



DECISION REPORT ONE OF FIVE

Proposed Gisborne Regional Freshwater Plan

RESOURCE MANAGEMENT ACT 1991

HEARING OF SUBMISSIONS DECISION OF HEARING PANEL

TOPICS: Regional Policy Statement
Issues, Objectives and Strategic Policies

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

HEARING DATES: 2-3 August 2016

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1.0 Background

- 1.1** The Section 42A Report¹ clearly sets out the background to the Proposed Gisborne Regional Freshwater Plan (the 'Freshwater Plan'). Key points include:
- Gisborne District Council ('Council') has not previously developed a Regional Plan that addresses the overall management of freshwater.
 - The Council has, up until now, allocated freshwater through provisions of its Transitional Regional Plan. There was no operative or proposed regional water plan.
 - In 2008, Council first started considering the need to put in place a regional freshwater plan under the Resource Management Act 1991(RMA) as a result of the release of the proposed National Environment Standard of Ecological Flows and Water Levels in March 2008.
 - In December 2010, the Freshwater Advisory Group (FWAG) – a collaborative group representing a wide range of interests across the region was formed. This group has overseen the investigation into freshwater management issues and potential responses and the development of the Freshwater Plan.
 - During 2011, the Council and FWAG embarked on an extensive process of identifying the significant values of the region's waterbodies through the River Values Assessment System (RiVAS).
 - Reports on all of these values were finalised during 2012. Following this a vision and outcome statements for the Freshwater Plan were developed and an engagement and consultation process with the wider community was embarked upon.
 - When the amendments to the National Policy Statement for Freshwater Management 2011, including the National Objectives Framework (NOF), was released in draft in 2013, a decision was made to additionally incorporate provisions to set limits and attribute states as required by the NOF.
 - A discussion document, *Freshwater Planning for the Gisborne Region* was released and a consultation period was held from June-October 2013.
 - During the mid-late part of 2014 detailed meetings with key interest groups around potential draft provisions were also held. Following those meetings, a draft Freshwater Plan was developed and released for consultation in September 2014. The intent of the draft Freshwater Plan consultation was to engage with key stakeholders to ensure that draft policies and rules were understood, and to seek detailed feedback prior to the formal notification process.
 - The Proposed Freshwater Plan was publicly notified in October 2015.

2.0 Notification

- 2.1** The Council resolved on 8 October 2015 to publicly notify the Freshwater Plan, which it did on 10 October 2015. The notification attracted 42 submissions with 1238 submissions points. Notification of the summary of submissions attracted 24 further submissions with 2681 further submission points.

3.0 Panel Appointment

- 3.1** The Gisborne District Council (the 'Council'), under section 37A of the RMA, appointed Independent Commissioners Mark Farnsworth (Chair); Peter Callander and Antoine Coffin, and Deputy Mayor Rehette Stoltz and Councillor Craig Bauld to the Freshwater Plan Hearings Panel. The Panel were authorised to hear and make recommendations on submissions and further submissions.
- 3.2** This first hearing was convened to consider submissions and further submissions on the Plan relating to Regional Policy Statement Issues, Objectives and Strategic Policies (Part B of the Freshwater Plan).
- 3.3** 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 |

¹ *Gisborne Regional Freshwater Plan- Section 42A Report – General Submissions and Regional Policy Statement; July 2016, pages 10-13.*

FWAG	Freshwater Advisory Group
FMU	Freshwater Management Unit
HortNZ	Horticulture New Zealand
Inc	Incorporated
LGA	Local Government Act 2002
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
TRONPnui	Te Runanganui o Ngati Porou

4.0 Relationship between Freshwater Plan and Tairāwhiti Plan

- 4.1** Subsequent to the Panel’s hearings of submissions and decisions on the Freshwater Plan, in July 2017 Council notified the Tairāwhiti Plan. The Tairāwhiti Plan covers all Council’s resource management plans, including the proposed Freshwater Plan, and replaced the former 7 resource management plans for the Gisborne region. The Freshwater Plan provisions are located in Part B, Part C and Part D of the Freshwater Plan.
- 4.2** Council is releasing a decision version of the Freshwater Plan based on the former structure as a standalone plan. However, as a second step, the Freshwater Plan as amended by the Panel’s decision will be incorporated into the Tairāwhiti Plan.

5.0 Statutory Considerations

- 5.1** The Section 42A Report provides a comprehensive analysis of statutory considerations. It is not our intention to copy that analysis in full but to highlight three aspects.

- 5.2 Regional Policy Statements:**
The Section 42A records²:

“Section 59 of the RMA states that the purpose of the RPS is “to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.” Section 62 identifies the required contents of a RPS to include the significant issues for the region, objectives sought, policies, methods, principal reasons and anticipated environmental results. Section 62 also states that a RPS must give effect to a national policy statement or the New Zealand Coastal Policy Statement.

The RPS provisions are in Part B of the Freshwater Plan and include:

- *values and objectives for tangata whenua in relation to freshwater (section 3.1);*
- *resource management issues (section 3.2);*
- *RPS objectives (section 3.3);*
- *Strategic objectives (section 3.4);*
- *Principal reasons for the RPS objectives, policies and methods (section 3.5); and*
- *Environmental results anticipated (section 3.5).”*

² Gisborne Regional Freshwater Plan- Section 42A Report – General Submissions and Regional Policy Statement; July 2016, page 4.

5.3 Regional plans:

In regard to regional plans, the Section 42 Report records³:

“Section 63 of the RMA states that the “purpose of the preparation, implementation, and administration of regional plans is to assist a regional council to carry out any of its functions in order to achieve the purpose of this Act”. As noted above, GDC has a number of functions in relation to water quality and quantity which the Freshwater Plan is intended to assist with. The regional plan provisions in the Freshwater Plan are also necessary to implement the National Policy Statement on Freshwater Management 2014, which the Freshwater Plan must give effect to.

- *The regional plan provisions are in Part C of the Freshwater Plan and includes provisions relating to:*
 - *Water quantity and allocation (section 4);*
 - *Water quality and discharges to water and land (section 5);*
 - *Activities in the Beds of Lakes and Rivers (Section 6); and*
 - *Riparian Margins and Wetlands (section 7).*

Sections 69 and 70 also set out specific requirements for regional plans relating to water quality and discharges. Section 69 allows regional councils to use the water classifications in Schedule 3 of the Act to include rules about water quality based on the Schedule 3 standards. Section 69 allows councils to set more stringent and specific standards than Schedule 3 where these are not adequate or appropriate to manage freshwater within the region. Section 70 provides restrictions on regional rules that allow the discharge of contaminants, to ensure these will not result in particular adverse effects in receiving environments, after reasonable mixing, as a result of the discharge.”

