



DECISION REPORT THREE OF FIVE

# Proposed Gisborne Regional Freshwater Plan

RESOURCE MANAGEMENT ACT 1991

## HEARING OF SUBMISSIONS DECISION OF HEARING PANEL

<b>TOPICS:</b>	Water Quality Provisions
<b>HEARING PANEL:</b>	Mark Farnsworth MNZM (Chair) Deputy Mayor Rehette Stoltz Cr Craig Bauld Peter Callander Antoine Coffin
<b>HEARING DATES:</b>	2-3 November 2016

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## 1.0 Panel Appointment

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- 1.1 The Gisborne District Council ('the Council'), under section 37A of the Resource Management Act 1991 (RMA), appointed Independent Commissioners Mark Farnsworth (Chair); Peter Callander and Antoine Coffin and Deputy Mayor Rehette Stoltz and Councillor Craig Bauld to a Proposed Gisborne Regional Freshwater Plan (the 'Freshwater Plan') Hearings Panel. The Panel were authorised to hear and make recommendations on submissions and further submissions on the Freshwater Plan.
- 1.2 This third hearing session was convened to consider submissions and further submissions on the Freshwater Plan relating to 'water quality' (section 5 of the Freshwater Plan).
- 1.3 In preparing this decision the following abbreviations have been used:
- |         |   |
|---------|---|
| AEE     | Assessment of Environmental Effects                             |
| ANZECC  | Australian and New Zealand Environment and Conservation Council |
| Council | Gisborne District Council                                       |
| DOC     | Department of Conservation                                      |
| FANZ    | Fertiliser Association of New Zealand                           |
| FEP     | Farm Environmental Plan   |
| FFNZ    | Federated Farmer of New Zealand                                 |
| FWAG    | Freshwater Advisory Group                                       |
| FMU     | Freshwater Management Unit                                      |
| HortNZ  | Horticulture New Zealand  |
| Inc     | Incorporated  |
| Ltd     | Limited   |
| 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                                  |

## 2.0 Officers' Reports

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- 2.1 The Panel received a comprehensive Section 42A Report which considered the 'water quality' provisions in the Freshwater Plan (Section 5) prepared by Paul Murphy, Alice Trevelyan and Lois Easton (Environmental and Science Services, Gisborne District Council), Kurt Ridling and Tim Blackman (Strategic Planning, Gisborne District Council) and Jerome Wyeth (4Sight Consulting Ltd) and reviewed by David Wilson, Strategic Planning Manager at Gisborne District Council<sup>1</sup>.
- 2.2 The Section 42A Report:
- Provides an overview of original and further submissions that relate to the water quality 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 Report recommendations can be found pages 46 - 59 of the Section 42A Report.

## 3.0 Conflict of Interest Declaration

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- 3.1 None were tabled.

<sup>1</sup> Gisborne Regional Freshwater Plan- Section 42A Report – Water Quality; October 2016.

## 4.0 Hearing

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- 4.1 Commissioner Antoine Coffin opened each day of 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 quality provisions in the Freshwater Plan:

### **Wednesday 2 November (in order of appearance)**

- Matawai Farmers Group – represented by:
  - Margaret Harkin-Mullooly; and
  - Lilian Sherman.
- Statement of evidence had been provided by:
  - Lilian Sherman
- New Zealand Fire Service Commission – represented by:
  - Perri Dufy; and
  - Trent Fernlee
- Statement of evidence had been provided by:
  - Perri Nicole Duffy
  - Charlie Te Tapore Turei
- Horticulture New Zealand (HortNZ) - represented by:
  - Christopher Keenan, Special Adviser, Natural Resources to HortNZ;
  - Vance Hodgson, Director of Hodgson Planning Consultants Ltd;
  - Nicolas Conland, Environmental Consultant; and
  - Andrew Barber, Agricultural Engineering Consultant and Director of Agrilink.
- Statements of evidence had been provided by:
  - Vance Hodgson;
  - Nicholas Conland;
  - Andrew Barber; and
  - Christopher Keenan.
- Eastern Fish and Game Council represented by Eben Herbert.
- Statement of submission by Eastern Fish and Game Council was tabled at the hearing

### **Thursday 3 November (in order of appearance)**

- Rongowhakaata Iwi Trust – represented by:
  - Murray Palmer;
  - Jody Wylie;
  - Moera Brown; and
  - Te Rina Whaanga.
- Verbal submission of Rongowhakaata Iwi Trust tabled at the hearing.
- Department of Conservation – represented by:
  - Teall Crossen, Legal Counsel; and
  - James Witham, Planner, DOC.
- Legal submission from Teall Crossen tabled at the hearing.
- Statement of Evidence had been provided from:
  - James Witham.
- Bush Penguin Restoration represented by:
  - Ms Kate McDonald; and
  - Ms Heera Rigby.
- Federated Farmers of New Zealand – represented by:
  - Debra Bidlake;
  - Charlie Reynolds; and
  - Hamish Cave

- Gisborne District Council – Water utilities Department represented by:
  - Rachel Boyte; and
  - Neville West.
- Legal submission from Rachel Boyte tabled at the hearing.
- Mangatu Blocks and Wi Pere Trust– represented by:
  - Trevor Robinson;
  - Greg Tatterfield;
  - Ian Millner; and
  - Alan Haronga.
- Legal submission from Trevor Robinson tabled at the hearing.
- Greg Tattersfield tabled his evidence at the hearing.
- Statement of evidence had been provided by Ian Millner.
- Ravensdown Limited represented by Christopher Hansen.
- Statement of evidence had been provided by Christopher Hansen.
- Fertiliser Association of New Zealand Ltd (FANZ) – represented by Ms Claire Kelly.
- Statement of evidence had been provided by Claire Kelly.
- Murray Palmer.
- Verbal submission of Murray Palmer tabled at the hearing.

#### **Tabled evidence / representations**

- New Zealand Transport Agency – Cole O’Keefe Principal Planning Advisor.
- New Zealand Fire Service Commission - Response to Second Minute of the Gisborne District Council Hearings Panel - New Zealand Fire Service Commission – BECA.
- Hearing Statement on Behalf Of The Oil Companies – Proposed Gisborne Regional Freshwater Plan (Water Quality,) John McCall, Graduate Planner, Burton Planning Consultants Limited.

#### 4.4 The following documents were tabled to support submissions made:

- New Zealand Dairy Statistics 2014-15 – LIC & DairyNZ 2015;
- Wastewater Reduction Plan Gisborne District Council June 2016;
- Land and Environment Plan Guideline – Level 2 Beef and Lamb New Zealand; and
- Benchmarking Tool Definitions - Beef and Lamb New Zealand.

#### 4.5 Other documents referenced in this hearing:

- Court Appeal decision between Coro Mainstreet Inc, Thames-Coromandel District Council and The national trading company of NZ Limited;
- Urban Auckland v Auckland Council – High court (CIV-2015-404-719);
- Associated churches of Christ Church extension and Property Trust Board v Auckland Council High Court (CIV-2014-404-1832);
- Decision of the environment court. Manawatu – Wanganui Regional Council proposed one plan appeals;
- Final Report and Decisions of the board of inquiry into the Tukituki Catchment Proposal;
- Final Report and Decisions of the board of inquiry into the Tukituki Catchment Proposal, In relation to the matters referred back to the board by the high court;
- Note to the hearings commissioners re Open Water and Constructed Wetlands;
- From Tapu to Noa – Māori cultural views on biowastes management: a focus on biosolids;
- Natural rapid habitat assessment protocol development for streams and rivers;
- Te Moananui O Te Turanganui A Kiwa. Social outcomes evaluation of the Gisborne City Wastewater Treatment project 2010 – 2013;
- The importance of the social components of biotransformation in the treatment of wastewater. Part 2: Water user experiences, perceptions and aspirations. Te Turanganui a kiwa 2013;
- Riparian Setbacks, Technical information for decision makers;
- Septic study Investigation of the removal of formaldehyde and phenol by funeral home septic systems;
- An indigenous perspective on water recycling;
- Background information wastewater discharges to waterways;

- LGOIMA response – Dates of wastewater discharges to river during wet weather 2010 – 2016;
- NIWA – Guidelines NZ constructed wetland treatment of tile drainage;
- The environmental benefits of NZGAP as a third-party quality assurance scheme – Matthew Dolan June 2016;
- Don't muddy the water-quantifying the effectiveness of sediment control on cultivated land AGRILINK Project Plan – SFF 407925 September 2015;
- Ngā Whakaaetanga ā Ture mō Te Tairāwhiti Statutory Acknowledgement for the Gisborne District Council, January 2013;
- Getting riparian planting right on the East Coast – DairyNZ; and
- Methodology and analysis tool to identify tangata whenua cultural flows for the Te Arai river catchment NIWA Client Report: HAM2010-036 April 2010.

## 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 of the evidence presented:

- It is our intention to highlight the key matters covered in each of the briefs/statements, especially the points of difference the submitters have with the recommendations in the Section 42A Report; and
- Focus on the amendments, additions and deletions the submitters are requesting.

### 5.3 MATAWAI FARMERS GROUP

5.3.1 Ms Lilian Sherman, a professional engineer, presented on behalf of the Matawai Farmers Group. Ms Sherman addressed the following matters:

5.3.1.1 Re-addressed the definition of 'intensively farmed stock' noting<sup>2</sup> that the Group is opposed to the inclusion of cattle contained for break-feeding of feed crops in the definition of intensive farming. Ms Sherman provided the following reasons:

- These are extensive farms with less than 5% of intensive area, they are not the same scale of intensity as dairy farming or irrigated farms;
- The potential adverse effects of this farming practice are mitigated by other rules in the plan; and
- There are other similar farming methods which are not captured by this rule.
- The reason cited in the Section 42A Report for including this method of farming in the definition is the declining water quality in the Motu River, there is no evidence of this<sup>3</sup>.

