintentionally engage in the 'cherry picking' of objectives, policies or rules, but rather remain focused on decision-making based on sound information with cogent reasons, provided by the Council reporting officers' and/or submitters.

⁶⁷ 2013. A guide to section 32 of the Resource Management Act 1991: Incorporating changes as a result of the Resource Management Amendment Act 2013, Interim guidance. Wellington: Ministry for the Environment.

⁶⁸ First Directive of the Hearing Panel, 1 July 2016

8.0 Issues

- 8.1** At the conclusion, of the water quantity hearings, the Panel determined that the following issues needed to be further considered and addressed:
- 8.1.1 Principle Issues:
- Ensuring that the policies, rules and other methods give effect to NPSFM;
 - The need to rationalise some methods and rules to provide greater certainty; and
 - Incorporating Māori expectations and cultural values and ensuring that they have been given appropriate consideration.
- 8.1.2 Specific water quantity issues – ensuring that following issues have been addressed either by Council (and signed off by the Panel) or the Panel.
- Permitted takes
 - Stock drinking water
 - Water for Fire Training / Defence Force training;
 - Gisborne Municipal Water Supply;
 - Managing Water Permits, including takes from Wetlands and Outstanding Waterbodies;
 - Assessment criteria;
 - Water restrictions;
 - Water transfers; and
 - Over-allocation.

9.0 Findings and Decisions on Water Quantity

- 9.1 GENERAL OBSERVATIONS**
- 9.1.1 This section of the Freshwater Plan attracted detailed submissions and we acknowledge the effort and thought that has gone into many of the submissions. The Panel is also very appreciative of the professional manner in which submitters applied themselves to the hearing process. Questions were answered and there were offers to provide further information to the Panel to assist with decision-making.
- 9.1.2 However, by the conclusion of the second round of hearings, it became very evident that some of the sector groups were seeking changes that would ensure that their sector would not be placed in a position of disadvantage by the policy framework in the Freshwater Plan relating to water quantity. But those submissions needed to provide a wider ranging consideration of an alternative approach to address the issues of concern rather than simply seeking avoidance for their own interests.
- 9.1.3 On reflection, even with the guidance provided by our First Directive, we may not have made our expectation clear enough about the need to provide cogent reasoning for substantive changes request. The net result was the lack of section 32 type analysis to support many of the substantive changes requested by submitters. While time and cost were certainly referenced, there was a general lack of wider cogent reasoning stemming from giving effect to the NPSFM that could help direct the Panel in its decision making. As a consequence, a large number of submissions points were put aside because the Panel did not have adequate reason(s) to move beyond that notified or recommended by Council staff in the Section 42A Report and subsequent advice and recommendations.
- 9.1.4 That is not to say that all requests were declined. The Panel adopted requested change where they:
- Would better give effect to the NPSFM;
 - Provided clarification, or promoted a better understanding; and
 - Filled a gap in the policy framework and methods for water quantity.
- 9.2** Changes which would better give effect to the NPSFM, provide clarification or a better understanding do not require a new 32AA analysis as the underpinning 32 analysis remain applicable.