5.4 The Section 42A Report⁴ provides a useful summary of iwi considerations under the following headings:

- Iwi Management Plans;
- Statutory Acknowledgements; and
- Joint Managements Agreement between Council and Te Runanganui o Ngati Porou (TRONPnui) on behalf of Nga hapu o Ngati Porou.

6.0 Section 32 Evaluation

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

6.2 The Ministry for the Environment’s Guide⁵ 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.”

³ Gisborne Regional Freshwater Plan- Section 42A Report – General Submissions and Regional Policy Statement; July 2016, page 4.

⁴ Ibid pages 7 – 9.

⁵ Ministry for the Environment. 2017. A guide to section 32 of the Resource Management Act 1991: Incorporating changes as a result of the Resource Legislation Amendment Act 2017. Wellington: Ministry for the Environment.

- 6.3** The Freshwater Plan is underpinned by a section 32 report⁶, the veracity of which was tested through the hearing process.
- 6.4** 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** In summary, section 32AA of the RMA makes it clear that when Council reporting officers make recommendations to the Panel to change the notified Freshwater Plan in response to submissions, there must be clear documented evidence and reasons for doing so. To this end, section 42A reports are required to include further evaluations under section 32AA⁷. The Panel were of the viewpoint this would be both a cost and time effective way of ensuring that the statutory requirements are met. This would also have the advantage of assisting the submitters prepare their own comments for the purposes of contributing to the required section 32AA evaluation.
- 6.6** One inescapable consequence of the requirements of section 32AA 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, while the Council's reporting officers could undertake such an analysis in their assessment of submissions and Section 42A Reporting, it was necessary that submitters also made 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 reporting 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 may not be in keeping with what the submitter considered was relevant or applicable.
- 6.7** The Panel made its expectations clear by providing a directive to submitters⁸ on its approach to information that should be provided at the hearings namely where experts are providing the Panel with recommendation for change, 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.
- 6.8** The Panel deemed the directive necessary to ensure that it 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.
- 6.9** Despite the efforts of the Panel to impress upon submitters and their witnesses that the RMA required reasons and justifications to support changes to a notified Plan, in a number of cases the information provided by submitters fell well short of the standard that could be weighted dominantly against the Council's Section 42A Report analysis and evidence.

7.0 Officers' Reports

- 7.1** The Panel received a comprehensive Section 42A⁹ which considered Regional Policy Statement Issues, Objectives and Strategic Policies prepared by Jerome Wyeth Senior Policy and Planning Consultant, 4Sight Consulting and Kurt Riding, Principal Planner at Council¹⁰. In preparing the report, the officers have taken into consideration the memos that were generated by the various pre-hearing meetings that took place on 7 and 8 July 2017.
- 7.2** A full list of submitters and further submitters and the Section 42A Report recommendations can be found pages 85 -123 of the Section 42A Report.

⁶ Gisborne District Council (2015), 'Proposed Gisborne Regional Freshwater Plan – Section 32 Report', prepared in October 2015.

⁷ Section 32AA(d) makes it clear that further evaluations may either be published in a evaluation report or be included in the decision making record (i.e. Section 42A Reports, Decision Reports).

⁸ First Directive of the Hearings Panel, 6 July 2016.

⁹ Gisborne Regional Freshwater Plan- Section 42A Report –Regional Policy Statement Issues, Objectives and Strategic Policies, July 2016, 138pp

¹⁰ *ibid* – Report Information and Quality Control.

8.0 Conflict of Interest Declaration

8.1 None were tabled.

9.0 Hearing

9.1 Mr Isaac Temple opened the hearing with a karakia followed by His Worship the Mayor of Gisborne Council Meng Foon who spoke on the journey of the Freshwater Plan and actions and interactions that have taken place to get the Proposed Plan to its current destination.

9.2 During the hearing process the following submitters appeared before the Panel to speak in support of their submission points on RPS Issues, Objectives and Strategic Policies:

Tuesday 2 August (in order of appearance)

- Rongowhakaata Iwi Trust¹¹ – represented by: Murray Palmer, Jody Wylie, Moera Brown & Dean Hawkins.
- Royal Forest and Bird Society of New Zealand¹² – represented by Al Flemming.
- TRONPnui¹³ – represented by: Tina Porou, Herewini Te Koha CEO of Ngati Porou and Selwyn Parata.
- Joint with TRONPnui - Hikurangi Takiwa Trust¹⁴ – represented by: Pia Pohatu
- Joint with TRONPnui - Agnes Walker¹⁵
- Mangatu Blocks and Wi Pere Trust¹⁶ – represented by Alan Haronga who had provided a presentation statement.
- Ravensdown Ltd¹⁷ – represented by Christopher Hansen and Shaun Burkett – Chris had provided a statement of evidence EC11.
- Te Whanau a Kai¹⁸ – represented by Keith Katipa and David Hawea.

Wednesday 3 August (in order of appearance)

- Department of Conservation (DOC) ¹⁹ – represented by:
Teall Crossen Legal Counsel;
Statements of Evidence had been provided from the following representatives who also presented their evidence at the hearing:
 - Jamie Quirk, Ranger Services, Biodiversity DOC;
 - Dr Philippe Gerbeaux, Technical Adviser, Freshwater, Science and Capacity (Wetlands) DOC; and
 - James Witham, Planner, DOC.
- Federated Farmers of New Zealand²⁰ – represented by:
 - Richard Gardner, Legal Counsel;
- Statement of Evidence had been provided from:
 - Cathy Begley, Senior Policy Advisor, who also attended the hearing.
 - Charlie Reynolds was also present during the hearing on behalf of Federated Farmers.
- Fertiliser Association of New Zealand Ltd (FANZ)²¹ – represented by:
 - Claire Kelly. Greg Sneath was present and answered questions as and when required.
- Murray Palmer²².
- Eastern Fish and Game Council²³ represented by Eben Herbert.

¹¹ Submitter No 36.

¹² Submitter No 12.

¹³ Submitter No 38.

¹⁴ Submitter No 18.

¹⁵ Submitter No 1.

¹⁶ Submitter No 22.

¹⁷ Submitter No 35.

¹⁸ Submitter No 39.

¹⁹ Submitter No 5.

²⁰ Submission No 9

²¹ Submission No 10

²² Submission No 26

²³ Submission No 11

- Horticulture New Zealand (HortNZ)²⁴ - represented by:
 - Helen Atkins Legal Counsel;
 Statements of evidence had been provided by the following representatives who also presented their evidence at the hearing:
 - Christopher Keenan, Special Adviser, Natural Resources to HortNZ
 - Vance Hodgson, Director of Hodgson Planning Consultants Ltd; and
 - Nicholas Conland, Environmental Consultant at Taiao - Natural Resource Management Limited

10.0 Analysis of Submissions

10.1 SCREENING PROCESS

- 10.1.1 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; 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.
- 10.1.2 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.