<sup>2</sup> Lilian Sherman EIC at [12 – 19]

<sup>3</sup> Ibid at [15]

- 5.3.1.2 The potential adverse effects of this farming practice are mitigated by other rules in the plan. Specifically Rule 5.3.5 for winter intensive grazing and Rule 6.3.2 for stock crossings.
- 5.3.1.3 Overall the potential adverse effects of sediment, nutrient and bacterial contamination of waterways are already mitigated by other rules in the plan therefore, in her opinion, there is no need to include this activity in the intensively farmed stock definition.
- 5.3.1.4 With the 'break-feeding of cattle or deer on feed crops' included in the definition for intensively farmed stock, farmers will turn to these other farm management practices in order to 'get around' the rule.
- 5.3.1.5 Water quality in the Motu River is affected by other activities in the catchment, not just farming. The water quality results for the Motu River do not show a declining trend in water quality.
- 5.3.1.6 The Group supported the use of a Farm Environment Plan to ensure that farmers have mitigation in place for environmental risks on farms with intensively farmed stock. However, with the definition of intensively farmed stock the including of deer and cattle breakfeeding on feed crops on otherwise extensive farms. Farm environment plans are an overkill for these properties and would most likely identify actions already provided for as rules (5.3.5 and 6.3.2) in the plan.
- 5.3.2 The Group requests that rule 5.3.2d be amended to read;
- From **31 May 2018**, all permanent and intermittent streams and rivers that are crossed **more than twice per week on average over a 12 month period** by formed stock crossings shall be bridged or culverted unless the adverse effects of stock crossing the waterbody are addressed in a farm environment plan.
- 5.3.3 Ms Margaret Harkin-Mullooly provided us with a practical illustrations of the points made by Ms Sherman.
- 5.4 **NEW ZEALAND FIRE SERVICE COMMISSION (NZFSC)**
- 5.4.1 Ms Perri Duffy, a Planner for Beca Limited acting on behalf of NZFSC, spoke to her evidence covering the following points:
- 5.4.1.1 The Commission's submission on the Freshwater Plan seeks the inclusion of new permitted activity rules for the taking and use of water for firefighter training, along with permitted activity rules for associated discharges<sup>4</sup>.
- 5.4.1.2 The combination of a permitted activity enabling water take and discharges for training purposes, will result in adequately trained firefighters minimising risks, and the potential significant adverse effects of fire, to the health and safety of communities.
- 5.4.2 Mr Trent Fernlee provided us with clarification of the ingredients of foam which is used to suppress fires.
- 5.5 **HORTICULTURE NEW ZEALAND**
- 5.5.1 Mr Andrew Barber, an Agricultural Engineering Consultant and Director of Agrilink spoke to tabled brief of evidence submission on behalf of HortNZ. He submitted:
- Support for Farm Management Plans.
  - Support a 1m setback from watercourses as a bank erosion mitigation measure.
  - Support the use of the HortNZ developed Erosion & Sediment Control Guidelines for Vegetable Production as the best solution for assessing risk and selecting the most appropriate mitigation tool.
  - Opposed the use of a universal 5m setback from watercourses that in many situations would be ineffective as a sediment control measure.
  - The Greenhouse Code of Practice is supported alongside newly created documents that help growers meet and achieve best practice.
  - The addition of a phosphorus limit (100kgP/ha/application) to Rule 5.3.6 is unnecessary, as compliance with the nitrogen limit will insure that the proposed phosphorus limit is never breached.
- 5.5.2 Mr Christopher Keenan, Special Adviser Natural Resources to HortNZ and a Director of Water Matters Ltd, submitted the following:
- Farm plans require considerable support to be effective.
  - The implement date of 2021 is a sensible date.

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<sup>4</sup> Perri Duffy EIC at [11]

#### 5.5.2.1 Rule 5.4.1 Discharge from Application of Fertilise<sup>5</sup>

Commercial vegetable crops remove considerable nitrogen in the crop and suggested changing the standard in the rule by splitting out the application on pasture and other uses from commercial vegetable production (wording provided) and add a new standard for commercial vegetable production.

*“For commercial vegetable production; where nitrogen applications are in excess of 200kg N/ha/year, nitrogen fertiliser application is in split dressings of no more than 115kg N/ha.”*

#### 5.5.2.2 Requirements for Farm Plan Approval by Council<sup>6</sup>

5.5.2.3 Approval of farm plans is unlikely to be viewed as independent when coming from sector organisations - suggested change to Rule 5.3.3 permitted activity standard a) add:

*“or person approved by the CE of the consent authority”.*

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

#### 5.5.3.1 Stormwater Quality

RMA clearly provides, in section 70, for reasonable mixing and restricts discharges which are likely to not meet minimum freshwater quality standards. He supported the planning analysis in the Section 42A Report noting that a clear method for reasonable mixing is best practice and it will drive consistent monitoring and inform stormwater solutions in the region.

The real problem is the notion that contaminants can be avoided from stormwater discharges. This would set a very costly standard for stormwater engineers to eliminate contaminants from stormwater discharges from every rain event.

HortNZ believe that this concern is conservatively answered in the same provision where a standard is set through not allowing an exceedance in trigger values for 95% species protection for substances that are toxic to aquatic ecosystems (as measured relative to the ANZECC Guidelines for Fresh and Marine Water Quality, 2000).

A suggested amendment was offered by HortNZ as below to clarify and provide for this:

*f. The discharge shall not contain hazardous substances, agricultural chemicals, or cause exceedance in trigger values for 95% species protection for substances that are toxic to aquatic ecosystems (as measured relative to Freshwater Catchment Plan limits or interim values in the ANZECC Guidelines for Fresh and Marine Water Quality, 2000) in receiving water bodies after reasonable mixing;*

5.5.4 Mr Vance Hodgson, a director of Hodgson Planning Consultants acting on behalf of HortNZ, spoke to his brief of evidence, emphasising the key points in evidence of Barber, Conland and Keenan, and the Section 42A Report recommendations which they support. Key points:

5.5.4.1 Rule 5.3.2 – add a condition which requires that Farm Management Plan are implement in whole according to specified timeframes, otherwise enforcement action may be taken.

Add a mechanism would allow the council to specify conditions to address over allocation in the Farm Environment Plan.

Setback Distance - Opposed to the 1 metre setback as it is insufficient to reduce current.

## 5.6 EASTERN FISH AND GAME COUNCIL

5.6.1 Mr Eben Herbert spoke to Eastern Fish and Game Council’s written evidence. Mr Herbert provided us a tabulation of the support and requested changes.

Changes noted:

- From 1 July no cultivation is undertaken within 5 metres of the edge of any modified watercourse, permanent or intermittent stream.

<sup>5</sup> Chris Keenan EIC at [24– 34]

<sup>6</sup> Ibid at [35 – 39]

## 5.7 RONGOWHAKAATA IWI TRUST

5.7.1 Rongawhakaata Iwi Trust tabled a detailed submission. The Trust emphasised their stance on the following issues:

- The mauri of the waterbodies, and therefore water quality should be protected or restored;
- By precluding the opportunity for iwi and hapū participation in resource consent applications, this component of the Plan makes it difficult, if not impossible, for iwi and hapū to perform, their kaitiaki role attendant to the interests, rights and responsibilities relating to the taonga; and
- Opposed to all submissions that aim to constrain the goal of improving the water quality or values of water bodies solely to those that are degraded and request GDC maintains the discretion, without constraint, to improve any waterbody deemed appropriate.

The Trust provided support for recommended changes and provided amended wording and additions.

### 5.7.2 Point Source Discharges<sup>7</sup>

The emphasis of their suggested changes was to provide clear directions and to address gaps in the rules that had been identified.

### 5.7.3 Discharges to bedrock and groundwater<sup>8</sup>

The mixing of the mauri of two different waters, contradicts a fundamental tenet of Māori resource management which aim to avoid such mixing.

### 5.7.4 Farm Environment Plans (FEP)<sup>9</sup>

Support for FEPs and offered up a number of additions to be made to Schedule <sup>11</sup>.

### 5.7.5 Setbacks<sup>10</sup>

The Trust had the opinion that there need to be a variety of riparian management tools and examples were offered.

### 5.7.6 Fertiliser application and setbacks<sup>11</sup>

The Freshwater Plan should encourage the avoidance of fertiliser deposition in freshwater bodies. Suggested changes were offered.

## 5.8 THE DIRECTOR-GENERAL OF CONSERVATION

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

- Wastewater overflows<sup>12</sup>;
- Point source discharge<sup>13</sup>;
- Discharges to groundwater and Bedrock<sup>14</sup>;
- Diffuse Discharges<sup>15</sup>;
- Solid discharges<sup>16</sup>;
- Un-reticulated wastewater<sup>17</sup>; and
- Definition of institutional facility<sup>18</sup>

5.8.2 Mr Witham, RMA planner for DOC, provided a summary of the matters he addressed in his evidence. Rationale and amended wording or additions were proffered. Key points:

5.8.2.1 The management of wastewater overflows, particularly:

- The establishment of appropriate management goals and targets;
- The appropriateness of non-notification for consents of this nature;
- The appropriate activity status to consider applications for wastewater overflows; and
- Matters to be considered when assessing applications for resource consent for wastewater overflows.

<sup>7</sup> Rongawhakaata Iwi Trust Representation at [3 – 6]

<sup>8</sup> Ibid at [7-8]

<sup>9</sup> Ibid at [9 – 12]

<sup>10</sup> Ibid at [13]

<sup>11</sup> Ibid at [14-18]

<sup>12</sup> Teal Crossen Legal Submission at [3 - 7]

<sup>13</sup> Ibid at [8 - 16]

<sup>14</sup> Ibid at [17 – 19]

<sup>15</sup> Ibid at [20 – 24]

<sup>16</sup> Ibid at [25]

<sup>17</sup> Ibid at [26]

<sup>18</sup> Ibid at [27]

- 5.8.2.2 Managing stormwater overflows, particularly:
- The appropriate activity status for stormwater discharges where degraded water is of concern;
  - The inclusion of the maintenance or enhancement of water quality, where appropriate;
  - The consideration of in-stream values when considering consents for discharges; and
  - The appropriateness of the definition of Integrated Catchment Management Plan.
- 5.8.2.3 Managing point source discharges, including:
- Alignment of the language with the NPSFM;
  - The appropriate management of degraded coastal water quality;
  - Appropriately considering the potential connections between groundwater and surface water when managing discharges;
  - Managing point source discharges where water is degraded; and
  - The appropriateness of applying the best practicable option to particular discharges.
- 5.8.2.4 Discharges to groundwater and bedrock, particularly where hydraulically connected to wetlands.
- 5.8.2.5 Managing diffuse discharges, particularly through effective and enforceable Farm Environment Plans.
- 5.8.2.6 Managing solid discharges, including consideration of sensitive and degraded areas and the use of contingency planning and bonds.
- 5.8.2.7 Avoiding discharges of wastewater where reticulated systems are available, and clarifying points of ambiguity
- 5.9 BUSH PENGUIN RESTORATION**
- 5.9.1 Ms Kate McDonald spoke of:
- The dangers around aerial spraying; and
  - Monitoring problems with consents across the rohe.
- 5.9.2 She reminded the panel of its RMA responsibilities the need to safeguard ecosystems while avoiding, remedying, or mitigating adverse effects.
- 5.10 FEDERATED FARMERS OF NEW ZEALAND**
- 5.10.1 Ms Debra Bidlake, a Senior Regional Policy Advisor for Federated Farmers of New Zealand ('Federated Farmers'), spoke to her comprehensive written brief of evidence. Key points:
- 5.10.2 Discharges of untreated wastewater as a result of overflows
- 5.10.2.1 Federated Farmers opposed exceptions for domestic wastewater overflows. Wastewater overflows should be consented and phased out over time. It is inappropriate and inequitable to include definitions ("heavy rainfall event") that would justify the discharge of raw sewage to waterways.
- 5.10.2.2 The issue of wastewater overflows from stock holding areas was discussed and a definition for stock holding area was proffered.
- 5.10.3 Stormwater Quality
- 5.10.3.1 Federated Farmers asked for Rule 5.1.3 needs to be clarified as it is unclear how agricultural practices are covered. The new wording needs to be amended.
- 5.10.3.2 The standards and exclusions in Rule 5.1.5 do not provide adequate safeguards to minimise any adverse impacts. There need to be more riggers with the management plan type approached advocated.
- 5.10.4 Point Source Discharges
- 5.10.4.1 Rule 5.1.4 should be deleted lacks underpinning policy.
- 5.10.4.2 Rule 5.1.14 as currently drafted could result in perverse outcomes – consent for a temporary sheep yards. There needs to be three new rules – one for discharges from stockholding areas; one providing for small amounts of animal effluent and one for diary shed discharges. The rules for Environment Canterbury were offered as an example<sup>19</sup>.