- 9.3** Where a change requested addressed a clear gap then it has been assessed further as appropriate and a section 32AA analysis completed.
- 9.4** Where submitters have noticed a gap, or gaps, in the underpinning 32A analysis, Council staff have been asked to address those gaps.
- 9.5 DECISION-MAKING PHILOSOPHY**
- 9.5.1 Decision Report Number 1 sets out the rationale the Panel adopted in its decision-making. While the Freshwater Plan as notified has created more new policies, objectives, methods and rules, the permissive nature of the current planning regime largely remains. The Freshwater Plan is required to give effect to the NPSFM and there is a clear and evident national agenda that the country face major freshwater issues that have to be addressed.
- 9.5.2 The Panel's aim is to give effect to the NPSFM by carefully considering all the submissions and further submissions and refining the Plan so that the tenets of the NPSFM are given effect while at the same time providing land-users with an alternative pathway where they can carry out their daily operational requirements without having to get a raft of consents.
- 9.6 PANEL DIRECTION TO STAFF**
- 9.6.1 As a direct result of the hearing process, the Panel directed staff to readdress their recommendations which they have done.
- 9.7 WATER QUANTITY ISSUES THAT REQUIRED FURTHER CONSIDERATION**
- 9.8 CULTURAL CONSIDERATIONS**
- 9.8.1 Rongowhakaata suggested⁶⁹ a responsive mechanism for water allocation on the basis of cultural activity may be via a 'kaitiaki flow allocation' and noted that an Environment Court⁷⁰ decision did not see any impediment in a cultural flow allocation. Rongowhakaata sought the introduction of a new policy to allow for the establishment of a Kaitiaki Water Allocation system.
- 9.8.2 Ms Tina Porou also addressed the issues of cultural flows noting⁷¹ that once cultural and environmental flows had been determined led by Mātauranga Māori and supported by good western science, allocation can take place on the remaining flows.
- 9.8.3 Decision Report 1 provides a more detailed explanation of the Panel's consideration of cultural issues. In this report, we addressed cultural flows noting that the implementation of a new policy would be a significant new step that requires considerable policy analysis and consultation. We have indicated that Rongowhakaata take their initiative up with the Council.
- 9.8.4 Ms Tina Porou presented evidence on behalf of TRONPnui submitting that Council need to do more than just encourage the development of water storage by including a method toward subsidizing water storage tanks in communities and providing a permissive regulatory framework for the establishment of water storage tanks and the council to undertake water audits developed with Ngāti Porou across catchment in the Ngāti Porou rohe. We agree with the section 42A Report response that subsidising of water tanks is an Annual Plan / Long Term Plan matter. We are also of the viewpoint that the Freshwater Plan adequately addresses the regulatory framework for the establishment of water tank storage. In terms of direct involvement in water audits this a matter that Ngāti Porou need to take up with Council.
- 9.8.5 Ms Porou also noted⁷² that Ngāti Porou did not support the first in first served approach for addressing full or over-allocation and asked that policy 4.1.7 be redesigned to include better freshwater management mechanisms. While types of mechanism were referenced no alternative was proposed. We have reconfirmed the section 42A Report response on this submission that the first in first served is the common default position under RMA that is used by most councils. Our decision does not prevent Ngāti Porou from advancing their concern with council by providing a firm proposal.

⁶⁹ Rongowhakaata Iwi Trust Submission 12 October at [5.3 – 6.5]

⁷⁰ Ngāti Makino vs Bay of Plenty Regional Council [201] NZEnvC 25

⁷¹ Ms Tina Porou EIC at [30] 4 October 2016

⁷² Ibid at [24]