10.2 SUMMARY OF EVIDENCE & REPRESENTATIONS

- 10.2.1 Briefs of expert evidence, and a number representation of statements, had been pre-circulated prior to the hearing dates in accordance with the Panel's First Direction of 1 July 2016. All material pre-circulated or tabled on the day of the hearing can be found on the Council's webpage at <http://www.gdc.govt.nz/gisborne-regional-freshwater-plan/>.
- 10.2.2 In this summary, it is not our intention to provide a detailed account of all of the matters covered in each of the briefs/statements, rather this summary highlights the points of difference the submitters have with the recommendations of the Section 42A Report, and focuses on the amendments, additions and deletions the submitters are requesting.

10.3 RONGOWHAKAATA IWI TRUST

- 10.3.1 Rongowhakaata Iwi Trust drew our attention to:
- Their recommendation that a Memorandum of Understanding be created between the iwi and Council and that this a matter that the iwi and the Council need to address.
 - A submission requesting that Objective 11 be amended to "enable their kaitiaki role".
- 10.3.2 The Trust drew our attention to wording amendments they wanted for:
- Objective 11;
 - Objective 12;
 - Objective 13;
 - Policy 3.2; and
 - Policy 3.10.
- 10.3.3 The Trust also provided²⁵ wording for two new Policies which the Section 42A Report had recommended no change be made.

²⁴ Submission No 19

²⁵ Rongowhakaata Iwi Trust EIC page 6.

10.4 ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC

10.4.1 Mr Al Fleming spoke to Royal Forest and Bird Protection Society's (Forest and Bird) brief of evidence. He submitted:

- Concern that there was no policy on the "unders and overs approach"²⁶.
- The current width of "NOF" attribute means that movement downwards within a band will lead to adverse effects on water quality. Providing for downward movement would be ultra vires²⁷ to the RMA and NPSFM.
- Defining "maintain" as staying within an attribute band would make maintenance synonymous with degradation. The 'current state' should be the average attribute calculated using the previous three years monitoring figures.
- "Improved" should be defined as moving to above the 'current state'.
- There should be implicit direction that sub-catchment and/or sub FMU's are established within catchments and/or FMUs.
- Inclusion of a map showing sub-catchments would assist in identifying the appropriate scale of a catchment or sub-catchment management plan.

10.5 COMBINED SUBMISSIONS OF NGATI POROU

10.5.1 Ms Tina Porou in speaking to TRONPnui's submission noted a number of key issues of concern:

- The Freshwater Plan will have region wide application and has been drafted to address water issues of the Waipaoa Catchment. Catchments in the Ngati Porou rohe have different characteristics. A one-size fits all approach will have significant adverse effects on the catchments within the Ngati Porou rohe.
- The Freshwater Plan needs to better recognise and provide for their cultural and ecological values and priorities from decision making through to monitoring; - a provision for matauranga Ngati Porou.
- There are process deficiencies in the failure to provide TRONPnui with a role in the process as intended by the Joint Management Agreement.

10.5.2 It was recommended that:

- RPS objectives and policies that address iwi issues permeate and/or inform the rest of the plan;
- Catchment plans developed across the Ngati Porou rohe should address and regulate specific issues; and
- An interim policy and rule regime is necessary for the catchments of the Ngati Porou rohe to ensure the highly permissive Waipaoa Catchment rules are not applied to freshwater planning in the Ngati Porou rohe

10.5.3 Ms Agnes Walker spoke to her 'Overarching Hearing Statement' noting that:

- The 'one-size' fit all approach will have significant adverse effects on the catchments within Ngati Porou rohe.
- The Freshwater Plan should better recognise and provide for Ngati Porou's cultural and ecological values and priorities, form decision-making through to monitoring, and in a manner that provides for mataranga Ngati Porou.
- There has been a failure been a failure to involve TRONPnui in the Freshwater Plan process – there should be joint decision-making within the traditional Ngati Porou rohe, as intended by the Joint Management Agreement (JMA) between Council and TRONPnui.

10.5.4 Crucial matters that the submitter highlighted include:

- RPS objectives and policies that address iwi issues permeate and/or inform the rest of the Freshwater Plan.
- That catchment plans developed across the Ngati Porou rohe should, where necessary address specific catchment issues, exercise the full suite of regulatory mechanisms, including the revision of region-wide policies and rules.
- An interim policy and rule regime is necessary for catchments in the Ngati Porou Rohe to ensure the highly permissive Waipaoa Catchment rules are not applied to freshwater planning in the Ngati Porou rohe.

²⁶ This concept relates to Objective A2 of the NPSFM, which require overall quality of freshwater within a region to be maintained or improved, and whether this allows plans to contemplate degradation of a particular waterbody provided the overall quality of freshwater across the region is maintained or improved.

²⁷ When questioned by the Panel on this point no evidence was offered.

10.6 MANGATU BLOCKS INCORPORATION AND WI PERE TRUST

10.6.1 Mr Alan Haronga, (Chair of both Mangatu Blocks Incorporation and Wi Pere Trust) noted that Mangatu Blocks Incorporation (Mangatu) and Wi Pere Trust (Wi Pere) are two Māori authorities with long and ancient ties to the Gisborne region through their lands. In outlining his whakapapa, Mr Haronga emphasised that the 43,363 hectares of land within the Mangatu Blocks holding and approximately 4,500 ha of land within Wai Pere Trust's holding will be nurtured and utilised forever, as it cannot be sold. Mr Haronga pointed out that their lands are located primarily in the Waipaoa catchment from the headwaters of the Waipaoa and Mangatu rivers to the Poverty Bay flats around Te Karaka, Waituhi, Waerenga a Hika, Waihirere, Waiohika, Kopaatuaki, Waimata West, Tiniroto, Manutuke and Karaua.

10.6.2 Mr Haronga records that they had experienced many challenges, successes and failures over that long period of time to get to the mature and successful state that they are at today. For all that they had suffered, it had been a long hard journey to get to where they are today. Mr Haronga expressed a view that the Gisborne region is dying as we have always been in the region and will always be in the future. He also stated that the Freshwater Plan should be facilitating, not a barrier to economic development and expressed disappointment that Council officers had rejected their economic development submissions in the Section 42A Report.