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<sup>19</sup> Bidlake at [8.6]

- 5.10.4.3 Amend the definition of ‘animal effluent’ to clarify that it relates to effluent which is collected and stored in concentrated form<sup>20</sup>.
- 5.10.5 Diffuse Discharges
- 5.10.5.1 New policy 5.3.3 – it would be excessive to require FEP for one/two paddocks which are used for break feeding of cattle (amended wording was offered)<sup>21</sup>.
- 5.10.5.2 Federated Farmers supports the use of FEP as a tool to enable good farming practices to be brought into overall farm management. The annual reporting requirement is onerous and vague and should be deleted.
- 5.10.5.3 Rule 5.3.2(b) need to be amended to reflect the council’s intention to capture areas of intensively farmed stock occurring adjacent to waterways that are greater than 5 ha – wording was provided<sup>22</sup>.
- 5.10.5.4 The setback distances in Rule 5.3.2 are not supported by adequate scientific information or take into account specific aspects. The most effective approach is to enable stock exclusion to be managed through an FEP.
- 5.10.5.5 There should only be one stock crossing rule. It does not make sense to have three rules for stock crossing with different lead times. The 2017 compliance timeframe raises real affordability issues. The s42A recommendation on fords is not acceptable.
- 5.10.5.6 Rule 5.3.5 should be amended to be consistent with the other setback rule the rule has uncertainties (assessment of slope). It is also appropriate to make some provision for existing fences.
- 5.10.5.7 Rule 5.3.7 – feedpads should be separated from feedlots.
- 5.10.5.8 FEP – cl4(g) should be deleted unnecessary to have business goals in FEPs.
- 5.10.5.9 At this stage, the council has yet to go through the process of setting water quality or quantity values. Therefore it is inappropriate to include a carte blanche requirement “maintain and enhance water quality”.
- 5.10.5.10 In terms of nutrient budgeting industry templates should be explicitly approved for use by council. Not convinced that council has the expertise to develop these plans by 2021.
- 5.10.5.11 What does “achievements” mean in cl6 – open to interpretation.
- 5.10.5.12 Very uncommon to require farmers to complete multiple plans as proposed. The wording of cl4 “The plan shall contain a minimum....” Does not allow flexibility. Define what “excluded” means – use Land & Water Forum 2015 Report (wording provided)<sup>23</sup>.
- 5.10.5.13 Feed Crop should be defined (wording provided)<sup>24</sup>.
- 5.10.5.14 Feed lot definition<sup>25</sup>.
- 5.10.5.15 Formed Stock Crossing definition<sup>26</sup>.
- 5.10.6 Discharges to groundwater and Bedrock
- 5.10.6.1 Policy 5.4.5 in the absence of a definition for “solid waste” not clear what the policy means.
- 5.10.6.2 Rule 5.4.1 should clarify what it covers.
- 5.10.6.3 Rule 5.4.2 – why is it necessary? Section 15 RMA can be relied on to manage stockpile activities.
- 5.10.7 Hamish Cave and Charlie Reynolds provided the panel with a famers’ perspective to illustrate the points Ms Bidlake had made.

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<sup>20</sup> *ibid* at [9.4]

<sup>21</sup> *ibid* at [11.6]

<sup>22</sup> *ibid* at [12.8 – 12.9]

<sup>23</sup> *ibid* at [17.1]

<sup>24</sup> *ibid* at [18.2]

<sup>25</sup> *ibid* at [19.1]

<sup>26</sup> *ibid* at [20.1]

## 5.11 GISBORNE DISTRICT COUNCIL (GDC) – WATER UTILITIES SECTION

- 5.11.1 Ms Rachel Boyte provided legal submissions on behalf of the Water Utilities Section of Council. She noted:
- The wastewater overflow issues will not be able to be eliminated entirely in the short to medium term.
  - They are seeking a controlled activity status and a non-notification clause.

- 5.11.2 Ms Boyte provided a rationale for what they were seeking. She noted to provide further certainty (community and tāngata whenua) additional consultation requirements could be added to Rule 5.1.10.

She stated her opinion that the Reporting Officer's recommended approach in the Section 42A Report is not the most appropriate way of managing emergency flows.

- 5.11.3 Mr Marcus Koll, Gisborne District Council's Water Supply Team Leader, provided us with:
- An overview of the wastewater and stormwater systems and the issues these systems face;
  - The works undertaken to date to address the systems' issues and what is planned for the future;
  - The departments progress towards consents for wastewater overflows and its intended process for developing and AEE; and
  - The consequences of declining the wastewater overflows consent application.

## 5.12 MANGATU BLOCKS INCORPORATION AND WI PERE TRUST

- 5.12.1 Trevor Robinson presented legal submissions on behalf of the Mangatu Blocks Incorporation and Wi Pere Trust. He addressed:

5.12.1.1 Management of Diffuse Discharges  
DOC sought linking FEPs to water quality limits, trends and allocations. The relief sought by DOC does not meet the section 32 tests. If linkage is required then it should be done as part of a policy regime (Policy 5.3.127).

5.12.1.2 Farm Environment Plans  
In section 32 terms the cost of preparing an FEP for the entire farming enterprise is not justified by the environmental benefit.

5.12.1.3 Dairy Farming  
The definition of dairying should exclude sheep and goats.

5.12.1.4 Slopes  
The absence of how to determine slopes is of particular concern. Mapping approach? Average slope a nominated distance from the edge of a waterway?

5.12.1.5 Intermittent Streams  
Amend the definition to say that an intermittent stream is a stream that flows regularly when the water table is high.

5.12.1.6 Intensive Cropping  
Improve the definition – does not include perennial crops.

- 5.12.2 Mr Ian Millner, a Senior Land Management Adviser at Rural Directions Advisory Services, spoke to written brief of evidence. He questioned stated rationale for having special requirements in the rules of the Plan for intensive stock farming, there is in my opinion no technical basis for aligning dairy sheep and goats with dairy cows for the purposes of management of diffuse stock discharges, or indeed, for treating them any differently to sheep and goats being farmed for their meat or wool – amend definition.

- 5.12.3 Mr Greg Tattersfield, an employee of the operating company of Mangatu Blocks Incorporated, provided us with practical illustration of the point made in the legal submission.

## 5.13 RAVENSDOWN LIMITED

- 5.13.1 Mr Christopher Hansen, a Director and Principal Planning Consultant with Chris Hansen Consultants Ltd, spoke to his brief of evidence for Ravensdown Limited.

5.13.1.1 Policy 5.3. - Diffuse discharges  
The issue is not whether efficient use and development of natural and physical resources occurs, but more about how nutrient losses from farming activities can have adverse effects on water quality. Ravensdown's policy is a much more efficient and effective approach to diffuse discharges consistent with the effects-based intent of the RMA, and is the most appropriate way to achieve the objectives of the NPSFM and the Plan and would meet the requirements of section 32 (1) (b) of the RMA.

<sup>27</sup> Robinson legal Submission at [17]

- 5.13.1.2 Rule 5.3.2 - Diffuse discharges from dairy farming and intensively farmed stock activities lawfully established prior to the date of notification of this Plan. Preparation of an annual report

The matter to be clarified in an Advisory Note to read as follows:

*Advisory Note: An annual report update may be in the form of an email to Council outlining progress on the preparation and/or implementation of a Farm Environment Plan*

- 5.13.1.3 Rule 5.3.6 - Discharge of greenhouse nutrient solution to land  
The focus on the input cap is not the correct approach, and that rules should focus on the control of outputs and the management of adverse environmental effects. The amendments to Rule 5.3.6 requested by Ravensdown, and a new controlled activity rule for activities that do not meet permitted activity standards with Council restricting its control to the matters in the permitted activity standard not met, represents sound resource management practice and would be the most appropriate way to achieve the objectives of the Plan and would meet the requirements of s.32 (1) (b) of the RMA.
- 5.13.1.4 Schedule 11 – Requirements for Farm Environment Plans  
Ravensdown sought national and regional consistency in the application of nutrient budgets. The usefulness of OVERSEER™ was discussed. If OVERSEER™ is not fit for purpose for the issues in Gisborne, then it should be deleted from Schedule 11 and no farming activity should be required to undertake any kind of nutrient budget for regulatory purposes. It was considered that limiting the matters to be reviewed and monitored to the achievements of the FEP as sought by Ravensdown is appropriate and consistent with Council’s intention for the farmer to prepare and implement the FEP.
- 5.13.1.5 Definition of Fertiliser  
Remove reference to soil conditioner.
- 5.13.1.6 6.30.6 Definitions – Winter Intensive Grazing/Significant De-vegetation  
Reference to ‘significant de-vegetation is vague and uses undefined terms.

#### 5.14 FERTILISER ASSOCIATION OF NEW ZEALAND LTD

- 5.14.1 Ms Claire Kelly, a Senior Planner at Boffa Miskell Limited, provided a written brief of evidence for FANZ.
- 5.14.2 Ms Kelly tabled further amendments to the Officers’ recommendations<sup>28</sup>.
- 5.14.2.1 Nutrient Efficiency  
Manage the outputs to land and water and not the inputs. Support for the use of OVERSEER™. The efficient use of nutrients was discussed.
- 5.14.2.2 Farm Environment Plan and the use of OVERSEER™  
Opposed to two versions of nutrient budgets. OVERSEER™ should be applied by expert users following the OVERSEER™ Best Practice Data Input Standards.
- 5.14.2.3 Activity status for application of Fertilisers  
Restricted discretionary activity status can be applied and discretion limited to the matters in Policy 5.4.6.

#### 5.15 MURRAY PALMER

- 5.15.1 Mr Palmer sought the following:
- 5.15.1.1 Addition to Rule 5.1.2  
*e. An annual public report on the number and size of overflows, and progress towards their reduction.*
- 5.15.1.2 Rule 5.1.10  
Change to Restricted Discretionary (Justification provided)
- 5.15.1.3 Additions to Rule 5.6.1  
*2. where new wastewater treatment and land application systems or other alternative systems (except greywater systems) are established there shall be no sewer network available.*

<sup>28</sup> Kelly EIC at [21]

9. *The discharge shall be applied into land within the legal boundaries of the property where the discharge originates from.*

Justification provided.

