



DECISION REPORT FOUR OF FIVE

# Proposed Gisborne Regional Freshwater Plan

RESOURCE MANAGEMENT ACT 1991

## HEARING OF SUBMISSIONS DECISION OF HEARING PANEL

**TOPICS:** Section 5.5: Hazardous substances and contaminated sites;  
Section 6: Activities in the Beds of Rivers and Lakes;  
Section 7: Riparian margins and wetlands; Schedules.

**HEARING PANEL:** Mark Farnsworth MNZM (Chair)  
Deputy Mayor Rehette Stoltz  
Cr Craig Bauld  
Peter Callander  
Antoine Coffin

**HEARING DATES:** 5-6 December 2016

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## 1.0 Panel Appointment

- 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 a recommendation on submissions and further submissions on the Freshwater Plan.
- 1.2 This fourth hearing session was convened to consider submissions and further submission on the Freshwater Plan relating to discharges from hazardous substances and contaminated sites (section 5.5 of the Plan), activities in the beds of rivers and lakes (section 6), riparian margins and wetlands (section 7), and the regional schedules (Part D). The fourth hearing session also considered submissions on the catchment plans (Part E) but decisions on those submissions are outlined in Decision Report number 5.
- 1.3 In preparing this decision the following abbreviations have been used:
- |         |  |
|---------|--|
| AEE     | Assessment of Environmental Effects                      |
| Council | Gisborne District Council                                |
| DOC     | Department of Conservation                               |
| FANZ    | Fertiliser Association of New Zealand                    |
| FEP     | Farm Environment Plan                                    |
| FFNZ    | Federated Farmer of New Zealand                          |
| FWAG    | Freshwater Advisory Group                                |
| FMU     | Freshwater Management Unit                               |
| HNZ     | 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                           |
| VTA     | Vertebrate Toxic Agents.                                 |

## 2.0 Officers' Reports

- 2.1 The Panel received a comprehensive Section 42A Report prepared by Dennis Crone, Sarah Thompson, Harriet Roil and Lois Easton (Environmental and Science Services, Gisborne District Council), Kurt Ridling and Tim Blackman (Strategic Planning GDC) and Jerome Wyeth (4Sight Consulting Ltd), and reviewed by David Wilson, Strategic Planning Manager at Gisborne District Council.
- 2.2 The Section 42A Report<sup>1</sup>:
- Provides an overview of original and further submissions that relate to:
    - from Hazardous Substances and Contaminated Sites;
    - Structures in Beds of Rivers and Lakes;
    - Vegetation Clearance in Beds of Rivers and Lakes;
    - Stock and Vehicle Access;
    - Damming, Diversion and Drainage;
    - Gravel extraction;
    - Riparian Margins;
    - Wetlands; and
    - Schedules 1 -19.
  - 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 can be found pages 238 - 280 of the Section 42A Report. The Section 42A Report recommendations can be found on pages 227 - 236.

<sup>1</sup> Gisborne Regional Freshwater Plan- Section 42A Report – Activities in the Beds of Rivers and Lakes, Wetlands, Riparian Margins and Waipaoa Catchment Plan; November 2016.

## 3.0 Conflict of Interest Declaration

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3.1 None were tabled.

## 4.0 Hearing

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4.1 Commissioner Antonie 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 in submissions and Council recommendations on those submissions, 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:

### **Monday 5 December 2016 (in order of appearance)**

- Murray Palmer:
  - Statement of evidence had been provided by Murray Palmer
- Federated Farmers of New Zealand – represented by:
  - Debra Bidlake;
  - Charlie Reynolds;
  - Hamish Cave; and
  - Kerry Phillips.
- Horticulture New Zealand (HortNZ) - represented by:
  - Christopher Keenan, Special Adviser, Natural Resources to HortNZ
- Statements of evidence had been provided by:
  - Vance Hodgson, Director of Hodgson Planning Consultants Ltd;
  - Nicolas Conland;
  - Stuart Ford;
  - Nickolas Pollock; and
  - Christopher Keenan.
- Ko Te Aitanga a Mahaki represented by:
  - Ian Ruru; and
  - Ray Farmer.
- Both tabled their evidence at the hearing
- Mangatu Blocks and Wi Pere Trust – represented by:
  - Trevor Robinson;
  - Alan Haronga;
  - Dr Oliver Ausseil; and
  - Gerard Willis.
- Legal submission from Trevor Robinson tabled at the hearing
- Statement of evidence had been provided by:
  - Gerard Willis; and
  - Dr Olivier Ausseil.
- Ernslaw One – represented by Peter Weir.
- Eastland Wood Council – represented by: - Michael Candy, Trish Fordyce and Prue Younger.
- Statement of evidence had been provided by Michael Eric Candy.
- Submission on behalf of Eastland Wood Council was tabled by Trish Fordyce.

### **Tuesday 6 December 2016 (in order of appearance)**

- Department of Conservation<sup>1</sup> – represented by:
  - Teall Crossen Legal Counsel;
  - Dr Alastair Fairweather (by phone link);
- Adam Canning;
  - James Witham; and
  - Jamie Quirk.

- Legal submission from Teall Crossen tabled at the hearing
- Statements of Evidence had been provided from by:
  - James Robert Witham;
  - Adam Canning;
  - Jamie Quirk;
  - Dr Alastair Fairweather; and
  - Stanley Hovell.
- Matawai Farmers Group – represented by:
  - Lilian Sherman; and
  - William Gaddum
- Statement of evidence had been provided by:
  - Lilian Sherman; and
  - William Gaddum.
- Joint with Matawai Farmers Neil Henderson
- Rongowhakaata Iwi Trust– represented by;
  - Murray Palmer;
  - Jody Wyllie;
  - Moera Brown; and
  - Te Rina Whaanga.
- Verbal submission of Rongowhakaata Iwi Trust tabled at the hearing.