9.9 PERMITTED TAKES

- 9.9.1 There were 27 original submission points received on the permitted take provisions in the Freshwater Plan. The main issues raised relate to the provision for stock drinking water, requests for additional permitted takes, and ensuring permitted takes do not result in adverse environmental effects.
- 9.9.2 The Section 42A Report recommends a number of minor amendments to clarify and refine the permitted take provisions, including removing the references to intensively farmed stock from Policy 4.1.1 and Rule 4.1.1. This recommendation was largely supported by submitters.
- 9.9.3 However, one key area of contention that remained relates to Rule 4.1.1 which permits takes for drinking stock water at rates of *“less than 5 litres per second, per property”*. Submitters have argued that this limit is unnecessary and contrary to section 14(3)(b) of the RMA which provides for the taking and use of water for reasonable domestic and animal drinking water purposes. Some submitters (e.g. Federated Farmers) have therefore requested it be deleted.
- 9.9.4 The Section 42A Report emphasises that access to stock drinking water is not an unrestricted right under section 14(3)(b) – rather this states that these shall only be permitted when *“the taking or use does not, or is not likely to, have an adverse effect on the environment”*. The Section 42A Report recommends that Rule 4.1.1 is retained as many waterbodies in the region have very low flows during summer and these waterbodies may be vulnerable to the cumulative effects of a range of permitted takes with no limits on volume.
- 9.9.5 The Panel has reviewed the submissions made on this issue and Section 14 of RMA and the Panel concur with Council officers’ recommendations in the Section 42A Report. Rule 4.1.1 is a general rule which applies to all activities. In our view, it is important to ensure the rules take into account ‘cumulative effects’ so we have also strengthened Policy 4.1.1(a) to include a consideration of cumulative effects.
- 9.9.6 Submitter concern was expressed about the wording of the permitted take provisions of Rule 4.1.3 which sets standards for other ‘permitted takes’, including a take for the irrigation of not more than one hectare. Submitters have suggested that it is the volume of take that is important not the area it services.
- 9.9.7 Rule 4.1.3 is relatively permissive and open ended and caused the Panel some concern over the potential impacts of cumulative effects from the permitted takes enabled by this Rule. We were told a number of times that this take covers those property owners/occupiers who take stock water/domestic water on their properties from small local springs. There are numerous takes of this type and they have been operating for years with no adverse effects on the environment. It also potentially allows for marae etc. to establish a meaningful garden without recourse to costly consents. The rule specifies a volume – rates less than 5 litres/ second to a maximum of 10m³ per day. We recognise that the ‘per property’ limit could cause some farmers problems, where they have multiple small takes from different ‘springs’. Under the old regime they were permitted whereas under the new regime under the Freshwater Plan only one would be permitted all the others will require consents. Therefore, the Panel has added an alternative pathway whereby multiple takes for stock water within a property can be permitted if an approved Farm Environmental Plan describes the use and demonstrates the use of water is efficient and occurs in a way that does not cause more than minor adverse effects on any waterways.
- 9.9.8 We sought further information from Council staff on the approach taken by other regional councils to provide for permitted takes. This concluded that the Freshwater Plan is generally consistent with regional councils across New Zealand, by providing for stock water as a permitted activity. Council proposes a uniform approach for ground and surface water takes by having a rate of take restriction of 5 litres per second for both resources. This differs from many other regional councils, who split permitted take volumes into ground and surface water resources. Council does not restrict the total volume per day abstracted for stock water. However, Rule 4.1.4 is governed by Rule 4.1.1 and Policy 4.1.1 taking into consideration matters that include any adverse effects of the permitted take on the environment.
- 9.9.9 We hold view that Council staff have justified their recommended changes. We have also made three small wording change to Policy 4.1.1 to clarify its intention:
- 9.9.10 Firstly, the consideration of adverse effects need to consider cumulative effects, rather than just each permitted take individually. We have also added this consideration to clause (e) of Rule 4.1.1;
- 9.9.11 Secondly the level of effect must pass a threshold of being “unacceptable”;
- 9.9.12 Thirdly, it needs to be clear that the criteria a. – d. need to be considered individually.

9.9.13 There were also requests that water takes for fire-fighting training and Defence Force training should be permitted activities. The Section 42A Report recommended that these takes be considered on a case-by-case where they are unable to comply with the permitted take limits.

9.9.14 The Panel requested clarification from the New Zealand Fire Service Commission (NZFSC) and received the following written response:

9.9.14.1 *Question: Does the NZFSC have the legal ability to abstract water for fire training without authorisation from a rule in the plan or a consent?*

The Commission considers that there is some ambiguity in terms of whether water may be legally taken and used for firefighting training without a rule or resource consent. Section 14(3) of the Resource Management Act 1991 (RMA) states: “(3) A person is not prohibited by subsection (2) from taking, using, damming, or diverting any water, heat, or energy if— ... (e) the water is required to be taken or used for firefighting purposes.”

There is no definition for firefighting purposes in either the RMA or the Fire Service Act 1975 and therefore it is not explicit whether firefighting purposes is intended to include, or exclude, essential training activities. This uncertainty is exemplified by the fact that different regional councils have interpreted ‘firefighting purposes’ differently. For example, Environment Canterbury has advised that this Council understands water take and use for firefighter training to be using that water for firefighting purposes, whereas Wellington Regional Council has advised that the taking and use of water for training activities is not ‘firefighting purposes’ and therefore any such activities must comply with the provisions of the Regional Plan. It is because of this inherent uncertainty, that the NZFSC has taken a precautionary approach to this matter by seeking permitted activity rules in regional plan at the time they are reviewed.