5.15.1.4 New policy requested

*Where new wastewater treatment and land applications systems or other alternative systems (except greywater systems) are established there shall be no sewer network available (except for 2 & 9 above)*

5.15.1.5 Additions of Appendix 1

*B: These objectives should address the long-term aim of reducing wastewater overflows.*

*C: Methods and timeframes for reducing wastewater overflows.*

*E: A monitoring programme addressing human and ecosystem health in both the receiving waters and the relevant downstream coastal waters:*

## 6.0 Panel Decisions

6.1 Clause 10 of Schedule 1 to the Act sets out the requirements for decisions on proposed policy statements and plans as follows:

*(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.*

6.2 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.

6.3 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.

## 6.4 DECISION MAKING PROCESS

6.4.1 The main drivers for the Panel's decisions on the policies, rules and other and methods in the Freshwater Plan relating to water quality 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, policies and rules being ultra vires;
- Deficiency in the Council's Section 42A Report; and
- The Panel's own evaluation.

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

6.4.2.1 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).

6.4.2.2 Where a submission point(s) supports a proposed provision and there are no submissions in opposition, the provision has been retained.

6.4.2.3 Where a submission point(s) sought changes to a proposed provision with cogent reasons, there were no submissions in opposition, and the changes were supported by the Reporting Officers', the submission point(s) have been accepted and the provision has been amended.

6.4.2.4 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(s) has been rejected and the Section 42A Report recommendation adopted.

6.4.2.5 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.

## 6.5 SECTION 32 AND 32AA EVALUATIONS

6.5.1 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. It provides 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.

6.5.2 The Ministry for the Environment's Guide<sup>29</sup> 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".*

<sup>29</sup> 2017. A guide to section 32 of the Resource Management Act 1991: Incorporating changes as a result of the Resource Management Amendment Act 2017, Wellington: Ministry for the Environment.

- 6.5.3 The water quality provisions in the Freshwater Plan – Part C (Section 5) is underpinned by a comprehensive section 32 report; the veracity of which was tested by the hearing process.
- 6.5.4 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.
- 6.5.5 One inescapable consequence of the section 32AA requirements is that the merit of public submissions must also be subject to the relevant section 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.
- 6.5.6 The Panel made its expectation clear to experts by providing a directive<sup>30</sup> on its approach to information that should be provided at the hearings, noting that:
- 6.5.7 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.
- 6.5.8 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.

## 7.0 Issues

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- 7.1 At the conclusion of the water quality hearings, the Panel determined that the following issues needed to be further considered and addressed:
- 7.1.1 Principle Issues:
- Ensuring that the policies, rules and other methods give effect to the NPSFM;
  - The need to rationalise some methods and rules to provide greater certainty;
  - Incorporating Māori expectations and cultural values and ensuring that they have been given appropriate consideration; and
  - Making further amendments to the RPS policies.
- 7.1.2 Water quality issues – ensuring that following issues have been addressed either by Council staff (signed off by the Panel) or the Panel:
- Wastewater Overflow(s);
  - Stormwater Quality;
  - Reasonable Mixing;
  - Point Source Discharges;
  - Discharges to Groundwater and Bedrock; and
  - Diffuse Discharges.

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<sup>30</sup> First Directive of the Hearing Panel, 1 July 2016

## 8.0 Findings

### 8.1 GENERAL OBSERVATIONS

8.1.1 We made a general observation in our Decision Report 2 for the Freshwater Plan that sector groups were seeking changes that would ensure that their sector would not be disadvantaged by the measures (i.e. the policy framework and rules in the Freshwater Plan) that would be put in place. This was to be expected. What we didn't expect was the finger pointing from submitters, and sector groups highlighting the problems that other different types of land users were causing and why they should be left to their devices. What appeared to be lacking from some submitters was the acceptance that the need to address water quality, especially at the national level, has become a priority. A priority which will require a paradigm shift in both attitude and management practices.

8.1.2 Like the hearings on water quantity, the water quality section of the Freshwater Plan attracted detailed submissions. The Panel acknowledges the effort and thought that has gone into many of the submissions. The Panel is 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.

Unlike the water quantity hearings, we were, in many instances, provided with some form of justification for the changes suggested by submitters. Time, cost and economic viability were to the fore in terms of reasoning.

Where a requested change from submitters provided clarification that was lacking, promoted a better understanding, or gave effect to the NPSFM, then the Panel have adopted many of those changes. Such changes do not require a new section 32AA analysis as the underpinning section 32 analysis is still applicable. Where a change requested by a submitter addressed a clear gap then it has been adopted. If the change has been made to give effect to the NPSFM, then a section 32AA is also not required as that analysis was completed when the national policy was put in place. If the change is new then a section 32AA analysis is completed.

8.1.3 Where submitters have noticed a gap, or gaps, in the underpinning section 32A analysis, Council staff have been asked to address those gaps.

8.1.4 In considering the rule regime, the Panel has adopted a cautious approach in setting criteria for decision-making. We have taken the attitude that it should fall to the land user, not the Council, to provide the proof that what they are doing does not adversely impact on the requirement to maintain or improve water quality. Just because something is common practice is not a good reason that it should continue. This point was graphically illustrated, a number of times, during our field trips to inspect freshwater bodies and non-regulatory projects across the region, including the Waipaoa Catchment. In particular, our attention became focused on the potential cumulative impacts that result from commonly accepted land use practices on water quality, especially where an activity is permitted all the way along a water course.

8.1.5 In terms of water quality, two key points need to be made:

8.1.5.1 For water quality to just be maintained in Gisborne then:

Livestock access to waterways and wetlands will need to be significantly reduced and better managed than is currently the case. We accept that such improvements will need to be phased in and the target should be to do so within the 10-year life of this plan; and

Stream margins will need to be protected by well managed riparian margins which conform to good management practice.

8.1.5.2 The economic importance of exotic forestry was stressed a number of times. We understand and accept that exotic forestry is an important and vital part of the Gisborne economy. What we do not accept are forestry management practices that can potentially cause major sedimentation and fill the water courses with mobile debris (forestry slash). Such practices cannot be allowed to continue and need to be phased out as soon as possible. This is a major, and serious issue which the district needs to face head-on and it may ultimately require the retirement of certain classes of land.

8.1.6 Whilst it is beyond the scope of this plan to address forestry management practices, we do want to ensure that adequate riparian buffers are in place to limit this land use impact. We also understand that a National Environmental Standard for Plantation Forestry is in preparation which we trust will improve the poor performance to date regarding the impacts of forestry practices on waterways.

## 8.2 DECISION MAKING PHILOSOPHY

- 8.2.1 The Panel's Decision Report Number 1 clearly sets out the rationale the Panel adopted in its decision-making. While the Freshwater Plan as notified has created more new objectives, policies, rules and other methods, the permissive nature of the current planning regime for the district largely remains. The Freshwater Plan has to give effect to the NPSFM and there is a clear and evident national agenda that the country face major freshwater issues that need to be addressed.
- 8.2.2 The Panel 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 to effectively and efficiently 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.

## 9.0 Findings and Decisions on Water Quality

### 9.1 CULTURAL CONSIDERATIONS

- 9.1.1 Decision Report number 1 provides a more detailed explanation of the Panel's consideration of cultural issues. It was noted in this report that a key focus of iwi and hapu submissions was the need to ensure that waterways are protected, maintained, and where necessary enhanced. We came to understand that 'Mauri' is linked with water quality and the association that iwi and hapu have had with that waterway and surrounding area. Each reach of a waterway has its own inherent mana.
- 9.1.2 Rongowhakaata maintained<sup>31</sup> their consistent approach, at each of the hearings, reminding us each time that the mauri of waterbodies, and particularly for this group of hearings on water quality, should be maintained or improved. They strongly reiterated their opposition to all those submissions that aim to constrain the goal of improving water quality or limiting improvement to those waterbodies that are degraded. However, they also acknowledged that more work was required to accurately define the concept of mauri and the specifics of what that might mean within a regional Freshwater Plan document. We are of the view that our decisions on the plan give substance to the concerns expressed by Rongowhakaata and provide the opportunity for iwi and hapu to work with Council to develop the understanding and implementation of these matters. We expect Rongowhakaata's input to the future development of the Te Arai FMU will be an opportunity to consider how these matters may be addressed in a practical planning framework.
- 9.1.3 Murray Palmer in his submission<sup>32</sup> made it clear that the plan should allow Council to improve water quality and not be constrained, or open to unnecessary challenge, because of lack of clarity in the Plan. The Panel agreed with Mr Palmer and has kept this point to the fore in making its decisions

#### Collecting Mortuary Wastewater

- 9.1.4 Mr Raymond Farmer<sup>33</sup> spoke to the issue of mortuary waste water and explained, with reference to 'tapu' and 'rahui' that the drainage of mortuary water to Gisborne's sewage reticulation system is an abuse of Māori beliefs, rituals and customs. He offered the viewpoint that 'Mauri' is the missing link between Māori and Western world views. Mr Farmer outlined discussions with Council about collecting mortuary wastewater into separate receptacles or containers. He has offered to deceased families to bury or put into a designated place of safety or a Wisconsin Mound sited in a cemetery.
- 9.1.5 The Panel had considerable sympathy with the viewpoints expressed and have recorded them so that Council can give them consideration. This is also a matter that the submitters can take up directly with Council.

### 9.2 WASTEWATER OVERFLOWS

- 9.2.1 There were 21 original submission points received on the wastewater overflow provisions in the Freshwater Plan. The main issues raised in submissions relate to reducing the frequency of overflows overtime, clarifying heavy rainfall events, the activity status for wastewater overflows, and upgrading council wastewater systems.