10.6.3 Mr Haronga expressed the viewpoint that:

- There is potential for considerable economic growth in the region stemming from the very large under-utilised Māori land estate in the region, which will start to build and grow;
- The Freshwater Plan needs balance. The region needs to know what the plan is for Gisborne to understand where the Freshwater Plan fits in with the broader economic development plan, because Gisborne is dying; and
- Regional development is a priority nationally and should be embraced locally. Māori want to be a part of the future of this region.

10.7 RAVENSDOWN LTD

10.7.1 Mr Christopher Hansen, a Planning Consultant, provided a brief of planning evidence for Ravensdown. Mr Hansen proffered that there were key planning matters that required addressing²⁸ including:

- Ensuring definitions are accurate and appropriate – in particular using good management practice when referring to nutrient management matter;
- Ensuring provisions manage the adverse effects of activities on the environment, and recognise important community values; and
- Ensuring the outcomes sought in policies and rules are clear and implement the objectives.

10.7.2 To address these matters Ravensdown sought a number of amendments:

- Amend Objective 1²⁹

“To safeguard the life supporting capacity of freshwater, including ecosystem requirements of indigenous species, while sustainably managing the use and development of land and freshwater”.
- Policy 3.21³⁰ - original wording should be retained, with a note that clarifies that the ANZECC Guidelines are an investigation trigger and not a remediation trigger or a water standard that needs to be met.
- Method 3.11

“Replace ‘identify’ with ‘reference’.
- It is considered that the amendment represents sound resource management practice³¹.

²⁸ Hansen EiC at [21]

²⁹ Ibid at [29]

³⁰ Ibid at [37]

³¹ Ibid at [43]

10.8 TE WHANAU A KAI

10.8.1 Mr David Hawea’s presentation on behalf of Te Whanau a Kai provided commentary under the following headings:

- Te Tiriti O Waitangi 1840;
- Inherent rights recognized under the Bill of Rights 1990;
- RMA;
- Aquaculture reform;
- Māori land reform;
- Freshwater reform;
- The New Zealand Māori Council Freshwater Claim; and
- International Obligations

10.8.2 Te Whanau a Kai’s key recommendations 32 included:

- Te Tiriti o Waitangi does not cede sovereignty;
- The right of kawanatanga (Government) does not extend to the regulations or management of Māori resources (taonga);
- That policy cannot override legislation;
- Common law has no jurisdiction over customary law³³ except to recognize and protect; and
- Freshwater reform must protect all Māori rights which are inalienable.

10.8.3 Te Whanau a Kai also stated that they expect Council to advise central government that it acts to mitigate concerns by protecting Māori property rights and customary interests over freshwater resources in the Tairāwhiti region before any reforms are further developed.

10.8.4 Mr Keth Katipa’s presentation on behalf of Te Whanau a Kai Iwi provided us with an overview of:

- The origins of Te Whanau a Kai; and
- Pre-European iwi water management and customary use demonstrating that water management through customary use has been clearly practiced by Te Whanau a Kai.

10.8.5 Mr Katipa stressed that Te Whanau a Kai:

- Has no intention of allowing the exploitation of any of their waterways;
- Is the Crown’s Treaty partner, there making them ‘water owners’ not mere ‘stakeholders’;
- There has been an imbalance in the whole water allocation debate with a lack of understanding of Māori cultural values;
- Mismanagement, pollution, and overuse of water ‘practices have been supported by the commercial sector; and
- GDC must work for the greater good of the whole district rather than cater to the extremes of the ‘select few’.

10.8.6 Mr Katipa concluded³⁴ that:

“ ...the Proposed Draft Plan lacks balance, gives no hope for our district’s waterways and sadly leaves ‘sustainability’ once again, badly trampled victim of greedy ambition.”

³² Hawea EiC page 7.

³³ ‘Lore’

³⁴ Katipa EiC.

10.9 THE DIRECTOR-GENERAL OF CONSERVATION

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

- Regional Plans must have objectives – section 67(1)(b) RMA³⁵;
- Given the tension that exists between objectives enabling use and objectives providing for protection reading the proposed objectives of the Plan as a whole will allow decision makers to balance those objectives in reaching a decision and it may lead to further degradation of freshwater values³⁶;
- Objectives A2 and B4 of the NPSFM apply to all wetlands, not just significant wetlands³⁷;
- The Freshwater Plan must properly provide for section 6(c) of the RMA by identifying wetland's in the region that contain significant indigenous vegetation and significant habitat of indigenous fauna and currently this is not clear³⁸; and
- Seeking a new objective in relation to over-allocation of freshwater that reflects the NZPSFM³⁹. Objective B2 of the NPSFM is set out below and in this context 'avoid' means "do not allow"⁴⁰.
- To avoid any further over-allocation of freshwater and phase out existing over-allocation.
- Seeking a new objective to ensure freshwater is safeguarded for the purposes of recreation⁴¹.
- Seeking a new policy on biodiversity offsetting⁴².

10.9.2 Ms Crossan's proffered that amendments sought by the Director-General will ensure the proposed plan gives effect to the NPSFM, the NZCPS and meets the requirements of Part 2 of RMA, in particular 6(a) and 6(c).

10.9.3 Dr Philippe Gerbeaux, Technical Advisor, Freshwater, Science and Capability, for the Department of Conservation (DOC). Dr Gerbeaux provided us with evidence under the following issues⁴³:

- The loss of wetlands nationally;
- Threats to wetlands;
- Overview of the functions and values of New Zealand's wetlands;
- Wetlands in the Gisborne District;
- NPSFM;
- Criteria of significant indigenous vegetation and significant habitat of indigenous fauna – section 6(c) of the RMA; and
- Wetlands as habitat for threatened species.

10.9.4 Dr Gerbeaux quoted the Directory of Wetlands in New Zealand (Cromarty et al 1996⁴⁴) which records notes that there has been a considerable history of modification and use of wetlands in New Zealand following both Māori and European settlement. He noted that "as a result of these modifications it has been estimated⁴⁵ that only about 10% of the country's former wetlands remain." Dr Gerbeaux supported the recommendations made by Mr Witham.

10.10 Jamie Quirk, a Department of Conservation Ranger, Services (Biodiversity) for the East Coast provided a brief of evidence giving us an overview of the conservation values of the Gisborne district focusing on freshwater fisheries, wetlands, coastal waters and recreation. In relation to the matters covered in his evidence, Mr Quirk supported the recommendations made by Mr Witham.

10.10.1 Mr James Witham, RMA planner for DOC in his comprehensive evidence addressed the following matters and provided recommendations for change in many areas.