We have the viewpoint that the RMA section 14(3) provision only allows water to be taken for firefighting in an emergency situation. Fire training is not an emergency situation.

9.9.14.2 *Question: List of the sections of streams where water is taken for training.*

The NZFSC has compiled a list of the 35 water bodies used for firefighter training activities by each of the 12 brigades within the Gisborne region.

9.9.14.3 The New Zealand Defence Force (NZDF) asked for similar approach requesting a permitted take rule for their training exercises.

9.9.15 In considering the submissions, and further information provided from NZFSC and NZDF, the Panel did not receive sufficient detail, on the identification of potential adverse impact and the arrangements that would be put in place in the event of an incident. Therefore we are not in a position where a Permitted Activity rule could be defined with certainty. The Panel are of the view that the objective of NZFS and NZDF can best be achieved by putting in place a new controlled activity rule for the take and use of water for firefighting training and defence training and giving both NZFSC and NZDF the ability to apply for a global consent. This rule will:

- Provide clear identification of the reaches of watercourse where they can take water for fire training; and
- Specify a minimum residual flow in the waterways they intend use.

The wording we have adopted for this Rule is as follows:

Controlled activity: The take and use of surface water for firefighting training and defence training purposes.

Matters of control:

- *The location of the take and use of the water;*
- *The rate, volume and timing of the take, relative to the flow and volume in the surface waterway;*
- *In-stream flow requirements;*
- *The effects the take or use has on any other authorised takes and uses;*
- *The prevention of fish entering any intake.*

9.9.16 In our consideration of permitted activities for water takes, we have been mindful of the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007. In particular, Regulation 10 requires that permitted activity rules for activities upstream of abstraction do not adversely impact on the ability of an intake to supply drinking water. However, as the requirements of this NES apply regardless and there were no submissions specifically related to this NES, we did not consider that a specific reference to this NES is required in the Freshwater Plan.

9.10 GISBORNE MUNICIPAL WATER SUPPLY

9.10.1 There were 14 original submission points relating the Gisborne municipal water supply provisions in the Freshwater Plan. The main issues raised in submissions relate to priority of urban industries over rural industries, the requirements for the water demand management plan, minimum flow requirements for municipal supply, and the metering of domestic and industrial water uses in the City.

9.10.2 The Section 42A Report recommends a number of amendments in response to these submissions with the main changes as follows:

- Amendments to Policy 4.1.2 to state that, when minimum flows are reached in the Waipaoa River, water can only be taken for domestic and sanitation municipal uses rather than commercial municipal uses;
- An additional schedule to the Freshwater Plan which sets out the requirements for the water demand management plan for the municipal supply along with associated amendments to the matters of discretion in Policy 4.1.9;
- New Policy to restrict water take at the Te Arai Bush intake and set a minimum flow by 2026 after sufficient monitoring has taken place; and
- Including community water supplies as a restricted discretionary activity alongside the municipal supply.

9.10.3 In making these recommendations, staff noted:

- A number of these changes are a result of pre-hearing mediation to address submitter concerns about the prioritisation of urban v rural industries and appear to be broadly supported by submitters.

9.10.4 The evidence received from Water Utilities indicated they broadly support the recommendations in relation to the municipal supply. However, they seek an amendment to also allow for an emergency take if flows on the Waipaoa are at or below minimum for a short duration while water restrictions are put in place.

9.10.5 DOC have also requested that a default 90% Mean Annual Low Flow (MALF) be set as the minimum flow below the Gisborne municipal water take consistent with Policy 4.1.4.

9.10.6 The Panel is comfortable with the approach which now will be taken by the Council Water Utilities team, in particular the New Schedule that sets out the Requirements for Demand Management Plans for Municipal and Community Water Supplies (as outlined in the Section 42A Report). However, given the time that has now passed since the Freshwater Plan was originally notified, Policy 4.1.2 and Method 4.1.1 can be amended to require the Council to have a water demand management plan required by 1 July 2017. The Panel understands a demand management plan has been prepared for the Waipaoa Catchment and Council will use the next review to ensure the requirements in the new schedule are met.