<sup>31</sup> Rongowhakaata Iwi Trust Representation 3 November 2016

<sup>32</sup> Murray Palmer Representation 3 August 2017

<sup>33</sup> Raymond Farmer, Ian Ruru, Anna Barber & Mo Smith representation 5 December 2016

- 9.2.2 The Section 42A Report recommends a number of amendments in response to these submissions. One key area of contention was the activity status for Rule 5.1.10 which provides for the discharge of wastewater overflows as a controlled activity where the permitted activity standards are not complied with. Some submitters considered that this activity status is not appropriate due to a number of factors and requested that a more stringent activity status be applied. The Section 42A Report acknowledged the concerns raised in submissions and recommended that the activity status for Rule 5.1.10 is amended to be a restricted discretionary activity.
- 9.2.3 Untreated sewage discharges attracted a number of submissions. Mr Witham, on behalf of DOC, addressed untreated wastewater overflows in his statement of evidence noting that the Wastewater Reduction Plan contains a number of strategic matters that should be embedded in the Freshwater Plan. Mr Witham considered that a policy in the Freshwater Plan seeking to ‘minimise’ wastewater discharges would adequately reflect this intent. In addition, when addressing accidental wastewater discharges to water, Mr Witham considered that there should be a target level of service to reduce releases from approximately four times per year, to once every two years by 2026/2027. While this is weather dependent, Mr Witham’s considered that an appropriate policy outcome to achieve this performance can be drawn based on current information. Mr Witham also considered that there is a lack of detail in the Freshwater Plan in terms of its expectations for the performance of the reticulated infrastructure network.
- 9.2.4 Wastewater discharges were also addressed by other submitters. For example, Mr Murray Palmer pointed out that the commitment from Council to address the problem of wastewater overflows in Gisborne is significant. Mr Palmer suggested that wastewater overflows due to severe weather events should be permitted subject to compliance with standards and that other discharges of untreated sewage should be prohibited. Federated Farmers expressed a view at the hearing that the permitted status of untreated sewage discharges is inappropriate and unfair on the public and other land users.
- 9.2.5 As noted above, Council reporting officers revised their recommendation in relation to the activity status of untreated wastewater discharges in their Section 42A Report – recommending Rule 5.1.10 shift from a controlled activity status (i.e. consent must be granted) to a restricted discretionary activity status (i.e. an application can be granted or declined). Council’s Water Utilities department noted in their submission and evidence that wastewater overflows will not be able to be eliminated entirely in the short to medium term. The Department asked for controlled, non-notified activity status for these discharges.
- 9.2.6 The Panel accepts the reality that discharges of untreated sewage from overflows will occur and that the Council has allocated considerable resources to address the problems in a considered and planned manner. The Panel is also mindful of the need to adopt a ‘fair approach’ and recognise the real constraints of ratepayer affordability in Gisborne.
- 9.2.7 Mr Witham, on behalf of DOC, proffered the viewpoint that a restricted discretionary status would not result in additional costs to the community but did not provide any justification for this view in his submission or evidence. By way of counter, experience has clearly demonstrated that contested resource consent hearing can be very costly. Even without notification and a hearing, the RMA consenting process can be a costly process.
- 9.2.8 However, the Panel recognise the need for the ‘public’ to be both involved and informed of this matter. There also needs to be clear policy direction setting out the expectations for how untreated wastewater overflow issues will be addressed over time.
- 9.2.9 The recent amendments to the RMA through the Resource Legislation Amendment Act 2017 has effectively removed the need to consider public notification from a controlled activity and these changes come into force on 18 October 2017. As a result, the Panel has adopted the recommendation in the Section 42A Report that a restricted discretionary activity status should apply to discharges of untreated sewage from overflows (Rule 5.1.10). This does not preclude notification of the application if that is deemed appropriate by the consent authority. We are also of the view that the default approach for any consent granted under this Rule should be for a 5-year period, although longer periods could be considered once it can be demonstrated that untreated sewage discharges are well controlled and limited to the more extreme weather events.
- 9.2.10 In summary, the Panel’s decisions with regard to untreated sewage discharges are:
- Activity status - adopt a restricted discretionary activity status as recommended in the Section 42A Report;
  - Discharge permit period restricted to five-years, unless the applicant can demonstrate the discharges are achieving the required level of performance;

- Public notification is a matter for the Council to consider on receipt of any application in accordance with the notification provisions in the RMA; and
- The addition of a new policy to minimise the occurrence of wastewater overflow events and for the network to achieve performance targets.

9.2.11 The wording of the new policy is shown below:

**Point source discharges of untreated sewage from overflows**

*Discharges of untreated sewage from the reticulated infrastructure network shall be managed to:*

- Minimise the frequency of these discharges;*
- Achieve performance of an overflow occurrence of no more than 50% probability in any given year; and*
- Issue discharge permits for no longer than 5 years except where there is evidence from past performance to demonstrate that wastewater overflow events can reliably achieve the performance standard in clause b above.*

9.2.12 The Panel has also adopted the other recommendations in the Section 42A Report to the wastewater overflow provisions in the Freshwater Plan as follows:

- Amendments to Policy 5.1.1 to clarify that untreated sewage and wastewater discharges should be reduced over-time;
- New requirement in Rule 5.1.2 to provide for public reporting on overflow events and progress towards their reduction; and
- Amendments to Schedule 18 (Requirements for Wastewater Network Assessment of Environmental Effects) to refer to the long term aim of reducing wastewater overflows and the methods and timeframes to achieve this, and a new monitoring programme addressing human and ecosystem health.

9.2.13 Furthermore, all wastewater discharges that occur into waterways that are identified in a catchment plan as degraded due to bacterial contamination must be required to improve the quality of their discharge and/or reduce the volume of the discharge so that the relevant water quality objective in the catchment plan can be met as quickly as possible. Appropriate amendments have been made to the policies and rules in the Freshwater Plan to ensure that adequate consideration is given to degraded waterbodies.

### 9.3 **STORMWATER QUALITY**

9.3.1 There were 24 original submission points relating to the stormwater quality provisions in the Freshwater Plan. The main issues raised in submissions relate to:

- The timeframe to prepare stormwater management plans;
- Stormwater controls in rural versus urban areas;
- The reasonable mixing zone for water quality standards; and
- The activity status for public stormwater system discharges not meeting permitted activity standards.

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

- Amendments to Policy 5.1.3 to require a stormwater plan to be prepared for all industrial and trade premises by 2020 for consistency, fairness and certainty;
- New requirements for the public stormwater monitoring programme to compare monitoring results to background levels; and
- Additional matters of control for the discharge of public stormwater in Rule 5.1.11 relating to the need to 'maintain or enhance water quality' and to 'consider the effects on in-stream habitat and indigenous species'.

9.3.3 The Panel has considered these recommendations, in light of the evidence and further representations made at the hearing. We are of the view that these are in keeping with the need for the Freshwater Plan to take a consistent, fair and certain approach and will help give effect to give effect to the NPSFM. Accordingly we have adopted these recommendations.

9.3.4 Furthermore, as with wastewater discharges, any stormwater discharges that occur into waterways that are identified in a catchment plan as degraded due to stormwater contaminants must be required to improve the quality of their discharge and/or reduce the volume of the discharge so that the relevant water quality objective in the catchment plan can be met as quickly as possible. Appropriate amendments have been made to the policies and rules in the Freshwater Plan to ensure that adequate consideration is given to degraded waterbodies.

#### 9.4 REASONABLE MIXING

9.4.1 A key issue raised in submissions, with regard to point-source discharges is the Council's approach to a 'reasonable mixing zone' for water quality standards in section 70 of the RMA. This was defined somewhat inconsistently in the Freshwater Plan. A number of rules in the Freshwater Plan as notified identified the reasonable mixing zone as 20 metres downstream of the discharge point where this related to the water quality standards in section 70 of the RMA (e.g. Rule 5.1.3.g, 5.1.4.h, 5.1.5.e). There are rules in the Freshwater Plan that refer to ANZECC guidelines values not being exceeded in "receiving waterbodies after reasonable mixing" (e.g. Rule 5.3.f, 5.1.4.g, 5.1.5.d).

9.4.2 Some submitters considered this concept of using a standard 20m downstream point to define reasonable mixing is highly problematic and should be removed from the Freshwater Plan. However, the Section 42A Report notes that reasonable mixing is an important concept used throughout the Freshwater Plan and by other Regional Councils to manage water quality. The Section 42A Report recommends that mixing zone is amended to be "7 times the width of the stream/waterbody (wetted edge to wetted edge)" rather than a standard 20 metres distance downstream of discharge. It was noted in the Section 42A Report that this is consistent with the approach adopted by other Regional Councils and is considered to be a simple way of ensuring that the size of the mixing zone is minimised to the extent practical and to ensure the assimilative capacity of the river is addressed.

9.4.3 In addressing the issue of an appropriate reasonable mixing zone, the Panel took a pragmatic viewpoint and agree the Council's approach in the Freshwater Plan should be consistent with the approach taken by other regional councils but also be consistent across the Freshwater Plan. To this end, we have provided a summary of the advice the Panel received from Council staff following the hearing below. Examples of reasonable mixing in other regional plans provided by Council staff is also provided as Appendix 1 to this decision.

*"Section 69(3) of the RMA states that a regional council shall not set standards in a plan which result, or may result, in a reduction of the quality of water in any water at the time of the public notification of the proposed plan unless it is consistent with the purpose of the Act to do so. Therefore it is important to provide a clear definition of what is considered to be "reasonable mixing" in receiving bodies to provide clarity on the water quality standards that must be met, If the term reasonable mixing is not defined, the definition is open for an applicant or a submitter to argue that the term reasonable mixing is not 'reasonable' in their circumstances.*

*However, despite the need to provide a definitive definition, reasonable mixing can be and is defined by a variety of different ways by Councils across New Zealand. Case law demonstrates that there is tension over the imposition of the term 'reasonable mixing' within plan provisions and when imposing conditions. The Courts have stated that reasonable mixing is to be determined on a case by case basis, therefore a fixed definition of reasonable mixing is not applicable to all cases. A report prepared for the Ministry of the Environment (2010) by Simpson Grierson on Case law on limits for freshwater quality and environmental flows highlights the contention surrounding the definition of reasonable mixing, and that Councils must ensure definitions adhere to the RMA as well as the National Policy Statement for Freshwater."*

9.4.4 This advice and the examples in Appendix A has demonstrated that regional councils have taken different approaches to define reasonable mixing and some provide more certainty than others. The area of mixing for any particular discharge will depend on the discharge flow relative to the flow in the receiving environment and the concentration of contaminants in the discharge relative to the background discharge in the receiving environment. These are highly variable factors. However, the Panel feel it is helpful and important to provide some guidance on a reasonable mixing zone to avoid excessive debate about what such a zone should be. The Panel's decision to define reasonable mixing is consistent with that recommended in the Section 42A Report but to add default upper limit and also clarify what waterbodies it applies to as follows:

*"7 times the width of any freshwater stream/river (wetted edge to wetted edge) up to a maximum distance of 100 metres, unless evidence is provided to demonstrate that a larger mixing zone will not adversely affect water quality. For all other waterbodies, including estuaries, lakes, and wetlands and estuaries, the appropriate mixing zone will be determined by Council on a case-by-case basis".*

9.4.5 This definition should be applied consistently across the Freshwater Plan to provide certainty about where water quality standards must be met and measured from. We recognise that streams have different widths at different flows and the assessment of the appropriate width to determine the mixing zone will need to evaluate the most sensitive times when the discharge will occur. No fixed zone is defined for estuaries, lakes or wetlands as these receiving environments can have many special characteristics and it is considered that the appropriate mixing zone to measure water quality standards within these waterbodies can be judged on a case by case basis.

## 9.5 POINT SOURCE DISCHARGES

9.5.1 There were 24 original submission points relating to the other point source discharges provisions in the Freshwater Plan. The main issues raised in submissions relate to the waterbodies where point-source discharges should be avoided, the provisions to manage point source discharges where limits are exceeded, and the activity status of certain point-source discharges.

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

- Amendments to Policy 5.1.5 to encourage discharges to land where this will result in better protection of the mauri of the waterbody;
- Merging Policies 5.1.6 and 5.1.7 as the revised definition of degraded waterbody means that these policies essentially apply to the same situation (i.e. where a limit is reached, a waterbody is considered to be degraded); and
- Greater policy direction on managing point source discharges where a waterbody is degraded including not issuing consents for contaminants of concern and reviewing consent conditions.