³⁵ Crossan Legal Submission at [9]

³⁶ Ibid at [12]

³⁷ Ibid at [16]

³⁸ Ibid at [18]

³⁹ Ibid at [21]

⁴⁰ Ibid at [25]

⁴¹ Ibid at [28]

⁴² Ibid at [33]

⁴³ Gerbeaux EIC page 4

⁴⁴ Cromarty P. & Scott D.A. (1996) A Directory of Wetlands in New Zealand. Department of Conservation, Wellington, New Zealand

⁴⁵ Gerbeaux EIC page 4

10.10.2 Water Quality

The overflows that occur from the Gisborne reticulated stormwater and wastewater system present a significant threat to freshwater and coastal water values, and the potential financial costs to address that threat are likely to be a significant burden on the community over time. It is appropriate that it is recognised as part of Issue 2 water quality in the PGRFP⁴⁶. Mr Witham recommended the addition of a new issue providing us with wording⁴⁷:

10.10.3 Objectives and Policies in the Planning Hierarchy

Regional plans are required to have objectives and policies, and may have rules to implement those policies. Using the Objectives in the PGRFP as both RPS and RP objectives results in objectives that are too general in their direction when it comes to assessments and making decisions pursuant to section 104 of the RMA for resource consents arising from rules set out in the RP.

10.10.4 Given the substantive nature of a re-write required to incorporate appropriate objectives into the RP, the proposal to deem RPS objectives may be an appropriate interim approach until such time as a variation or amending plan change is developed⁴⁸. Amend Part C: Regional Freshwater Plan - Section 5: Objectives – clearly noting that “the Objectives for the PGRFP are the same objectives as set out in the RPS.”

10.11 FEDERATED FARMERS OF NEW ZEALAND

10.11.1 Mr Richard Gardner, Legal Counsel for Federated Farmers of New Zealand Inc (Federated Farmer), provided a legal submission on behalf of Federated Farmers. Mr Gardner advocated that:

- There are conflicting interpretations of the NPSFM as it relates to over-allocation, water quality and water quantity which the Panel will need to address as it comes to implement the NPSFM in the Freshwater Plan⁴⁹.
- Federated Farmers strongly opposes⁵⁰ the Council’s literal interpretation of the NPSFM that it is the exact state of each attribute that is to be maintained or enhanced, not the quality in terms of each attribute. Federated Farmers requires a better description of what can happen within each band.
- Council must satisfy itself that the Freshwater Plan maintains and enhances water quality and must ensure the Freshwater Plan gives effect to the National policy statement⁵¹.
- When maintaining water quality, what the relevant assessment needs to be made against is the particular value which is sought to be maintained or enhanced⁵².
- The Cabinet papers which supported the development of the NPSFM make it arguable that the “unders and overs’ approach is what the NPSFM envisages, and would enable regional councils to continue to have the flexibility to trade-off water quality between waterways across the region, provided the bottom lines are not breached.
- The inclusion of cultural values needs to be done carefully to ensure that one sector of the society is not elevated above the others⁵³. Mr Gardner noted that the Courts have held that a proposed activity on the land that meets the purpose of sustainable management cannot be prevented from occurring for spiritual and cultural reasons as that would disenfranchise owners from the legitimate use of their lands⁵⁴.
- Federated Farmers has concerns about the juxtaposition between the regional policy statement and the plan and referred to section 60(1) of the RMA which states there must be one regional policy statement within a region⁵⁵.

10.11.2 In concluding, Mr Gardner advocated that the changes Federated Farmers were seeking for the Freshwater Plan are essential for the successful implementation of the NPSFM, the successful implementation of the higher order policies in the RPS, the success of the Freshwater Plan itself and the protection of Gisborne’s significant agricultural industry⁵⁶.

⁴⁶ Witham EIC at [7 – 16]

⁴⁷ Witham EIC at [16]

⁴⁸ Ibid at [17 – 24]

⁴⁹ Gardner Legal Submission at [5]

⁵⁰ Ibid at [6]

⁵¹ Ibid at [7]

⁵² Ibid at [13]

⁵³ Ibid at [15]

⁵⁴ Ibid at [17]

⁵⁵ Ibid at [21]

⁵⁶ Ibid at [24]

10.11.3 Cathy Begley, a Senior Policy Advisor (Environment and Water) for Federated Farmers, spoke to her written brief of evidence. Key points included:

- A resource management plan should not elevate one sector of the society above others, as that proposed by new Objective 13⁵⁷. Instead of “taking into account” cultural and spiritual values, one must now “recognise and provide for” cultural and spiritual values. ‘Recognise and provide for’ means that the matters, being cultural and spiritual values and the mauri of water, must be provided for not only within resource management processes but also within decision-making. In her view, it is unclear at what level of decision making these matters must be provided for (e.g. at the Plan/sub-catchment plan preparation stage or at the resource consent stage).
- It is entirely appropriate for the matters set out within new Policy 13 to form a key plank of any catchment/sub-catchment planning process. However, Federated Farmers is somewhat uncomfortable with them forming such a plank within the decision-making framework. A consequence of the proposed amendment to new Policy 13 in Ms Begleys’ view, is that it would not be unexpected for cultural and spiritual values to be included as a matter of control or discretion for controlled or restricted discretionary activities⁵⁸. Otherwise, in her view, it could be argued that cultural and spiritual values are not being recognised and provided for as anticipated by the new Policy. She explained that she was highlighting what may seem to be a practical and reasonable change, but could have significant and unintended ramifications when it is considered in isolation.
- Ms Begley stated that concepts such as mauri, matauranga, tikanga, etc. should be defined where they are not already defined. This is particularly important where such concepts are being used as either matters of control or discretion⁵⁹.
- Maintaining water quality needs to be judged against the value which is being maintained or enhanced. Where the NOF contained within the NPSFM sets a compulsory attribute, Council can be assured that they are maintaining water quality for that attribute, even if monitoring shows fluctuations of the precise number within the band. This gives rise to a philosophical difference of opinion - can you maintain water quality by ‘bouncing around the attribute band’ or can this only be achieved by sticking rigidly to the precise numeric number⁶⁰? A suggestion was made to expand the ‘explanation of objectives’ section of the plan to explain what maintaining water quality means under the Freshwater Plan. In Ms Begley’s view this approach has some merit, but she noted that the S42A Report didn’t explore this option.
- Ms Begley noted that a stipulation that the maintenance of water quality can only be achieved by rigidly sticking to the numeric attribute number not only within the catchment as a whole, but also to any separate reaches of a waterway, could have the perverse outcome of penalising a Council/Community who seeks to monitor their waterways at numerous locations along it⁶¹. She noted that Objective 2A of the NPSFM enables a degree of flexibility by enabling the maintenance of water quality to be achieved by looking at the waterway as a whole.