#### **Tabled Evidence / Representations**

- New Zealand Transport Agency – Cole O’Keefe Principal Planning Advisor;
- *Hearing Statement on Behalf Of The Oil Companies – Proposed Gisborne Regional Freshwater Plan*, John McCall, Graduate Planner, Burton Planning Consultants Limited;
- Eastern Fish and Game – Eben Herbert submission for freshwater hearing;
- Fertiliser Association of New Zealand – Statement of evidence of Claire Ursula Kelly; and
- New Zealand Defence Force – Letter to support and oppose parts of the Freshwater Plan.

4.4 The following documents were provided to the Panel in support of submissions made:

- Ko Te Aitanga a Mahaki - Gisborne Herald article on Mauri Compass – 22 Oct 2016;
- Ernslaw One - Powerpoint – Supporting evidence, submission to the hearings panel on the Proposed Gisborne Regional Freshwater Plan;
- Ernslaw One - Powerpoint – Forestry Water Quality;
- Department of Conservation - Supplementary evidence of Adam Douglas Canning, on surface water flows and ecological health of waterbodies;
- Department of Conservation - Supplementary evidence of James Witham;
- Department of Conservation - James Witham – Wetlands Management;
- Matawai Farmers Group - Powerpoint supporting evidence from William Gaddum;
- Neil Henderson - Powerpoint Water Slides;
- Horticulture NZ - Christopher Keenan – Oral evidence to a hearing on the proposed trial of MAR in the PBF, Gisborne region;
- Horticulture NZ - Regional council snap-shot survey responses;
- Horticulture NZ - Letter from Agrilink;
- Mangatu Block Inc / Wi Pere Trust - Hawke's Bay and Eastern Fish and Game Councils v Hawke's Bay Regional Council court decision;
- Mangatu Block Inc / Wi Pere Trust - Ngati Kahungunu Iwi Inc v HBRC court decision;
- Mangatu Block Inc / Wi Pere Trust - NZKS-SC- EDS v King Salmon court decision;
- Eastland Wood Council - Mike Candy – copy of landuse consent RR206022;
- Eastland Wood Council – Mike Candy -copy of LV-2011-104765-00;
- Eastland Wood Council - Mike Candy – various Aerial photos; and
- Eastland Wood Council - Mike Candy – sedimentation history of Waipaoa catchment Envirolink project 1015-GSDC96.

## 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

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/>.

5.2.1 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 of the Section 42A Report, and focuses on the amendments, additions and deletions the submitters are requesting.

### 5.3 MURRAY PALMER

5.4 Mr Palmer provided us with a comprehensive written representation which he spoke to. He sought the following:

- Require a bond or acceptable alternative for any point discharge;
- GDC to work with iwi, hapū, land managers, the wider community, local freshwater advocates and science providers to develop regional guidelines for good land management practices;
- Integrate into Rule 6.1.1 protection mechanisms for juvenile diadromous fish.
- Clarify gravel extraction applies to large boulders;
- Monitor effects of gravel/boulder extraction;
- Restriction on gravel extraction – due potential effects on ecological and biological components;
- Review Schedule 8 criteria so they include mauri and mahinga kai;
- 2m riparian setback in cropping areas (nil accepted then avoid herbicide application within 1m);
- Te Maungarongo o Te Kooti is included in the Schedule of Regional Significant wetlands and Emirau wetlands are renamed Rototahi;
- Wharekahika River assessed for inclusion in Schedule of Outstanding Waterbodies; and
- Puna Ora and the Ruataniwha swimming sites of the Wharekahika River are included in Schedule 5.

### 5.5 FEDERATED FARMERS OF NEW ZEALAND

5.5.1 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:

5.5.1.1 Section 5.5: Hazardous Substances and Contaminated sites

- Rule 5.5.1: discharge of agrichemicals – the Code applies to all agrichemical users.

5.5.1.2 Section 6.0: Activities in the Beds of Rivers and Lakes

- Rule 6.1.4(b) is unnecessary
- Amend Rule 6.1.4(f) to enable bridge abutments/foundations to be installed.

- Rule 6.1.7(c) what effects is the 100ha threshold addressing when standard (b) which requires the culvert to be able to pass a reasonable flood event. Will also increase the number of farms requiring an FEP.
  - Rule 6.1.8 ‘erection’ should be deleted.
- 5.5.1.3 Vegetation Clearance and Establishment
- Amend Rule 6.2.1. Concern expressed over amount of slash and large trees that are left behind and which gets washed downstream onto farms with vast amounts of sediment. The need to provide exemptions for farms located in catchments which have recently had or will have forests harvested, until such time as the area has been replanted and stabilised (i.e. to avoid culverts being filled in) and the level of slash within the forestry block has been significantly reduced i.e. to avoid damage to fences, bridges and culverts.
- 5.5.1.4 Stock and Vehicle Access
- Reword Policy 6.3.1.
  - Opposed to Forest and Birds submission to remove Policy 6.3.1 – not practicable.
  - Rule 6.3.2 the 2018 timeframe is not sufficient time – action before the GRFP is operative.
  - 2017 compliance date raises affordability issues. Water quality within the region is not under pressure.
  - Amend Rule 6.3.2.
  - Current wording of Rule 6.2.6 could mean that unless the crossing is bridged, culverted or forded, farmers may need discretionary consent to drive, for instance a quad bike across a stream under Rule 6.3.6. In the hill country, this is impractical.
- 5.5.1.5 Gravel Extraction
- Remove ‘dry’ from Rules 6.4.1 & 6.4.2 explanatory note required.
- 5.5.1.6 Damming, Diversion and Drainage
- Rule 6.5.5 encouraging water storage needs clarification.
  - Policy 6.5.7 reference to reference to Aquatic Ecosystem Waterbodies should be deleted as it is unnecessary.
  - Rule 6.5.2 the threshold of 5ha is too small.
  - Support DOC’s submission on an Advisory Note for Rule 6.5.3
  - Rule 6.5.3 DOC’s Advisory Note which regulation does it come from?
  - Rule 6.5.5 should be discretionary.
  - Notified wording of Policy 7.1.4 should be retained.
  - Rule 7.1.1 need for pragmatic approach to allow for wetland restoration work. Work can occur without triggering consent requirements or requiring a formal Wetland Management Plan.
  - Standard (b) in Rule 7.1.2 not required amend standard
  - Rule 7.1.5 Stock access to wetland an integral part of weed management may require grazing at a low stocking rate.
  - Disagree that all restoration work, however big or small, in any wetland should require a certified Wetland Management Plan prepared in accordance with Schedule 17.
  - Modify wording in Policy 7.1.2
  - The Freshwater Plan should define what it means by “edge” of a wetland and, to avoid penalising conscientious landowners with the setback rules should not requiring existing fences to be moved until such time as they are replaced.
- 5.5.1.7 Riparian Margins
- Focus should be on ‘appropriate’ rather than ‘indigenous’.
  - Confusion could be cleared up by deleting “riparian margins” and clarifying the definition of Riparian Management Area as suggested by Federated Farmers.
  - Rule 7.2.3 Standard (c) not necessary.