9.5.3 The Panel has considered these recommendations, in light of the evidence and representations made at the hearing. We are of the view that they provide better policy direction, give effect to NPSFM and meet, in part, the policy expectation of tangata whenua. Accordingly, we have adopted these recommendations in our decision.

9.5.4 We have also made amendments to Policy 5.1.7.a and b. which refer to not granting discharge consents in degraded waterbodies unless contaminants of concern are removed. While we agree that it is important that contaminants are reduced in degraded waterbodies, complete removal of contaminants is often not achievable and this could effectively prevent the granting of some necessary discharge permits. Our amendments to this Policy is outlined below.

### 9.5.4.1 Policy 5.1.7

When degraded waterbodies are identified:

- No discharge consents for new point source discharges ~~of contaminants of concern~~ will be issued unless treatment removes the contaminants of concern are reduced to a concentration that maintains or improves water quality after reasonable mixing;
- As existing discharge consents are renewed, additional requirements for avoidance of contamination, recovery of contaminants, treatment ~~and~~ or alternative disposal methods will be required, unless treatment ~~removes~~ reduces the contaminants of concern to a concentration that maintains or improves water quality after reasonable mixing;

## 9.6 DISCHARGES TO GROUNDWATER AND BEDROCK- INCLUDING FROM BORES, OIL AND GAS DRILLING

9.6.1 There were 29 original submission points relating to the discharges from groundwater and bedrock provisions in the Freshwater Plan. The main issues raised in submissions related to the protection of groundwater, the avoidance of hydrocarbon activities in scheduled waterbodies, and the activity status of oil and gas activities.

9.6.2 The Section 42A Report recommends only minor amendments in response to these submissions. The main amendments recommended are:

- Amendments to Policy 5.2.1 to recognise the link between surface and groundwater quality and the need to maintain or improve water quality rather than protect;
- A new requirement in permitted activity Rule 5.2.2 for groundwater bores to ensure well integrity is maintained in accordance with Schedule 12 (Bore Construction Requirements); and
- Deletion of Method 5.2.1 as it is considered that there would be limited benefit in researching the necessity of buffer zones for hydrocarbon activities around aquifer management areas.

- 9.6.3 The Panel has considered these recommendations, in light of the evidence and representations made at the hearing. We are of the view that they provide better policy direction and have adopted these recommendations in our decision.
- 9.6.4 We recognise the risk that abandoned bores can pose by providing a pathway for contaminants to impact on groundwater quality which may be used for drinking-water supply. These need to be promptly decommissioned and properly sealed as soon as their use has come to an end. A new rule has been added to require that unused bores must be properly decommissioned and sealed within one year of them no longer being required for use. We have also added a new method for the Council to actively investigate abandoned or poorly constructed bores and to rectify these situations to minimise the number of surface contamination pathways into groundwater that is used as a source of drinking-water supply.
- 9.7 **DIFFUSE DISCHARGES**
- 9.7.1 There were 73 original submission points relating to the diffuse discharges provisions in the Freshwater Plan, and this attracted the most interest in submissions and submitter evidence. The main issues raised in submissions related to the requirement for Farm Environment Plans (FEPs), stock exclusion timeframes, requirements for stock crossings, referring to “good” rather than “best management practice”, and setbacks from waterbodies. FEPs and setbacks are discussed in the two sections below.
- 9.7.2 The Section 42A Report recommended amendments to the diffuse discharge provisions to refer to ‘*good management practices*’ instead of “best management practices” consistent with recommendations in previous Section 42A Reports. This relates to Policy 5.3.1 and Policy 5.3.2 and a number of the diffuse discharge rules. The Panel consider that this is an appropriate change as it matches the term used by the Land and Water Forum Report 2015 and is also consistent with terminology used by industry.
- 9.8 **FARM ENVIRONMENT PLANS**
- 9.8.1 There was general support in submissions for FEPs) in the Freshwater Plan. For example, Matawai Farmers Group<sup>34</sup> recognised that FEPs are required to ensure that farmers have mitigation in place for environmental risks on farms with intensively farmed stock. Rongowhakaata Iwi Trust<sup>35</sup> expressed a similar view – that they support the use of FEPs as an important tool in helping implement the sustainable management of natural resources in Gisborne. The submission of HortNZ<sup>36</sup> noted that they consider 2021 to be a sensible date to require the implementation of FEPs. Their reasoning was that over this time they could establish a nationally consistent methodology for FEPs that could be easily implemented across their industry.
- 9.8.2 The Panel have adopted the viewpoint that properly constructed FEPs are a key tool to allow land users to carry out normal daily land use operations without having to obtain a raft of resource consents, thereby providing a cost effective alternative compliance pathway. There is a clear recognition that, as a country, New Zealand faces major water quality issues. These are issues that are going to require paradigm shifts in both attitudes and management practices.
- 9.8.3 The Panel consider FEPs to be the Freshwater Plan’s main land management tool. There will be a need for each plan to identify the relevant environmental issues for each land use activity, site specific issues, and the management practices that will be used to avoid, remedy or mitigate adverse effects on freshwater and to maintain or improve the overall quality of the receiving environment.
- 9.8.4 FEPs will need to cover the whole area of an enterprise, but only need to provide sufficient detail in terms of the specific land use issues that are most relevant to the water quality issues of concern. Many of the issues such as nutrient loss, set-back distances and stock crossing of waterways could potentially be permitted or controlled activities provided a FEP is approved and implemented in a way that manages the site and activity specific effects in a targeted, effective and efficient manner. Consents will only be required if the land users are not implementing an effective FEP, as required by the rules in section 5.3 and Schedule 11 of the Freshwater Plan.
- 9.8.5 The Panel is also of the view that the FEP approach could beneficially be applied across a wider range of land uses to improve land management and effects of land use activities of water quality. We are also mindful of that management plan requirements in the Freshwater Plan should not unfairly apply to certain sectors over others. The contrast between requirements for farming relative to the lack of control over water quality impacts from forestry was highlighted to us by several submitters and we have some sympathy for those views.

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<sup>34</sup> Sherman at [54]

<sup>35</sup> Representation at ??

<sup>36</sup> Keenan EiC at [23]

- 9.8.6 However, we recognise this was beyond the scope of our current task and would require a wider discussion to ensure the requirements for each type of land use activity are fit for purpose. A broader review of the overall policy framework for managing land use activities throughout the Plan would also be required. However, the Panel encourages the wider application of management plans to land use activities and have added a new method to the Freshwater Plan to make this clear. In terms of forestry, we also expect that the National Environmental Standard for forestry that is currently in preparation will make improvements to the current situation.
- 9.8.7 The Section 42A Report recommended the following amendments in relation to FEPs:
- A new policy to clarify that FEPs will become a requirement for certain land use activities and to encourage their development for all land use activities. As noted above, the Panel supports this direction but consider that it should be a method rather than policy;
  - Amendments to permitted activity conditions clarifying Councils role in to assess that FEPs meet the requirements of Schedule 11 (certify rather than approve FEPs) and that the land use activities must be carried out in accordance with the FEP submitted to Council; and
  - Amendments to the requirements for FEPs to demonstrate how activities will be managed to maintain or enhance water quality and sustain the soil resource, and outline the timeframes for implementation.
- 9.8.8 The Panel has largely adopted these recommendations as these will ensure FEPs are more effective to manage effects of activities on water quality and to provide greater clarity on how they will be implemented.
- 9.8.9 Turning to specific submissions in relation to FEPs:
- Matawai Farmers Group supported Federated Farmers submission which requests that Rule 5.3.2.b be amended so that farms with an intensive area of less than 5% of the property also do not require a FEP. They noted that this consistent with their submission on the definition of intensively farmed stock. The Section 42A Report recommends this submission be rejected on the grounds that the impact of intensive farming on adjacent waterways can be significant. Matawai Farmers Group responded to this recommendation by noting that the potential effects caused by the overland flow of contaminants are mitigated by the conditions outlined in the rule, which require slope restrictions and setbacks from waterways for establishing feed crops.
- 9.8.10 The Panel's emphasis in its decision-making is based on a precautionary, whole of enterprise approach. The need for such an approach was highlighted on our field trips to farms and waterways within the Gisborne district. As we have noted above, FEPs will need to cover the whole area of an enterprise, but only need to provide sufficient detail in terms of the issues that are most relevant. Therefore the Panel agrees with the recommendation in the Section 42A Report and have retained the 5 hectare threshold for FEPs in this Rule.
- 9.8.11 Several submitters requested that cultural concerns could be addressed through the development of Farm Management Plans. It was not clear to the Panel how this might occur across the Gisborne district, including the procurement of appropriate information, the site specific detail, peer review and moderation of the content. Whilst the panel believes this might have some merit, we are unable to progress it further based on the information presented to us. We suggest that this matter would require further detailed investigation and development to understand how it could best be implemented in practice.
- 9.8.12 We are also aware that RMA Amendment Act 2017 has introduced a new process for establishing agreements between tangata whenua (through iwi authorities) and councils called Mana Whakahono a Rohe: Iwi participation arrangements (Mana Whakahono a Rohe). The intent of these changes is to facilitate improved working relationships between iwi and councils, and enhance Māori participation in resource management processes. Rongowhakaata will have the ability through these processes to address their needs and this may result in future plan changes to ensure land-use management plans better address cultural values if this is found to be necessary.
- 9.8.13 DOC submitted (supported by Fish and Game) that FEPs need to be more stringent and linked to water quality limits. DOC noted that, in their opinion, decoupling FEPs from water quality states renders the FEP approach ineffective and inefficient. DOC also expressed a view that where new more intensive farms are proposed to be located within an area covered by a catchment plan and the freshwater limits in it are already not being met, relying solely on a FEP would not meet the requirements of Objective A2(c) of the NPSFM to improve degraded water quality. We want to ensure that FEPs are an effective tool to maintain or improve water quality and so have added a new requirement into Schedule 11 as follows:

The FEP must demonstrate that where it impacts on a degraded waterway, as identified in a Catchment Plan or the National Objectives Framework of the NPSFM, a schedule of actions that will improve the relevant water quality parameters and, for all other waterways and attributes, what actions will be taken to maintain or improve water quality. A timetable will also be provided for implementing these actions.

- 9.8.14 The submission of DOC recommended that FEPs need to be approved<sup>37</sup> by Council and that land use activities should be required to be carried out in accordance with the approval. The Section 42A Report recommended amendments to the rules to refer to FEPs that “has been certified by the consent authority as meeting the requirements of Schedule 11”. The Panel is of the view that this wording is more appropriate than “approved” as it is not appropriate for a permitted activity condition to be reliant on another approval. That is a result of the principle that a person should be able to determine on the face of the planning document whether or not an activity is permitted, without the activity classification being subject to discretion on the part of the consent authority. The certification process is simply to check the requirements of Schedule 11 are met rather than approve the FEP.
- 9.9 We also disagree with the use of the word ‘in general accordance’ provided by DOC in their amended wording for Rule 5.3.2. While we do acknowledge that there is case law associated with the use of this term it has the potential to make monitoring difficult.
- 9.9.1 We have adopted some of the recommended wording in the Section 42A Report and DOC submissions for Rules 5.3.2, 5.3.3 and 5.3.4 as outlined below. We have also included an additional advice note as outlined below.