9.11 MANAGING WATER PERMITS

9.11.1 There were 40 original submission points relating the managing water permit provisions in the Freshwater Plan. The main issues raised in submissions related to the five year default permit duration, establishing efficient and reasonable use of water, default minimum flows, cultural considerations, and the requirements for irrigation management plans.

9.11.2 The Section 42A Report recommends a number of amendments in response to those submissions; the Panel has adopted most of those recommendations.

9.11.3 The need for the Freshwater Plan to “safeguard the life supporting capacity of freshwater ecosystems” was an often made plea noting this is a directive in Part 2 of the RMA and the NPSFM. Policy B7 of the NPSFM provides clear guidance on the matters that consent authority must have regard to when considering any application. We have therefore adopted Policy B7 of the NPSFM to ensure that consideration of this issue is provided for all consent applications, irrespective of whether or not a catchment plan has been prepared.

9.11.4 In terms of the submissions in relation to Policy 4.1.4, the following issues required further consideration from the Panel:

- *A default 5-year permit duration:* some submitters considered that this default is too short and provides insufficient certainty for businesses. This is a new policy regime and, in keeping with our stated aim of putting in place a precautionary regime which allows more information to be gained, we are not of a mind to change clause b. of Policy 4.1.4 in response to these submissions. A 5-year permit duration is intended to allow users to verify a five-year history of achieving reasonable and efficient use, and then have the ability to seek a longer period. We consider this approach to be prudent. The 5-year period should be seen as a probationary period, putting the onus on the applicant to establish a history of reasonable and efficient use.
- *Default minimum flows and over-allocation:* Policy 4.1.4 specifies default values for the minimum flow in water permits. Questions were raised as to whether it should also specify default values for the size of an allocation block – to avoid the risk of catchments becoming over-allocated before a catchment Plan is prepared. We were reminded that Objective B2 and Policy B5 of the NPSFM directs that councils cannot make a decision on a water permit which would result in over-allocation of a water resource. Policy 4.1.4 sets out how to determine an interim minimum flow regime (being no less than the MALF for Schedule 1 water bodies and 90% of MALF for all other surface waterways) but it is silent on an interim overall allocation regime for a water resource to avoid becoming over allocated before the catchment specific plan has been prepared.

Submitters questioned whether the Council could discharge its duty to give effect to the NPSFM without setting out an interim overall allocation regime against which water permit applications can be judged

We concur with the view expressed in submissions that Council runs the risk of over allocating a catchment by not having some form of interim allocation limits. This is because it has nothing against which to judge whether a water permit application will or will not result in a catchment becoming over allocated. Accordingly, we have added a new policy as follows:

Where no allocation quantity has been set through a catchment plan, the default allocation limit shall be the greater of:

- *30% of the MALF as calculated by the regional council, for surface water and groundwater that has a direct hydraulic connection to surface waterways or 30% of annual average rainfall recharge for groundwater that does not directly affect a surface waterway;*
- *The total allocation from the catchment on the date that the decision on the GDC hearings is released, less any resource consents surrendered, lapsed, cancelled or not replaced.*

MEAN ANNUAL LOW FLOW

9.11.5 The default minimum flow of 90% of Mean Annual Low Flow (MALF) was questioned by some submitters who considered that there needs to be flexibility to consider flows below the MALF while catchment plans are being developed. In the absence of good information supporting these requests and demonstrating there will be no adverse effects from flows less than 90% MALF, we do not have adequate basis to allow users to go below the minimum flow in the Freshwater Plan.

9.11.6 Conversely, other submitters have recommended additional policies to minimise the length of time water waterbodies are kept at low flows. The Freshwater Plan's approach to MALF was discussed at length by a number of submitters. Various scenarios were advanced. In making a considered decision, the Panel was faced with uncertain information. While adjusted (for all the permitted takes) natural MALF may have been advocated as the base point, we were faced with the question - what constitutes natural MALF? The determination of natural MALF is problematic. In the absence of reliable information, the Panel resolved that MALF would be based on measured or calculated flows, with a correction for upstream abstractions.