10.11.4 Council may not share this view; an example of this is the catchment specific Waipaoa Catchment plan where a specific numeric number has been set. Council has taken this approach for two reasons: -

- To avoid ‘horse trading’ between catchments due to their literal interpretation of Objective 2A of the NPSFM. This situation can be avoided by setting out within the ‘explanation of objectives’ that the maintenance of water quality will be limited to within catchments, not across the Gisborne Region as a whole⁶².

The approach Council provides the community, land owners and resource users with a level of certainty and avoids a situation where the waterway starts out at the top of an attribute band and overtime moves down towards the bottom of the attribute band, with the potential risk of moving into a lower attribute band. All the while people within the community are undertaking their activities thinking that all is well. At a high level I concur that providing a strict numeric number can provide a level of certainty.

⁵⁷ Begley EIC at [3.2]

⁵⁸ Ibid at [3.3]

⁵⁹ Ibid at [3.5]

⁶⁰ Ibid at [4.2 – 4.3]

⁶¹ Ibid at [4.5]

⁶² Ibid at [4.7]

- In addressing the question - how does one 'judge' where water quality? Where water quality is within an attribute band, to maintain it, it should stay within that band. At a high level she concurred that providing a strict numeric number can provide a level of certainty. However, in her opinion when it comes to water quality this approach can also, and often does, provide an unnecessary level of rigidity⁶³.
- Amended Objective 2 specifying where there is a trend over time of water quality moving from the higher end of the attribute band, towards to lower end of the attribute band investigations will be initiated⁶⁴.
- For FMUs is the Council adopting the Environment Canterbury approach or Environment Southland approach? It would be useful to know which approach Council is proposing to take to enable the appropriate crafting of the objectives and policies within the plan.
- Amended Objective 1 as currently drafted could sustainably constrain, if not put a halt to any use and development of freshwater within the Gisborne Region⁶⁵.
- Referring only to a 'plan' within the introduction to both Section B and Section C; but also within the objectives and policies could create a level of confusion, and incorrectly create a perception that there is only a regional plan rather than a combined document. The confusion can be easily avoided by redrafting the 'note' under 3.3 Objectives as follows⁶⁶:

"The Objectives of this Regional Policy Statement and Plan must be read in their entirety..."
- Water should be allocated using both an efficient and reasonable use test. Federated Farmers concern could be addressed by amending Objective 8 as follows⁶⁷:

To ensure that any water taken is used efficiently; is reasonable for its intended use and does not result in over allocation of the water resource.

10.12 FERTILISER ASSOCIATION OF NEW ZEALAND

10.12.1 Ms Claire Kelly, a Senior Planner at Boffa Miskell Limited, provided a written brief of evidence for FANZ. She provided an overview of what FANZ does and who it represents and offered the viewpoints that FANZ:

- Supports and encourages an environmentally responsible science-based approach to nutrient management and its regulation.
- Member companies provide product that is critical to New Zealand farming systems along with research that supports both environmentally sustainable farming practices and government's export growth agenda.
- Supports responsible nutrient management with interests and responsibility across all agricultural sectors, including dairy, sheep, beef, arable and horticulture.

10.12.2 With regards to the NPSFM, Ms Kelly emphasised the particular importance of Objectives A1 and A2 and expressing the opinion, that the Freshwater Plan essentially gives effect to the NPS-FM but some further refinements are required to the policy framework to give full effect to the NPS-FM and the RMA, namely:

- Amend⁶⁸ Objective 3 so that it only applies to the preservation of the natural character of waterbodies and their margins, and include a new objective to provide for the maintenance and enhancement of visual amenity and recreational values.
- Amend Policy 3.5 and Policy 3.18 to provide for the improvement of degraded freshwater bodies.
- Amend Policy 3.5 and Policy 3.12 to remove the reference to 'rules' as these do not appear to be included in the catchment plans/FMU's.
- Amend Policy 3.10 to ensure it is clear that the Policy requires the values of significant waterbodies to be identified rather than identifying significant waterbodies.
- Amend Method 3.11 to clarify that additions to outstanding waterbodies are to be referenced and not identified.
- Retain the reference to guidelines and water quality and quantity data in Policy 3.21.
- Recognise the integrated management of physical and natural resources and land uses in Policy 3.25.

⁶³ Ibid at [4.6]

⁶⁴ Ibid at [4.10]

⁶⁵ Ibid at [4.15]

⁶⁶ Ibid at [5.2 – 5.3]

⁶⁷ Ibid at [5.6 – 5.7]

⁶⁸ Where amendment was recommended wording was provided.

- 10.12.3 In her opinion the approach sought by FANZ appropriately gives effect to the NPSFM in that it:
- Seeks to maintain or improve existing water quality.
 - Will apply a consistent regional approach to the protection of the significant values of outstanding natural waterbodies and wetlands.
- 10.12.4 Ms Kelly noted her support for Council Officer’s recommendation that the definition ‘good management practice’ is amended to be more aligned with the Land and Water Forum definition and refer to freshwater generally. Ms Kelly sought a further amendment to the definition.
- 10.12.5 Ms Kelly concluded that the provisions proposed by FANZ accord with Part 2 of the RMA, and are the most appropriate mechanism (having regard to their relative efficiency and effectiveness) to achieve the purpose of the RMA. She provided a benefit cost analysis recording the opinion that the benefits of the amendments sought outweigh the costs as they will ensure the objectives and policies are more enabling, relatively simple to interpret and provide an efficient and effective planning framework for the maintenance and enhancement of water quality.

10.13 MURRAY PALMER

10.13.1 Key focus of his submission is to make sure that the ability of communities and GDC to improve water quality is not constrained, or open to unnecessary challenge, because of the lack of clarity in plan wording. Mr Palmer drew our attention to the Supreme Court ruling⁶⁹ on the NZ King Salmon proposals.

10.13.2 Mr Palmer provided with commentary on:

10.13.2.1 Evidence relating to improving water quality noting⁷⁰ :

It is important that the plan makes clear that the community and GDC has a strong discretion as to implementing improvement in water bodies. They must improve the water quality in water bodies that are degraded, but they may improve water quality in water bodies for a range of reasons.

10.13.2.2 Palmer also stressed⁷¹ that:

The NPSFM makes clear the broad discretion that the community have to identify the values they hold for their water bodies, and implement plans to protect or restore water quality in these.

10.13.2.3 Palmer in considering the Section 42A recommendation suggested adding an explanation to Objective 9:

Communities across the Gisborne Tarāwhiti region have high aspirations for their freshwater environments. Our communities will identify values for their waterbodies and set water quality limits to ensure these values are protected They will also work to improve water quality to restore or enhance freshwater values in order to achieve social, cultural, economic or ecological goals.