- If the Council wants riparian management areas on private land retired and planted in natives, it should be working with and compensating farmers for the loss of that land, rather than using rules to restrict its use and achieving that retirement by stealth.
- Definition of Riparian Management Area should be deleted as it reads more like a rule than a definition.
- The requirements in the irrigation management plan and FEP should be better aligned and that more flexibility should be incorporated into the FEP to enable their inclusion.

## 5.6 HORTICULTURE NEW ZEALAND

5.6.1 Mr Vance Hodgson, a director of Hodgson Planning Consultants, spoke to his brief of evidence on behalf of HortNZ. Mr Hodgson's submission provided support for a number of Council staff recommendations in the Section 42A Report. Key points:

### 5.6.1.1 Discharges from Hazardous Substances and Contaminated Sites

NZS 8409 - the name of the Standard is important to ensure certainty and to comply with the requirements of the RMA in relation to referencing external documents. The correct name is NZS 8409:2004 Management of agrichemicals.

The need for a permitted activity pathway for the discharge agrichemicals into the air, onto or into land and/or into water.

### 5.6.1.2 Wetlands

Rule 7.1.3 improved by adopting a consistent approach to the officers recommended changes to Rule 6.2.1

## 5.7 LEADERBRAND

Mr Nicholas Pollock, Senior Crop Manager/Agronomist for Leaderbrand gave us an overview of his written statement of evidence which was focused on-growing crops in Gisborne.

## 5.8 MANGATU BLOCKS INCORPORATION AND WI PERE TRUST.

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

- Activities in Beds of Rivers and Lakes
- Rule 6.1.1 further amendment suggested.
- Rule 6.3.1 opposition to wording suggested by DOC and Forest & Bird, the wording is clumsy. Material difference between what was notified and what is now proposed; no section 32 like analysis.
- Rule 6.3.4 there is an inconsistency in the wording.
- Rule 6.4.2 Reframe.
- Method 6.4.1 the suggested staff amendment does not address the submission; it broadens the application to potentially include any waterbody.
- Riparian Management – Protected Water Courses
- Delete Schedule 7.

## 5.9 EASTLAND WOOD COUNCIL

5.9.1 Ms Trish Fordyce for the Eastland Wood Council requested that Schedule 7 be deleted as protected watercourses have been identified by way of resource consents.

5.9.2 Mr Michael Candy, National Asset Manager for Crown Forestry, spoke to his evidence in support of Eastland Wood Council.

5.9.3 Deletion of Schedule 7:

5.9.3.1 Protected Watercourses were identified in forestry resource consents as ones with risk of bed incision and erosion. They were not created for maintaining or enhancing vegetation along riparian areas.

5.9.3.2 Policy 7.2.1 makes it clear that reason now for Protected Watercourses is to **retire** areas and the establishment of indigenous riparian margins. This was not the reason why these protected watercourses were established in previous forestry resource consents.



5.9.3.3 The concept of permanent retirement has now been introduced by the Freshwater Plan with the proposed rules appearing to be a de-facto method of establishing Outstanding Waterbodies but without all the research and public processes the Proposed Freshwater Plan provides for the identification of such waterbodies. The Proposed Freshwater Plan has taken a confused approach to the forestry protected watercourses. The relevant policy is clear that the riparian areas are to be retired for the encouragement of indigenous vegetation yet even the GDC report writers consider the provisions are for water quality reasons. The provisions in themselves are confusing. Rule 7.2.11 appears to treat land disturbance in the riparian areas adjacent to forestry protected watercourses the same way as activities adjacent to Outstanding Waterbodies. Should Council consider that any water courses within forestry fit the criteria of Outstanding Waterbodies, then the Proposed Freshwater Plan processes are available for such identification.

## 5.10 THE DIRECTOR-GENERAL OF CONSERVATION

5.10.1 Ms Teall Crossen provided legal submission on behalf of the Director-General of Conservation which addressed:

- Agrichemicals<sup>2</sup>;
- Vertebrate Toxic Agents<sup>3</sup>;
- Fish passage<sup>4</sup>; and
- Wetlands<sup>5</sup>.