9.11.7 Accordingly, Policy 4.1.4 will include an advice note that MALF will be corrected for the effects of upstream abstractions and be a number determined by Council. Until a site specific minimum flow is determined through a catchment plan process, the default should remain as 90% of MALF.

PERMIT AUDITS – METHOD 4.1.5

9.11.8 The Freshwater Plan recognises the need for water permit audits – which will help give effect to Policy B4 of the NPSFM which requires councils to include methods in regional plans to encourage efficient use of water. The approach to auditing needs to be extended beyond the largest 20% of city water users especially where water take and use is unusually high compared to expected Good Management Practice operations.

- 9.11.9 The Panel has therefore broadened Method 4.1.5 to require water audits of any activity authorised by a consent or a permitted activity rule in the Freshwater Plan where water take and use is unusually high compared to expected Good Management Practice operations. The wording we have adopted for this amended method is as follows:

Method 4.1.5

The Council will require water audits of the largest 25% of city water users and any activity authorised by a consent or permitted activity where water take and use is unusually high compared to expected Good Management Practice operations. The Council will work with those users to ensure that water efficiency measures are put in place.

- 9.11.10 We have also added a qualification to Policy 4.1.5 as follows:

“The take and use of water from Wetlands and Outstanding Waterbodies, that adversely affects the values of those waterbodies, should be minimised”.

- 9.11.11 The basis for this amendment is that we have no data on takes from these waterbodies but to put in place an avoidance regime at this time could have major cost implications for those currently accessing water, and they will need time to effect a change.

- 9.11.12 We also considered the need to ensure the requirements of the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 are met when managing water permits. However, as noted above, the requirements of this NES apply regardless so we did not consider that it is necessary to make any changes to the Freshwater Plan to specifically refer to these requirements. In particular, Regulation 7 which relates to the granting of water permits or discharge permits upstream of abstraction point where drinking water meets health quality criteria and Regulation 8 which relates to the granting of a water permit or discharge permit upstream of the abstraction point for a drinking water supply. We have therefore added an advisory note to section 4 and section 5 (water quality) of the Plan to ensure plan users are aware of these requirements.

9.12 ASSESSMENT CRITERIA

A number of submissions raised concerns about the criteria used to assess consent applications (e.g. Department of Conservation, Federated Farmers and Forest & Bird). The Panel has decided to add a new clause in the assessment criteria (Policy 4.1.13) as follows: *“The effects the take and use has on the quantity and quality of all water resources that may be affected by the proposed activity”*. The purpose of this additional clause is to focus attention of the wider implications of any proposed take.

9.13 WATER RESTRICTIONS

- 9.13.1 There were 15 original submission points relating the water restriction provisions in the Freshwater Plan. These provisions are aimed at providing additional policy guidance on priorities for water use during water shortages given the frequency of droughts in Gisborne.

- 9.13.2 The main issues raised in submissions related to provision for animal water drinking needs, provision for survival root stock and drought susceptible crops, and provision for fire-fighting.

- 9.13.3 The Section 42A Report recommends only one minor amendment in response to these provisions – including horticultural and viticultural rootstock requirements in Policy 4.19. The other changes requested by submissions are generally not considered to be necessary because they are sufficiently covered by the existing provisions or are inappropriate.

- 9.13.4 The provisions in the Freshwater Plan relating to survival water for root stock are intended to avoid the multiple year economic impacts associated with root death. They are not intended to extend to drought susceptible crop requirements as sought by HortNZ. The two key considerations for the Panel in responding to this issue is as follows:

- It needs to be clear that survival water does not apply to annual crops; and
- Survival water also needs to be defined as an allocation block, or water use that can occur below the minimum flow to address the point raised by Fish & Game in their submission. These allocation blocks will need to be defined in each catchment plan FMU where root stock survival water is required.

- 9.13.5 Amendments have been made to Policy 4.1.11 and the definition of survival water to make this clear. Corresponding amendments have also been made to the Waipaoa Catchment Plan in relation to survival water which are discussed further in Decision Report number 5.