*Rule 5.3.2*

*Diffuse discharges from dairy farming and intensively farmed stock activities lawfully established prior to 14 October 2015.*

*Permitted Activity Standards*

- a. *From 1 May 2021, dairy farming and intensively farmed stock activities shall have prepared and submitted to the Consent Authority a Farm Environment Plan which has been certified by the Consent Authority as meeting the requirements outlined in Schedule 11 ~~and have commenced implementation of this Farm Environmental Plan in accordance with best practice and provide those record to the Consent Authority.~~ All dairy farming and intensively farmed stock activities must operate in accordance with (or to a higher standard than) the actions and timeframes specified in the certified Farm Environment Plan. An annual report will be provided to the Consent Authority on the implementation of the Farm Environment Plan; except that*
- b. *Where the area of dairy farming or intensively farmed stock is less than 5 hectares, a Farm Environment Plan is not required provided that the activity complies with the following standards:*

*Advisory Note: Farm Environment Plans will be assessed by the Consent Authority for compliance with the information requirements in Schedule 11. If a Farm Environment Plan which meets the Schedule 11 requirements is not produced by the 1 May 2021 then existing intensively farmed stock activities will require a resource consent to continue.*

*Rule 5.3.3*

*Diffuse discharges from commercial vegetable growing and cropping activities lawfully established prior to the date of notification of this plan 15 October 2015.*

*Permitted Activity Standards*

- a. *From 1 May 2021, all commercial vegetable growing and cropping activities shall have prepared and submitted to the Consent Authority a Farm Environment Plan which has been certified by the Consent Authority as meeting the requirements outlined in Schedule 11 ~~and have commenced implementation of this Farm Environmental Plan in accordance with best practice and provide those record to the Consent Authority.~~ All commercial vegetable growing and cropping activities must be carried out in accordance with (or to a higher standard than) the actions and timeframes specified in the certified Farm Environment Plan. An annual report will be provided to the Consent Authority on the implementation of the Farm Environment Plan; except that*

- b. From 1 July 2021, no cultivation is undertaken within 5 metres of the edge of any modified watercourse, permanent or intermittent stream, unless the FEP can demonstrate that a smaller setback of at least 1 metre can occur without adversely impacting on the quality of the receiving water.

Advisory Note: Farm Environment Plans will be assessed by the Consent Authority for compliance with the information requirements in Schedule 11. If a Farm Environment Plan which meets the Schedule 11 requirements is not produced by the 1 May 2021 then existing vegetable growing and cropping will require a resource consent to continue.

## 9.10 SETBACKS

- 9.10.1 Setbacks attached a number of submissions with concerns being expressed over the universal setback requirements to waterbodies as submitters considered that there are more effective measures to mitigate adverse effects of land use activities on adjacent waterbodies. There was also the view expressed that a rigid universal setback requirement is inappropriate as the appropriate setback distance will vary from waterbody to waterbody.
- 9.10.2 What was lacking in this discussion was solid evidence to back the alternative setbacks being suggested by submitters. The Panel accepts that there are a range of factors (such as topography, lithology and vegetation cover etc.) that impact on the effectiveness of setbacks and the setback distance required to manage adverse effects on the adjacent waterbody. The Panel also recognises the need for the Council to adopt a consistent strategy for setbacks throughout the Freshwater Plan.
- 9.10.3 The Panel are of the viewpoint that better science is required to validate setback distance in the Gisborne District. Until there are agreed, good management practices for setbacks, then the Panel considers that a conservative approach should be adopted in the Freshwater Plan. It should be up to land users to provide robust validation for smaller setbacks not the Council. The Panel acknowledges that land users such a horticulture there is a relatively high cost to this approach as for each meter of setback over 100 meters is 100 square meters of lost production. The potential loss of production should therefore be an incentive to validate setback distances in the Gisborne situation.
- 9.10.4 To this end, the Panel is recommending that the Freshwater Plan sets a default 5 metre setback to waterbodies (artificial watercourses, streams, lakes or wetlands) for all commercial vegetable growing, cropping, dairy farming, and intensively farmed stock activities. There should also be an allowance for smaller setbacks (down to a minimum of 1 metre) where site specific information is provided to demonstrate that the land is managed to minimise the discharges of sediment, nutrients and other contaminants to such an extent that there is an improvement in degraded waterways to achieve water quality objectives and the maintenance or improvement of water quality in all other waterways – as set out in a FEP. For existing operations that do not meet the default 5 metre setback requirement, they have until 1 May 2021 to either implement that setback or to justify a shorter setback distance (but not less than 1 metre) through the FEP process. These amendments are shown below in relation to Rule 5.3.4:

### *Rule 5.3.4*

*Diffuse discharges from new commercial vegetable growing, cropping, dairy farming and intensively farmed stock activities established after the date of notification of this Plan 14 October 2015 except where they are within 20 metres of an Outstanding Waterbodies identified in Schedule 4.*

### *Permitted Activity Standards*

- a *Farm Environment Plan which has been certified by the Consent Authority as meeting the requirements outlined in Schedule 11 and have commenced implementation of this Farm Environmental Plan in accordance with best practice and provide those record to the Consent Authority and provide those records to the Consent Authority. All commercial vegetable growing, cropping and dairy farming activities must be carried out in accordance with (or to a higher standard than) the actions and timeframes specified in the certified Farm Environment Plan. An annual report will be provided to the Consent Authority on the implementation of the Farm Environment Plan; except that*
- b *Where dairy farming or intensively farmed stock activities are within a paddock adjoining a waterbody, all livestock shall be excluded from 5 metres from the top of the bank or edge of any permanently flowing stream, or the edge of any lake or wetland, or within 10 metres of the top of the bank or edge of any Aquatic Ecosystem Waterbody identified in Schedule 1, any Outstanding Waterbody identified in Schedule 4 or any Regionally Significant Wetland identified in Schedule 3, or within 20 metres of any Outstanding Waterbody identified in Schedule 4.*

- c. *All permanent and intermittent streams and rivers that are crossed by formed stock crossings as part of the intensively farmed stock activity shall be bridged or culverted. This must be done by 1 July 2019 or when the activity is established if after this date. However, cattle, deer and pigs are able to enter waterbodies for the purpose of crossing from one side to the other provided:*
- i. *They are being supervised and are actively driven across the water body in one continuous movement; and*
  - ii. *This occurs less frequently than once per week;*
- d. *No cultivation is undertaken within 5 metres of the edge of any modified watercourse, permanent or intermittent stream, unless a FEP demonstrates that a shorter distance (but no less than 1 metre) can occur without adversely impacting on the quality of receiving waterbody and this is certified by the Consent Authority.*

## 9.11 RIPARIAN MANAGEMENT

- 9.11.1 For the setbacks to be effective they need to be planted, contoured and maintained so as to intercept and treat sediments, nutrients and any other contaminants before they enter surface waterways. This is best achieved through industry good practice and guidelines. The Panel is aware of the initiatives currently underway such as DairyNZ's guidelines for riparian planting and considers that the Freshwater Plan should promote and be consistent with these initiatives.
- 9.11.2 Policy 5.3.1 of the Freshwater is focused on working with industry and landowners to development best management practices and the Plan also includes non-regulatory methods to promote guidelines and implement good management practices, including riparian management. Submitters and the S42A report largely supported this approach and the Panel is also supportive of the implementation of the importance of good riparian management as a key tool to maintain or improve water quality.

## 9.12 LIVESTOCK CROSSINGS

- 9.12.1 The various farmer groups who submitted expressed concerns over the stock crossing controls in the Freshwater Plan and the lack of evidence to support them. The adverse impact of livestock in waterways is well known and there needs to be an acceptance that impacts of livestock on waterways need to be minimised in the short term and subject to avoidance in the longer term. The Government is proposing to introduce staged requirements for stock exclusion from waterways, including requirements for stock crossings to be bridged or culverted, and allowing regional plans to set more stringent requirements as appropriate. The Panel has therefore determined that the livestock crossing standards in the Freshwater Plan should be consistent with these proposals as outlined in the Governments Clean Water document released in February 2017. These amendments are shown in relation to Rule 5.3.4 in paragraph 9.10.4 above.

## 9.13 FIELD -TILE DRAINAGE

- 9.13.1 We are concerned that the mitigation of land use effects that can be achieved by setbacks and riparian management can be undermined by field tile drainage systems that allow contaminants to by-pass land treatment processes and directly enter surface waterways. Whilst they are installed to enable better use of the land, this should not be at the expense of water quality. This is potentially an important water quality issue that has not received much consideration to date. Rules regarding field tiles tend to focus on flooding and erosion concerns. However, we have determined that amendments are required to also ensure that consideration is given to impacts from nutrients, bacteria and other contaminants. The land must be managed, or the field tile discharges modified to avoid adverse effects and to assist in maintaining or improving water quality. To this end we propose the following changes:
- Rule 5.1. 8: a new clause c: *"The discharge shall not contribute to elevated bacterial, nutrient, or other chemical contaminant concentrations in the receiving waterway into which the discharge occurs and shall improve degraded waterbodies"*.
  - Rule 5.1.12 – amendments to refer to avoiding bacterial, nutrient, or other chemical contaminant concentrations in order to improve degraded waterbodies, and to maintain or improve all other water bodies.
  - Schedule 11 – amendments to require FEPs to assess potential contaminant migration through field tiles and to manage land use activities and field tile discharges to improve degraded water bodies, and to maintain or improve all other waterbodies.

## 9.14 SOLID DISCHARGES

9.14.1 There were 39 original submission points relating to the solid discharges provisions in the Freshwater Plan. The main issues raised in submissions related to consistency with the NPSFM, setbacks to waterbodies, the appropriateness of permitted activity limits, and consistency with good industry practice.

9.14.2 The Section 42A Report recommends a number of amendments in response to these submissions. The main changes recommended are as follows:

- Renaming the section to *'Fertiliser and Solid Discharges'* and amending Policy 5.4.1 and 5.4.6 to also refer to fertilisers to make this clearer to plan-users;
- Amendments Policy 5.4.1 to refer to the improvement of degraded waterbodies consistent with the NPSFM;
- Amending Rule 5.4.4 to extend the scope of the provisions in relation to offal pits from properties in the same ownership, and reduce the setback requirement to sensitive areas to 50m;
- Increasing the permitted volume of any silage pit or stockpile to 100m<sup>3</sup> in Rule 5.4.6; and
- Amendments to Rule 5.4.7 to clarify that activities which do not comply with the permitted activity standards or not provided for by other rules are discretionary activities.

9.14.3 The Panel has considered these recommendations, in light of the evidence and representations made by submitters at the hearing. We are of the view that these amendments provide better policy direction and clarity and have adopted them in our decision.