10.13.2.4 Evidence relating to life supporting capacity.

Palmer noted there is a broad regional movement to go further than simply safeguarding the life supporting capacity of freshwater bodies, but rather enhance their life supporting capacity through beneficial ecological restoration and enhance work. Current examples of this type of work was provided⁷².

10.13.3 Given the strong regional directive to restore and enhance the quality of freshwater ecosystems in the region, and consequently their life supporting capacity Palmer asked the Panel to consider his revised Objective 1⁷³.

The quality and quantity of the Region’s freshwater bodies and their catchments is managed so that ecosystems are able to continue to function, including supporting habitat and feeding, breeding, migratory and other requirements of indigenous species, and that the life supporting capacity of freshwater is safeguarded or enhanced.

⁶⁹ Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38

⁷⁰ Palmer EIC at [2.8]

⁷¹ Ibid at [2.10]

⁷² Ibid at [3.3]

⁷³ Palmer at [3.5]

10.14 EASTERN FISH AND GAME COUNCIL

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

10.14.2 Mr Herbert recommended:

- A full review and edit of the Freshwater Plan is made prior to decisions being finalised to ensure consistency in terminology⁷⁴.
- Last paragraph on Page 172, general Catchment Plans, 1.0 Introduction should be amended by including a sentence outlining that under RMA the Council also has a statutory function to uphold with regards to limit-setting and freshwater management⁷⁵.
- Objective 4 fails to meet the obligations of Council with regard to the protection of the significant values of wetlands as set out in the NPSFM. Amend Objective 4 to refer to all wetlands, or Schedule be amended to include all wetlands⁷⁶.

10.15 HORTICULTURE NEW ZEALAND

10.15.1 Helen Atkins, Legal Counsel for Horticultural New Zealand (HortNZ) spoke to her legal submission. In addressing Objective A2 of the NPSFM, which provides for an 'unders and over' approach. Key points include:

- The NPSFM does not require that no decline in water quality occurs in any waterbody, but rather requires that goals are set to improve overall water quality over time⁷⁷.
- If degradation merely causes a fluctuation within a band, this suffices a Council's Objective A2 requirement to 'maintain' water quality⁷⁸.
- The NPSFM provides flexibility to Councils in the implementation of the objectives and policies⁷⁹. She referenced⁸⁰ a Cabinet Paper⁸¹ that stated – "freshwater objectives (at or above national bottom lines) will apply at the scale of the management unit, rather than individually to each component of that unit."
- The NPSFM prevents Regional Councils from setting bottom lines below the National Bottom Lines⁸².
- The Cabinet paper also noted that there is no obligation to exceed the national bottom lines, either immediately or within any defined period⁸³.
- Freshwater objectives may be set at or above the minimum acceptable state for the attributes which are identified as relevant to the FMU⁸⁴.
- Fluctuation within a band is permitted by the requirement on Council to ensure the 'maintenance of water quality'⁸⁵.
- Where a water body sits well within the top attribute state band and a strong economic argument can be made for degradation of that water body while remaining in the top band, fluctuations within the band would be a valid resource management response⁸⁶.

10.15.2 Ms Atkins provided us with an analysis⁸⁷ of case law on the 'unders and overs' approach noting in summary:

- In terms of the 'unders and over' approach there has not been a binding determination on its validity.
- A Government signal of a fix-up to the 'unders and overs' approach leaves the proposition in an uncertain place not an invalid one.
- Prudent to maintain the ability of the Plan accommodate and 'under and overs' approach by way of a plan change in the future.

⁷⁴ Herbert EIC at page 6

⁷⁵ Ibid at page 7

⁷⁶ Ibid at page 9

⁷⁷ Artkin Legal Submission at [22]

⁷⁸ Ibid at [24]

⁷⁹ Ibid at [32]

⁸⁰ Ibid at [35]

⁸¹ Ministry for the Environment Cabinet Paper: Freshwater Reform: consultation on Amendments to the National Policy Statement for Freshwater Management (13-C-01319 EGI (13)

⁸² Artkin Legal Submission at [37]

⁸³ Ibid at [39]

⁸⁴ Ibid at [41]

⁸⁵ Ibid at [51]

⁸⁶ Ibid at [55]

⁸⁷ Ibid at [60 – 80]

- 10.15.3 Mr Christopher Keenan, Special Adviser, Natural Resources to HortNZ, provided a written brief of evidence. Keenan’s evidence addressed⁸⁸:
- Describe the formation, functions and role of HortNZ;
 - Provide information about horticulture in NZ;
 - Provide an overview of horticulture within the Gisborne District;
 - Outline HortNZ’s role in Gisborne water related plan changes; and
 - Outline what HortNZ is seeking from this process.
- 10.15.4 Mr Keenan expressed his concerns over the interpretation of Council about “maintenance” of the exact number in terms of the attributes for nitrogen and phosphorous in the Waipaoa River. This approach is unlikely to provide for additional horticultural development. The attribute levels for nitrogen and phosphorous are in the top of the A Band for nitrogen and phosphorous under the NOF. Their modelling work shows that the development of another 4000 hectares of irrigation will require some movement within the A band for the limits set in the Waipaoa Catchment Plan. The movement has been assessed and HortNZ is seeking that this movement be provided for⁸⁹.
- 10.15.5 Mr Keenan did not support the movement of these attribute states if it would degrade the freshwater values specified in the plan for the Waipaoa River and catchment. Convinced there will be no degradation of those values with the small change that is being sought by HortNZ⁹⁰.
- 10.15.6 Mr Keenan was convinced that without the provision of water for horticulture that there will be a degradation in the economic wellbeing of the Gisborne community because existing operations will not be allowed to grow, and will very likely have to retrench as aquifer levels decline. In his view, this is not an acceptable outcome⁹¹.
- 10.15.7 Mr Keenan was also of the viewpoint that significant benefits will accrue to iwi seeking to develop opportunities for the use of iwi land; that are not currently able to access water for development.
- 10.15.8 As part of their evidence HortNZ had forwarded a reported entitled ‘*The Value of the Horticultural Sector to the Gisborne Economy*’. HortNZ had asked Stuart Ford of The AgriBusiness Group and Trevor Lupton of Lewis Wright Valuation and Consultancy to work together to produce a value (to the nearest year where info is available) of the on farm and off farm contribution of horticulture to the Gisborne economy including labour / employment figures. The purpose of the report was informing submissions and expert evidence and will be useful for assessing the effects of policy changes.
- 10.15.9 Mr Vance Hodgson, a director of Hodgson Planning Consultants Ltd, provided a brief of planning evidence for HortNZ.
- 10.15.10 In addressing the “unders and overs” approach⁹² to water quality, HortNZ sought that the Freshwater Plan be explicit on how it addresses the issue of interpreting Objective A2 of the NPSFM. It is appropriate that Freshwater Plan policies should not preclude the ability to consider an “unders and overs” option for future catchment plans.
- 10.15.11 In his consideration of Issue 3: Maintaining water quality⁹³, Mr Hodgson recommended the introduction of further text into the Explanation of Objectives of Section 3.3 of the Freshwater Plan.
- 10.15.12 Mr Hodgson noted that the Freshwater Plan has developed FMUs allowing for greater community involvement in the management of freshwater. The key outcome to ensure is maintenance of community values and their associated attribute states within an acceptable range, providing for all qualitative and quantitative values.
- 10.15.13 Mr Hodgson stated that fluctuations within an acceptable range in the relevant catchment should be allowed, provided that a downward trend in water quality is avoided.
- 10.15.14 Mr Hodgson considered that new Policy 3.5 could be improved by referring in (d) to the development and implementation of non-regulatory projects and methods that help achieve catchment objectives⁹⁴.