5.10.2 Mr James Witham, RMA planner for DOC, provided a summary of the matters he addressed in his comprehensive evidence. Rationale, amended wording, or wording additions were proffered. Mr Witham addressed the following issues:

5.10.2.1 *Hazardous substances and contaminated Land* - the need for a permitted activity provision to appropriately manage Vertebrate Toxic Agents<sup>6</sup>;

5.10.2.2 Structures in the beds of lakes and rivers<sup>7</sup>:

- Ensuring provisions appropriately provide for fish passage when managing structures;
- Outlining appropriate parameters for the design, placement, installation, and maintenance for culverts;
- Managing the expansion of existing structures.

5.10.2.3 *Vegetation clearance and establishment*<sup>8</sup> - discouraging the planting of exotic species in the beds of rivers and lakes;

5.10.2.4 *Stock and vehicle access*<sup>9</sup> - additional circumstances for the exclusion of stock;

5.10.2.5 *Gravel extraction*<sup>10</sup> - additional permitted activity standards for gravel extraction;

5.10.2.6 Damming, diversion and drainage of stream, rivers and lakes<sup>11</sup>

- Stipulating circumstances when the damming, diversion and drainage of rivers and lakes may be appropriate
- Additional matters to be considered when assessing resource consents;

5.10.2.7 Activities in and adjacent to wetlands<sup>12</sup>

- Clarifying where and how 'significant' values and 'significance' values of wetlands are most appropriately addressed in the Freshwater Plan;
- Aligning and expanding the provisions for the exclusion of stock from wetlands;
- Opposing the definition of modification of wetlands;
- Promoting restoration and the use of Wetland Management Plans;

<sup>2</sup> Crossen Legal Submissions at [3 – 5]

<sup>3</sup> Ibid at [6 – 7]

<sup>4</sup> Ibid at [10 – 12]

<sup>5</sup> Ibid at [13 – 15]

<sup>6</sup> Witham EIC at [8 – 19]

<sup>7</sup> Ibid at [20 – 48]

<sup>8</sup> Witham EIC at [49]

<sup>9</sup> Ibid at [50 – 54]

<sup>10</sup> Ibid at [55 – 56]

<sup>11</sup> Ibid at [57 – 60]

<sup>12</sup> Ibid at [61 – 86]

5.10.2.8 Riparian margins<sup>13</sup>:

- Improving readability;
- Linking provisions to Farm Environment Plans;
- Inclusion of additional matters for assessment of resource consents;

5.10.2.9 Schedules<sup>14</sup>

- Supporting and clarifications and amendments to Schedule 1;
- Supporting the inclusion of inanga spawning areas;
- Clarifying the purpose of Schedule 3 and the most appropriate criteria in the schedule;
- Supporting minor changes to Schedule 5;
- Recommending amendments to Schedule 10 to provide for fish passage in Culverts;

5.10.2.10 *Definitions*<sup>15</sup> - supporting the amended definition of agrichemical and proposing a definition of Vertebrate Toxic Agent;

5.10.3 Mr Alastair Fairweather, a Technical Advisor (Systems Improvements, Threats) for DOC provided a brief of evidence on 'Vertebrate Toxic Agents' (VTA). Key points of his evidence:

- Overview of land based and aerial application of VTAs.
- Information about pest control in New Zealand and in the Gisborne District, the ecotoxicology of VTAs that may enter water and the regulatory controls around their use.
- Permitted Activity Rule for VTA's.

5.10.4 Mr Stanley Hovell, a Ranger for DOC, in his statement of evidence addressed threatened and at risk fish species. Additional fish in these categories have been added to Schedule 1.

5.11 **MATAWAI FARMERS' GROUP & NEIL HENDERSON**

5.11.1 Ms Lilian Sherman, a Director and Environmental Engineer for Irricon, spoke to her written brief of evidence on behalf of Matawai Farmers Group.

5.11.2 The definition of formed stock crossing for the purposes of rules 5.3.2 and 6.3.2d is missing from the definitions:

## 5.11.2.1 Rules Requiring Culverts or Bridges

Rule 6.3.2 allows stock access to the beds of rivers, lakes or streams by livestock access through a formed stock crossing provided the activity meets permitted activity rules including permitted activity standard (b)i which requires that the stock crossing does not occur more than twice a week after 1 July 2018. Requested change 'more than twice a week' is further defined to 'more than twice a week on average in any 12-month period'

## 5.11.2.2 Rule 6.1.4 for Bridges

Rule 6.1.4b requires a consent for the erection, construction, placement, alteration or extension of bridges installed in catchments over 100ha. The 100ha number appears to be an arbitrary number and no basis is given for it. The risk of flooding is already mitigated in the case of bridges by the permitted activity standard b. which requires the height of the deck of the bridge to be sufficient so that it is not overtopped by a 1 in 5-year flood, permitted activity standard b. for culverts has the same standard. This sufficiently addresses the effects of flooding, the additional restriction of 100ha catchment is unnecessary.

Rule 6.1.4.a permitted activity standard requires a chartered engineer to design the bridge. This adds an unnecessary cost to the installation of bridges without any additional environmental benefit.

Rule 6.1.4 permitted activity standard f. requires the bridge and approaches to be designed and constructed to prevent animal waste and run off from the stock crossing approach from entering the water. Amendment required - 'where possible' (or the words 'where practical' could be substituted) are included in the permitted activity standard

One consent to cover the installation of bridges and culvert to meet the rules in the Freshwater Plan.

<sup>13</sup> *Ibid* at [87 – 97]

<sup>14</sup> *Ibid* at [98 108]

<sup>15</sup> *Ibid* at [109 – 111]

5.11.2.3 Rule 6.1.7 for Culverts – similar reasoning as above for the 100ha restriction. Additional comments - does not support a minimum size of 375mm and would like the reference to a minimum culvert size deleted. 5.3.4 for new intensive activities require crossings to be installed on permanent and intermittent streams and rivers. Intermittent streams may be very small and it may be appropriate to install a culvert smaller than 375mm. Farmers are qualified to make this judgement.