- 9.13.6 In the time of water shortage, Council has the ability to impose water restrictions via a water shortage direction under section 329 of the RMA and Policy 4.1.10 provides some guidance on how water use will be prioritised in these situations. The Panel looked at providing better definition of priorities and felt that maintenance of animal health should be deleted as the third priority (c) and a new 2nd priority be added, “(b) maintenance of animal welfare”. The Panel has also included a method stating that when a water shortage is declared under section 329 of the RMA, the Council will convene a Water Shortage Task Force comprising representatives of major water user groups and environmental interest groups to prioritise water use and assist with the implementation of Policy 4.1.10.

9.14 TRANSFERS OF WATER

- 9.14.1 There were 8 original submission points relating the transfer of water in the Freshwater Plan. The main issues raised in submissions relate to limitations on water transfers in over-allocated catchments and enabling transfers to promote efficiency in water use.
- 9.14.2 The Section 42A Report recommends only one small amendment to include a specific reference to partial transfers in Rule 4.1.8. No other changes are recommended by Council officers for the following reasons:
- The requested amendments by submitters may act as a disincentive for water transfers, including those aiming to increase water use efficiency in over-allocated zones. The Panel concurs with this assessment.
 - A controlled activity status is not considered to be appropriate for transfers as this regime is new to the region and it is important that Council retain the ability to assess these applications on case by case basis and decline if necessary. The Panel concurs with this assessment although it is recognised that some submitters still consider that the transfer water permit provisions are too restrictive and may actually discourage the transfer of permits.
- 9.14.3 The Panel are of the view that, to be absolutely clear, Policy 4.1.12(c) and Rule 4.1.8(c) should spell out, “...no increase in current actual water use...” Any unused allocation should be surrendered at the time of any transfer in an over-allocated catchment.

9.15 OVER ALLOCATED WATERBODIES

- 9.15.1 With the introduction of potential audits of water permits a consequential change is required in Policy 4.1.8 with the addition of “... the results of a water audit demonstrate that a longer permit duration is appropriate”. This is to ensure that when consideration of replacement consents occur in over-allocated water bodies, any new consents that are issued are only for quantities required for efficient use. Any unused or inefficient allocation within an over-allocated catchment should be removed from any replacement consent.
- 9.15.2 To further address over-allocation issues, we have added some additional words to clause (c) of Policy 4.1.8 such that any consent term of up to 20 years shall be considered, “only where there is evidence that over allocation of the waterbody is progressively reduced overtime”. No additional changes have been made by the Panel.

10.0 Concluding Comments

- 10.1 It is the Panel's decision to adopt the Council reporting officers' discussion, and recommendations in relation to the water quantity provisions in the Freshwater Plan in:
- The Section 42A Report⁷³; and
 - Further recommendations and advice provided by Council staff.
- 10.2 Amendments have also been made in relation to the relief sought by submitters as outlined in section 13 above.

⁷³ Hearing Agenda: 11 -12 November 2016

11.0 Section 32AA Evaluation

11.1 For the purposes of section 32AA, the section 42A version of the Freshwater Plan has been considered in terms of section 32(1) to section 32(4). The Panel accepts the Council reporting officers' recommendations and finds that water quantity provisions in the Freshwater Plan as amended in the Section 42A Report and subsequent Council Reporting Officers' recommendations and advice are the most appropriate in terms of:

- Giving effect to NPSFM. The Panel clearly understands the cost implications of having to give effect to the NPSFM and has endeavoured to put in place a regime that gives effect to the intent of the NPSFM at the same time allowing economic activities to continue.
- The potential costs and benefits of the provisions.
- Recognising that further allocation of water may not be possible in catchments where over allocation has occurred and measures will be taken to address the over-allocation which could potentially negatively impact on economic activity.

The changes proposed by the Council reporting officers' to the notified version of the Freshwater Plan will make the Plan more efficient and effective.

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(Panel Chair)



Rehette Stoltz



Craig Bauld



Peter Callander



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