### Split dressings

9.14.4 With regard to Rule 5.4.1(c) HortNZ raised the need to consider split dressings in their evidence at the hearing, suggesting there should be different standards for pasture and other uses to commercial vegetable cropping. Fertiliser NZ requested a different split dressing standard for commercial vegetation production. The Panel finds it difficult to specify specific numbers, particularly when there is no consistency between the views of different interest groups. Although we were told the current limits should be changed, we were not provided with evidence on the environmental effects of the suggested alternatives to amend the limits in Rule 5.4.1.

9.14.5 Fertiliser NZ favour management of nutrient issues in terms of losses to water whereas HortNZ favour input based controls. The problem with output based limits is whether they can be accurately estimated with the tools available.

9.14.6 Therefore the Panel favours input based controls but it is difficult to be specific about these and we are concerned that the current and proposed rules have no upper limit. We have therefore adopted an approach that will require farmers to specify how the timing and magnitude of fertiliser applications will maximise the opportunity for plant uptake and minimise the risk of loss to waterbodies and the environment as determined by industry good practice taking into account the environmental setting. This is a requirement of FEPs which need to be submitted to Council and certified. As outlined in relation to FEPs above, we have also added new requirements to Schedule 11 to ensure a particularly conservative approach must be implemented for land use activities in the catchments of degraded waterways. In these circumstances, the FEP must demonstrate how the fertiliser applications will contribute to an improvement in water quality in order to achieve certification.

9.14.7 Consequently our proposed wording to replace clauses (c) and (d) of Rule 5.4.1 is as follows:

*"Where a FEP is required under section 5.3, the magnitude and timing of fertiliser applications throughout the year and the total annual application must be specified in a Farm Environment Plan that has been certified by the Council. The FEP must demonstrate that the timing and magnitude of fertiliser applications is managed to maximize plant uptake and to minimize loss of nutrients to the environment. In catchments where waterways are degraded due to nutrient related effects, the FEP must demonstrate how a meaningful improvement in nutrient related effects will be achieved in order for their FEP to be certified."*

## 9.15 UN-RETICULATED WASTEWATER TREATMENT, STORAGE AND DISPOSAL

9.15.1 There were 19 original submission points relating to the un-reticulated wastewater treatment, storage and disposal provisions in the Freshwater Plan. The main issues raised in submissions related to the drafting of some of the rules and permitted activity conditions, the activity status of on-site wastewater systems serving more than one dwelling, and requirements for greywater.

- 9.15.2 The Un-reticulated Wastewater Treatment, Storage and Disposal provisions in the Freshwater Plan are based off the provisions in the Discharges Plan which were recently reviewed and made operative in 2012. As a result, the provisions in the Freshwater Plan are largely identical and the Section 42A Report recommends only two minor amendments in response to the submissions. The two amendments recommended are:
- Amendments to the advisory note in Rule 5.6.1 to refer to correct rule; and
  - Amendments to refer to freshwater bodies and remove references to coastal water in Rules 5.6.7 and 5.6.17.
- 9.15.3 The Panel is of the viewpoint that given that these provisions have been subjected to a relatively recent public review process that our preferred stance would be to adopt these provisions. A subsequent review of submissions and further submission confirmed this viewpoint.
- 9.16 **GIVING EFFECT TO HIGHER ORDER STATUTORY INSTRUMENTS**
- 9.16.1 One of the common themes in the submissions, further submissions and in evidence and presentations at the hearing was the need for the plan to give effect to the NPSFM, and by implication, other NPSs. The Freshwater Plan must also recognise relevant NESs in accordance with section 44A of the RMA which requires any rules that duplicate or conflict with the NES to be removed. To this end, the Panel look for gaps that need to be addressed.
- 9.16.2 One of the questions we asked ourselves is should the plan include a policy and/or clauses in the relevant rules to implement regulations 7 and 8 and 10 of the National Environmental Standard for Sources of Human Drinking Water 2008. These regulations place the restriction on the granting of water permits where this will adversely affect sources of human drinking water. While the Panel has given consideration to this National Environmental Standard, there was no scope in submissions to make any changes. National Environmental Standards still need to be considered regardless so this NES does not necessarily need to be specifically referred to in the Freshwater Plan. We have however been mindful of regulation 10 of the NES when considering the permitted activity rules for this plan.

## 10.0 Concluding Comments

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- 10.1 It is the Panel's decision to adopt the Councils reporting officers' discussion, and recommendations in relation to the water quality provisions in the Freshwater Plan in:
- The Section 42A Report<sup>38</sup>; and
  - Further recommendations and advice provided by Council staff.
- 10.2 Amendments have also been made by the Panel in response to the relief sought by submitters and these are outlined in section 13 above

## 11.0 Section 32AA Evaluation

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- 11.1 For the purposes of section 32AA, the Section 42A Report 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 quality provisions in the Freshwater Plan, as amended in the Section 42A Report and subsequent Council 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.
- 11.2 The changes proposed by the Council reporting officers' to the notified version of the Freshwater Plan and the Panel's amendments in response to submissions will make the Plan more efficient and effective.

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<sup>38</sup> Hearing Agenda: 11 -12 November 2016

**Mark Farnsworth** MNZM  
(Panel Chair)



**Rehette Stoltz**



**Craig Bauld**



**Peter Callander**



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## Appendix A: Examples of reasonable mixing definitions in regional plans

**Auckland Regional Council** produced a report titled “A Review of Definitions of Mixing Zones and Reasonable Mixing in Receiving Waters”, August 2010, Technical Report 2010/045. Below is a summary of Regional Council Guidance in relation to reasonable mixing, as described by Auckland Regional Council (2010).

**Northland – Operative Regional Water and Soil Plan (2004)** -When determining what constitutes a reasonable mixing zone, the Council will take into account:

- (a) The characteristics of the discharge and the sensitivity of the receiving water;
- (b) The assimilative capacity of the receiving water body;
- (c) The proximity and effects of other discharges;
- (d) The proximity of, and likely effects on, downstream uses;
- +(e) The desirability of keeping the mixing zone as small as practicable;
- (f) The availability and cost-effectiveness of current treatment technology.

**Waikato – Proposed Regional Plan – Appeals Version (June 2005)** - The zone of reasonable mixing is the area within which a discharge into water (including any discharge that occurs subsequent to a discharge onto or into land) does not need to achieve the standards specified in the water management class for the receiving water body. The size of the mixing zone must be minimised as far as is practicable and will be determined on a case by- case basis, including consideration of the following matters.

- a. The nature of the effluent, including its flow rate, composition and contaminant concentrations.
- b. River flow rate and flow characteristics.
- c. The design of the outfall.
- d. The depth, velocity and rate of mixing in the receiving water body.
- e. Existing contaminant concentrations in the receiving water body both upstream and downstream of the discharge point and the assimilative capacity of the water body.
- f. The frequency of the discharge.
- g. The speed with which any contaminants will be diluted.
- h. The ability of the discharger to alter the location of the discharge and the mixing characteristics of the outfall so as to ensure that adverse effects of the discharge beyond the zone of non-compliance are not inconsistent with the purpose for which the water body is being managed.
- i. Whether the discharger has taken all practicable steps to minimise the concentration and volume of contaminants at source.
- j. Any effects of the mixing zone on other users of the water body.
- k. The extent of adverse effects within the mixing zone.

**Bay of Plenty – Proposed Regional Water and Land Plan Version 9.7 (2007)** - Defines the length or radius of a reasonable mixing zone in the conditions of a resource consent for the point-source discharge of contaminants to a surface waterbody having regard to the following assessment criteria:

- a. The best practicable option to minimise the length or radius of the reasonable mixing zone.
- b. The water quality classification of the receiving waterbody (refer to the Water Quality Classification Map), and the relevant water quality classification standard in Schedule 10;
- c. The flow regime of the receiving water;
- d. The ambient concentrations of contaminants in the receiving water;
- e. Effluent discharge flow rate and contaminant concentrations;
- f. Existing discharge and abstraction consents;
- g. Fish migration and aquatic ecosystems requirements;
- h. The values and existing uses of the waterbody;
- i. Maori cultural values (refer to Policy 34);
- j. Proximity to bathing sites, especially those listed in Schedule 11;
- k. Adverse environmental effects of the discharge, including cumulative effects in relation to (a) to (j);
- l. The location of the discharge and position of the outfall;
- m. Outfall diffuser design criteria;
- n. Information provided by the applicant;
- o. Any other information relevant to the nature of the discharge and the site characteristics.

## Greater Wellington – Regional Freshwater Plan for the Wellington Region (1999)

### Policy 5.2.11

To ensure that any zones allowed on a discharge permit for reasonable mixing of contaminants or water with the receiving water are determined by having regard to:

- the purpose for which the receiving water is being managed, and any effects of the discharge on that management purpose; and
- any tangata whenua values that may be affected; and
- the volume of water or concentration of contaminants being discharged, and the area of receiving water that could potentially be affected; and
- the physical, hydraulic and hydrological characteristics of the receiving water.

### Appendix 8 Water Quality Guidelines

The plan contains water quality guidelines rather than standards.

The guidelines are expressed in terms of reasonable mixing.

**Canterbury – Proposed Canterbury Natural Resources Regional Plan** –Policy WQL1(2)(a) establishes criteria for determining the size of a mixing zone so that the discharge does not compromise the values of the water body and the aquatic ecosystem. In the vicinity of an outfall, there will be a zone where the discharge mixes with the receiving water, and the receiving water standards will not be complied with. This is called the "Zone of Non- Compliance". The boundary of the zone defines the point at which reasonable mixing has occurred and the water quality standards are met. In each case, the size of the zone will depend on the flow regime and water quality characteristics of the receiving water body, the type of contaminants, the level of treatment and flow rate of the discharge, and the design of the outfall.

### Otago – Regional Plan: Water for Otago (2004)

Discharges of contaminants authorised under resource consents must meet any water quality standard set in respect of receiving waters after “reasonable mixing”. Reasonable mixing occurs in a mixing zone, an accepted area of non-compliance. Matters (a) to (f) of the policy will be considered in the determination of the size of any mixing zone. Where a mixing zone is required for the discharge of contaminants to water, to ensure that it is limited to the extent necessary to take account of:

- a. The sensitivity of the receiving environment;
- b. The natural and human use values identified in Schedule 1;
- c. The natural character of the water body;
- d. The amenity values supported by the water body;
- e. The physical processes acting on the area of discharge; and
- f. The particular discharge, including contaminant type, concentration, and volume.

### Definitions Employed By Other Councils.

#### *Auckland Regional Council:*

Assessment of compliance with the reasonable mixing requirement is undertaken at the point downstream, which is 30 times the receiving water channel width at the point of discharge, and one third of the channel width across.

#### *Hawke’s Bay Regional Council:*

Assessment of compliance in relation to a permitted activity is assessed downstream of an area seven times the width of the channel (wetted edge to wetted edge) at the point of discharge.

#### *Horizons Regional Council:*

Assessment of compliance in relation to a permitted activity is assessed downstream of an area seven times the width of the channel (wetted edge to wetted edge) at the point of discharge.

#### *Taranaki Regional Council:*

Assessment of compliance in relation to a permitted activity is assessed downstream of an area seven times the width of the channel (wetted edge to wetted edge) at the point of discharge.