## 5.12 RONGWHAKAATA IWI TRUST

Rongwhakaata Iwi Trust confirmed the cultural, historical and spiritual importance of the Te Arai (Te Uru) River to Rongowhakaata. They once more expressed their disappointment with the GDC process of engagement and uncertain whether GDC realise the weight and value placed upon tangata whenua expression of their mana whenua and the importance of their active participation, in the process.

Submission points:

- A new FMU for the Te Arai sub-catchment.
- Communities can identify values for their water bodies and set water quality limits to ensure these values are protected. Hence the importance of dedicated participatory framework between GDC and the hapu and iwi groups in order to establish FMU values.
- Mountain to sea, ki uta ki tai, integrated perspective is fundamental to a Māori world view.

## 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 methods 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 or 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:
- Where submission point(s) did not affect a proposed provision, the provision has been retained (unless changes to dependent related provisions require this and it can be accommodated within scope).
  - Where a submission point(s) supports a proposed provision and there are no submissions in opposition, the provision has been retained.
  - Where a submission point(s) sought changes to 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.
  - 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.
  - 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 2 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>16</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."*

<sup>16</sup> 2017. A guide to section 32 of the Resource Management Act 1991: Incorporating changes as a result of the Resource Legislation Amendment Act 2017, Interim guidance. Wellington: Ministry for the Environment.

*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”.*

- 6.5.3 The Freshwater Plan 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>17</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 officers and/or submitters.

## 7.0 Issues

- 7.1 At the conclusion, of the 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 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 Specific issues - ensuring that following issues have been addressed either by staff (signed off by the Panel) or the Panel:
- Hazardous Substances and Contaminated Sites (Section 5.5);
  - Structures in the Beds of Rivers and Lakes (Section 6.1);
  - Vegetation Clearance in Beds of Rivers and Lakes (Section 6.2);
  - Stock and Vehicle Access (Section 6.3);
  - Gravel Abstraction (Section 6.4);
  - Damming, Diversion and Drainage (Section 6.5);
  - Wetlands (Section 7.1); and
  - Riparian Margins (Section 7.2).

<sup>17</sup> First Directive of the Hearing Panel, 1 July 2016

## 8.0 Findings and Decisions

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*Note: Most of the amendments made by the Panel have been done so to provide clarity and to include better wording that will assist with implementation*

### 8.1 GENERAL OBSERVATIONS

8.1.1 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.

8.1.2 Like the water quality hearings, we were, in many instances provided, with some form of justification for the changes suggested. Time, cost, economic viability, and the need to give effect to the NPSFM were to the fore in terms of reasoning.

8.1.3 Where a requested change 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 32A analysis is still applicable. Where a change requested addressed a clear gap then it has been adopted. If the change has been made to give effect the NPSFM then a section 32AA is 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 has been completed.

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

8.1.5 In considering the rules regime, the Panel has adopted a cautious approach in setting criteria for decision-making. We have taken the attitude that the onus should be on the land user, not the council, to provide the proof that what they were doing does not adversely impact on freshwater. 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 extended inspections of water quality issues throughout the Gisborne district. In particular, our attention became focused on the potential cumulative impacts that results from commonly accepted land use practices on water quality, especially where an activity is permitted all the way along a water course.

### 8.2 DECISION-MAKING PHILOSOPHY

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

8.2.2 The Panel aim is to give effect to the NPSFM by carefully considering all the submission and further submissions, and refining the Plan so that the tenets of the NPSFM are given effect to 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.

### 8.3 PANEL DIRECTION TO STAFF

As a direct result of the hearing process the Panel directed staff to readdress their recommendations which they did.

### 8.4 Hazardous Substances and Contaminated Sites (Section 5.5)

8.4.1 The recent adoption of the Resource Management (Exemption) Regulations 2017 – Pest Control have effectively changed the compliance regime in terms of Vertebrate Toxic Agents (VTAs). Under the regulations, three (VTAs) - used to control mammalian pests such as stoats, possums and rats, and pest fish - are exempt from RMA requirements for aerial and ground applications. The three VTAs are sodium fluoroacetate (1080), brodifacoum and rotenone. The regulations are intended to reduce duplication in the regulatory regime for pest control and Council will need to comply with these regulations.

8.4.2 On that basis we find that this plan does not need to define or deal with VTAs.

8.4.3 However, we have accepted the DOC proffered amendment to the definition of 'Agrichemicals' as set out below as the Panel considers that this provides further clarification.



### **Agrichemical**

Any substance or combination of substances including adjuvants or dyes, whether inorganic or organic, human-made or naturally occurring, modified or in its natural state, that is used in agriculture, horticulture or related activity including environmental pest management to eradicate, modify or control flora and fauna or ecological processes. (Note: this definition excludes fertilisers and vertebrate poisons but includes animal remedies).

- 8.4.4 For Policy 5.5.6 we have adopted the additional matters to be considered proffered by DOC. We consider that the additional matter 'k' provides a clearer linkage and additional matter 'l' reinforces one of the tenets of the NPSFM, although we have strengthened that by referencing the consideration to improve water quality. These amendments are shown below:

k. The need for a financial bond or other alternative where there is potential for long-term contamination or adverse effects on water quality;

l. The need to maintain, or improve the life supporting capacity of freshwater.

- 8.4.5 For Rule 5.5.1 we have adopted the S42A changes, but we note it is effectively a rule for all discharges of agrichemicals to be undertaken as a permitted activity subject to conditions. Therefore there needs to be a default rule that where these discharges do not meet the permitted activity conditions, consent must be sought as a discretionary activity. Consequently we adopt the S42A wording for Rule 5.5.3, which will require a re-numbering of the subsequent rules in this section.

### **8.5 Structures in the Beds of Rivers and Lakes (Section 6.1)**

- 8.5.1 The rationale for the 100 ha catchment threshold for consent requirements for bridges (Rule 6.1.4) and culverts (Rule 6.1.7) was questioned. The Panel sought further information from Council staff on this issue. They advised that the reason for introducing consent requirements for larger catchments is that these will have steeper land masses and therefore create higher volumes/velocities for flushing flows (and also more slash) which are likely to damage or destroy smaller bridges and culverts. The Panel understands there is a need to set the threshold at some level and Council staff have advised that 100ha is a number that has worked in the past and is therefore considered to be a reasonable approach for the Freshwater Plan. The Panel agrees with this rationale.

- 8.5.2 Similarly, concern was expressed about the minimum culvert size specified in Rule 6.1.7.

- 8.5.3 The Panel did consider how the Freshwater Plan could be amended to avoid requirements for bridges and culverts on streams that have a highly mobile bed recognising that this may create more problems than it solves. However, it was not possible to come up with workable, certain definition of a mobile river bed given that all streams are mobile to some degree. Providing a general exception to the requirements for bridges and culverts could also undermine the intent of the Freshwater Plan.

- 8.5.4 However, for all matters involving structures and stock management in waterways, the Panel are keen to allow activities that may not meet the specific conditions of permitted activities to be addressed through FEPs which require details of waterways within the property or enterprise and details of structures and stock management that will achieve the desired environmental outcome. That provides an alternative compliance pathway to deal with these matters in a pragmatic manner without the need to go through a consenting process. We have added extra words to these rules to allow for this provision.

- 8.5.5 We have adopted the Mangatu Blocks Incorporation submission and requested amendment to Rule 6.1.1(d). This is consistent with the amendment recommendation in the Section 42A Report but we consider the additional reference to when "construction work commences" provides better wording. This in combination with the amended definition of reasonable mixing will provide greater certainty and when and where water quality standards must be met. The amendment we have adopted is as follows:

"more than 48 hours after any construction work commences in the lake, river or stream bed"

- 8.5.6 Rule 6.1.1(d) should also be modified constrain the effect of this discharge to the reasonable mixing zone as defined by us in decision report 3.

- 8.5.7 We also consider that Rule 6.1.14 needs to be Restricted Discretionary Activity rather than a Controlled Activity to be consistent with the Combined Plan and because of our general concern about the damage to waterways being caused by forestry activities relative to the controls that are imposed on many other land use activities.



- 8.5.8 We are also of the viewpoint that new Rule 6.1.xx recommended in the Section 42A Report is generally applicable to temporary bridges. We have therefore deleted “for military training purposes” from the wording recommended in the Section 42A Report.
- 8.5.9 Vegetation Clearance in Beds of Rivers and Lakes (Section 6.2)
- 8.5.10 The Section 42A Report recommended amendments to Policy 6.2.1 and Rule 6.2.2 to state “pest plant(s)” rather than “plant pest(s)” in response to submissions from Beef and Lamb. There were no submissions regarding amending to pest plants within Rule 6.2.1 but this should be changed to ensure consistency with Beef and Lamb’s other submissions.
- 8.5.11 We concur with the submission of HortNZ and have adopted their recommended changes to Rule 6.2.1 (Removal of Vegetation in the Beds of Lakes and Rivers). These amendments are outlined below:
- 8.5.12 The activity is for the purposes of control of any pest plant which is included within the Gisborne Regional Pest Management Strategy, the National Pest Plant Accord or any unwanted organism under the Biosecurity Act 1993.
- 8.6 Stock and Vehicle Access (Section 6.3)**
- 8.6.1 We have adopted the Mangatu Blocks Incorporation submission seeking an amendment to Policy 6.3.1 as the Panel considered that it provides better wording and gives effect to Policy A1 of the NPSFM. In particular, we are of the view that the use word ‘significant’ in the proposed rule may potentially create major debate on how ‘significant’ should actually be quantified and measured. This could undermine the general thrust of the Plan. Removing the reference to significant impacts is also more consistent with the NPSFM which is about improving or maintaining water quality generally not just avoiding significant impacts on water quality. We are also of the view that in addition to referencing minor adverse effects, specific mention should be made of the need to reduce stock access where they are contributing to a degraded waterbody, so that an improvement can be achieved. The wording we have adopted is as follows:
- “But require reduced access where impacts of stock use occurs beyond thresholds ~~where environmental impacts can be significant~~ which involve more than minor adverse effects on water quality or where they contribute to degraded water quality.*
- 8.6.2 We also agree that Rule 6.3.4 needs to refer to vehicle entry, exit and passage across the bed of a lake, river or stream. We have therefore also incorporated the Mangatu Blocks Incorporation recommended amendment on Rule 6.3.4.b as outlined below.
- Rule 6.3.4*
- “Vehicle passage ~~is outside the wetted area of the bed and river crossings (including river crossings)~~ within the wetted area is minimised.”*
- 8.7 Gravel Abstraction (Section 6.4)**
- 8.7.1 We have adopted the Mangatu Blocks Incorporation submission requesting that Policy 6.4.2 is reframed as we consider that provides better wording. The amended text essentially replaces “may only be” with “shall not be” and “if this will maintain or enhance” with “unless this will enhance” with as follows:
- “gravel extraction ~~may only be~~ shall not be undertaken in outstanding water bodies if this ~~maintain or enhances the~~ unless the values of the water body are maintained or enhanced.*
- 8.7.2 We have also adopted the Mangatu Blocks Incorporation requested amendment to Method 6.4.1 as we consider that this provides useful clarification. The amendments are outlined below:
- The council will identify Outstanding Waterbodies (Schedule 4) and other high value waterbodies where gravel management plans would be beneficial, including when conflict ~~or issues~~ between gravel extractors might arise or where gravel extraction may adversely affect the environmental values of the waterbody. These plans will identify the cause of aggradation and will seek to reduce bed levels while protecting or restoring in-stream values.*
- 8.7.3 We accept Murray Palmers point about the need to recognise the different effects that the removal of boulders can have compared to gravel. This can most effectively be implemented by including a definition of gravel into the plan (for the purpose of section 6.4) to clarify that it specifically excludes boulders. That will require excavation of boulders to require a consent under rule 6.4.2 which will allow appropriate consideration of the effects of that activity. The definition we have adopted is as follows:

Gravel: For the purpose of the gravel extraction provisions in section 6.4, gravel refers to the granular deposits in the beds of lakes and rivers that is predominately in the size range of 2 – 64 mm in average diameter. It specifically excludes boulders, which are greater than 256 mm in average diameter.

- 8.7.4 We also note that Rule 6.4.2 only refers to excavation from a dry riverbed, which would mean that excavation from the wet part of the river bed is an innominate activity. To cover all this off, Rule 6.4.2 should be amended as follows:
- 8.8 The extraction of sand, shingle, gravel or rock from the ~~dry~~ bed of a river that is not permitted by Rule 6.4.1. **Damming, Diversion and Drainage (Section 6.5)**
- 8.8.1 The Section 42A Report recommended a number of amendments to damming, diversion and drainage provisions in the Freshwater Plan noting that the main area in contention in submissions is the threshold of a 5ha catchment size in permitted activity rule 6.5.2 (which we have discussed in relation to structures). After considering evidence and representations made by submitters at the hearing, we are of the view that the amendments in the Section 42A Report provide better policy direction and clarity and have adopted them in our decision.
- 8.9 **Wetlands (Section 7.1)**
- 8.9.1 Wetlands need to be benchmarked to clearly identify their location and size at the time the Plan becomes operative, so as to avoid issues related to their increase in size once protection measures are in place. This will require Council putting in place a programme, in conjunction with landowners, to progressively delimit wetland areas (i.e. GPS boundary definitions). To achieve this we have added a requirement to map the extent of the wetland area in Method 7.1.1.
- 8.10 **Riparian Margins (Section 7.2)**
- 8.10.1 After considering evidence and representations made by submitters at the hearing, we are of the view that the amendments in the Section 42A Report in relation to riparian margins provide better policy direction and clarity and have adopted them in our decision. In addition, when referring to riparian margins have adopted the term “Riparian Management Area” to be used consistently throughout the Freshwater Plan.
- 8.10.2 The evidence from several submitters, including forestry sector representatives, noted the significant deterioration in water quality and the in stream environment that occurs as a result of activities that are regarded as normal forestry industry practice. At present it appears that the effects of forestry on surface waterways are treated in a manner that is inconsistent, and significantly more lenient, than the effects from many other land use and discharge activities.
- 8.10.3 Consequently, we have amended Rule 7.2.11 to require consents for all land and vegetation disturbance as a result of cable haul logging across surface waterways rather than limit this to Protected Watercourses. That will help to bring some consistency to the scale of effects that land use activities have on surface waterways and will encourage the appropriate protection and maintenance of riparian margins, which is a key tool to lessen the impact of forestry on surface waterways.
- 8.11 **Department of Conservation’s Amendments.**
- 8.11.1 Mr Witham, on behalf of DOC, proffered a number of amendments to the provisions in section 6 and 7 of the Freshwater Plan. The Section 42A Report recommended that a number of these amendments be accepted. The Panel has also adopted some of these changes where we consider they will help to better give effect to the NPSPM, improve clarity, or provide better wording. In summary, the main changes in these amendments from the notified version of the Freshwater Plan are as follows:
- Minor amendments to policies to better align with Objective A1 of the NPSPM;
  - Providing greater direction on how fish passage should be improved, including specific provision for native aquatic species;
  - Including better provision for ‘threatened’ and ‘at-risk’ indigenous bird species;
  - Referring to the significant values of wetlands consistent with the NPSPM and improved reference to wetland management plans in the wetland rules; and.
  - Improved permitted activity conditions for gravel extraction.
- 8.11.2 However, there are also a number of amendments sought by DOC which we haven’t adopted such as the Schedules, including the appendix with wetland significance criteria (as outlined in Decision Report 1) and additional policy to only provide for the damming, diversion and drainage of waterbodies in limited circumstances.

## 9.0 Concluding Comments

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- 9.1 It is the Panel's decision to adopt the Councils reporting officers' discussion, and recommendations in relation to the provisions in Section 5.5 (Discharges from Hazardous Substances and Contaminated Sites), Section 6 (Activities in the Beds of Rivers and Lakes), Section 7 (Riparian Margins and Wetlands), and Part D (Regional Schedules) of the Freshwater Plan in:
- The Section 42A Report<sup>18</sup>; and
  - Further recommendations and advice provided by Councils staff.
- 9.2 Amendments have also been made in relation to the relief sought by submitters and these are outlined in section 8 above.

## 10.0 Section 32AA Evaluation

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- 10.1 For the purposes of section 32AA, the section 42A version of the Freshwater Plan has been considered in terms of section 32(1) to section 32(4). The Panel accepts the Council reporting officers' recommendations and finds that provisions in the Freshwater Plan as amended in the Section 42A Report and subsequent Council Reporting Officers' recommendations and advice are the most appropriate in terms of:
- Giving effect to NPSFM. The Panel clearly understands the cost implications of having to give effect to the NPSFM and has endeavoured to put in place a regime that gives effect to the intent of the NPSFM at the same time allowing economic activities to continue.
  - The potential costs and benefits of the provisions.
- 10.2 The changes proposed by the Council reporting officers' to the notified version of the Freshwater Plan will make the Plan more efficient and effective.

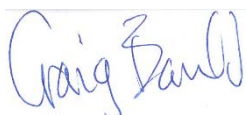
**Mark Farnsworth MNZM**  
(Panel Chair)



**Rehette Stoltz**



**Craig Bauld**



**Peter Callander**



**Antoine Coffin**



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<sup>18</sup> Hearing Agenda: 11 -12 November 2016

## Appendix A: Amendments sought by the Department of Conservation the Panel has adopted

NB: Additional amendments to section 42A Report highlighted in yellow. Additional amendments made by Panel highlighted in green.

### Policy 6.1.2

Improve fish passage in the region by:

- a. Progressively remove barriers to improve fish passage in priority areas (identified by 2020)
- b. Avoiding the creation of future barriers to native fish passage by requiring the use of appropriately designed, placed, installed and maintained structures including the use of culverts and bridges for permanent river crossings rather than permanently constructed fords
- c. Recognising that the best time to remove barriers is often at time of infrastructure renewal.

### Policy 6.1.3

Provide for new structures and activities in streams, rivers and lakes where:

- a. Fish passage for migration, recruitment and habitat range is maintained and structures are established according to best practice;
- b. Adverse effects on the significant habitats and migratory and breeding activities of native aquatic and terrestrial species and trout are minimised;
- c. Where only native aquatic species are found and not trout, fish passage should be designed to only allow the passage of native aquatic species.
- d. They will not hinder the recharge of groundwater aquifers;
- e. de. Impacts on water quality and flow are managed within the objectives and limits/targets set for the waterbody;
- f. ef. There is no reduction in flood carrying capacity, increased flood levels, adversely altered floating debris carrying ability of the stream or river, or adverse alteration to rates of aggradation or bank erosion;
- g. fg. There is no damage to heritage items, waahi tapi, taonga and areas of cultural significance;
- h. gh. There is no reduction in value of the waterbody for activities such as kohinga kai harvesting or recreational use, including the protection of public access and impacts on natural character and amenity values; and
- i. There is a functional need for the structure to be located in the bed of a lake, river or stream.
- j. The new structure is the most is no practical alternative
- k. ~~Adverse effects on the known habitats of threatened or at risk species are avoided;~~
- l. The mauri-health of the waterbody is maintained or improved.

### Policy 6.3.1

To allow for low levels of stock access to the beds of streams, rivers and lakes where:

- a. Adverse effects on the significant habitats and migratory and breeding activities of native aquatic and terrestrial species and trout are minimised;
- b. Impacts on water quality are low;
- c. There is no reduction in the value capacity of the water body to provide for activities such as kohinga kai harvesting or recreational use.

But;

- i. require reduced access where impacts of stock use occurs beyond thresholds where environmental impacts can be significant; which involve more than minor adverse effects on water quality or where they contribute to degraded water quality; and
- ii. Consider prevention of stock access where water quality is degraded below National Bottom Lines and there is a practicable alternative for farm management.

## Rules

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### Rules 6.1.3 – 6.1.9

#### Permitted Activity Standards

##### Rule 6.1.3

Any structure (including river control works) and its use occurring in, on, under or over the bed of a lake, river or stream provided that:

- a. It is not specifically provided for in a rule in this plan; **and**
- b. It was lawfully established prior to the date of notification of this Plan c. It meets all the requirements of Rule 6.1.1 by 2020.173

##### Rule 6.1.5

The maintenance, repair, alteration, reconstruction and extension of lawfully established structures (including river control works, but excluding the extension of dams which act to impound water) occurring in, on, under or over the beds of lakes, rivers and streams. Provided that:

- a. No increase or extension occurs to structures within Outstanding Waterbodies;
- b. In all other waterbodies any increase in the **size of the** structure is not more than 10% of the size of the structure **when legally established**;
- c. From 1 May 2020 the structure has not been identified as preventing the passage of migrating fish;
- d. ~~The structure has not been identified as causing more than minor adverse flooding effects on~~ **will not cause more than minor adverse** flooding or erosion **effects** to land, property owned or occupied by another person, buildings or access-ways.

##### Rule 6.1.7

#### Permitted Activity Standards

- a. The minimum culvert diameter shall be **the larger of:**
  - i. 375 mm; or
  - ii. **20% wider than the natural width of the stream plus 0.5m.**

##### Rule 6.1.9

#### Permitted Activity Standards

Structures for the purpose of game bird shooting or whitebaiting **erected after this plan becomes operative shall:**

- i. Be erected no more than one month prior to and shall be dismantled no more than two weeks after the relevant season; and,
- ii. **Shall not be used as temporary dwellings or for camping.**

## Methods

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### Method 6.1.x

When appropriate, taking into account Council priorities, **de**velop a non-statutory GIS layer and or register identifying structures in rivers and streams that are a barrier to the movement of fish.

### Method 7.1.1

Develop a database of all known wetlands within the region, including those in land drainage areas, that identifies their **principal significant** values and threats **to those** values. **Council will also undertake a programme, in conjunction with landowners, to accurately map the boundary of each wetland using GPS.**

### Method 7.1.2

Encourage the active restoration of wetlands and their margins, **by;**

- a. developing non-regulatory projects which arise from this Freshwater Plan and Catchment Plans, and;
- b. **providing and coordinating the provision of information regarding wetland restoration, and;**
- c. support the development of Wetland Management Plans as outlined in Schedule 17 as a formal tool for managing wetlands.