⁸⁸ Keenan EIC at [15]

⁸⁹ *ibid* at [37 -38]

⁹⁰ *ibid* at [39]

⁹¹ *ibid* at [40]

⁹² Hodgson EIC at [16 -20]

⁹³ *ibid* at [21 -24]

⁹⁴ *ibid* at [59]

10.15.15 HortNZ supported Policy 3.32 that provides a framework for water storage and aquifer recharge. Horticulture NZ suggested⁹⁵ the policy should also explicitly provide for water harvesting. Policy may be improved by referring to water harvesting as follows:

“Promote and help investigate where possible, water harvesting, water storage and aquifer recharge opportunities that provide for the economic, social and cultural well-being of communities.”

10.15.16 Mr Nicholas Conland, an Environmental Consultant of Taiao - Natural Resource Management Limited provided a brief of expert evidence. In addressing “an overs and unders” approach to water quality he noted that he had provided advice at the pre-hearing meeting that a balanced or an “unders and overs” approach within a band (for a range of attributes) could work for a regulatory framework inside a catchment or sub-catchment. However, this is not a valid practice at a regional scale given the unique characteristics across hydrologically distinct catchments in a region⁹⁶.

10.15.17 In addressing maintaining water quality⁹⁷, Mr Conland expressed the viewpoint that a fixed or rigid approach to the setting of limits in some cases within the proposed Waipaoa Catchment Plan to 3 or 4 significant figures is out of kilter with both analytical methods and natural fluctuations in climate and biophysical responses. Mr Conland recommended an amendment to the explanation of Objectives of Section 3.3 of the Plan which would clarify the Freshwater Plan’s approach.

“The plan has developed FMUs allowing for greater community involvement in the management of freshwater. The key outcome to ensure is maintenance of community values and their associated attribute states within an acceptable range, providing for all qualitative and quantitative values”.

Fluctuations within an acceptable range in the relevant catchment are allowed, provided that a downward trend in water quality is avoided.

10.15.18 This explanation is useful as it provides regional guidance for the Freshwater Management Unit (“FMU”) limit development in a framework which acknowledges the challenges for managing within a limits framework.

11.0 Panel Requests for Further Information or Clarification

11.1 At the hearing on 3 August 2016, the Panel requested the Director-General of Conservation to provide us with an amended version of the definition of wetlands and the wording for a new policy assessing ecological significance. Ms Crossen⁹⁸ responded and provided:

- A definition footnote within the definition of wetlands.
- The footnote is as follows: “A checklist of 912 plant species classified according to their wetland indicator status ratings has been developed according to typical habitat, from obligate and facultative wet wetland habitat to facultative upland wetland habitat. Presence of plants defining upland habitat would not be considered to be part of a wetland margin. See Appendix 9 in Clarkson BR 2013. A vegetation tool for wetland delineation in New Zealand. Landcare Research Contract Report. <http://www.landcareresearch.co.nz/science/plants-animalsfungi/ecosystems/wetland-ecosystems>”
- The Director-General proposes removing the reference to Johnson and Gerbeaux in the proposed policy on wetland significance and include that reference in a footnote. The footnote is as follows “As per Johnson and Gerbeaux 2004 (Wetland types in New Zealand)”.

⁹⁵ *Ibid* at [82 – 83]

⁹⁶ *Conland EiC* at [21]

⁹⁷ *Ibid* at [28 – 34]

⁹⁸ *Memorandum of Counsel on Behalf of the Director-General of Conservation - Information Requested Information Requested Information Requested Information Requested from the Panel On Wetlands. 16 August 2016*

12.0 Issues

12.1 At the conclusion of the RPS hearing, the Panel determined that the following issues needed to be further considered and addressed:

- Plan Structure;
- Plan wording – in particular the wording of RPS objectives and strategic policies;
- Recognition of cultural values;
- “Unders and overs”;
- Maintaining water quality – i.e. setting numeric values for attributes v/s the ability for the value of an attributes to fluctuate within a band width;
- Consistency with the NPSFM;
- Implementation of the Freshwater Plan;
- RPS Issues;
- Freshwater Plan objectives; and
- RPS Strategic policies.

13.0 Panel Decisions

13.1 Clause 10 of Schedule 1 to the Act sets out the requirements for decisions on proposed policy statements and plans. This states:

- (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.*

- 13.2** 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 submissions/further submissions, 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 driving 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.
- 13.3** 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.
- 13.4** **DECISION-MAKING PROCESS**
- The main drivers for the Panel's decisions on objectives, policies in the RPS of the Freshwater Plan are the specific requirements and tests set out within the Act, in particular the demonstration or provision of:
- Cogent reason(s), where possible supported with actual examples;
 - Giving effect to NPSFM;
 - Deficiency identified within the Council's section 32 evaluation;
 - Requirements of another RMA Plan or Policy Statement, or relevant enactment;
 - Proposed objectives and policies being ultra vires;
 - Deficiency in the Council's Section 42A Report and
 - The Panel's own evaluation.
- 13.5** In reaching its' decisions, the Panel adopted the following process:
- Where submissions 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(s) point 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 Council reporting officers', the submission point(s) have been accepted and the provision has been amended.
 - Where a submission point(s) was not supported by Council reporting officers and where the Section 42A Report recommendation was based on legal requirements to give effect to a superior document (such as the NPSFM), the submission point has been rejected and the Section 42A Report recommendation adopted.
 - Where a submission point(s) was in opposition and/or where there are related submissions on a topic seeking a variety of different outcomes for the same provision(s), key facts, issues and views have been identified and section 32AA analysis completed before a decision is made.
- 13.6** All plan provisions are subject to section 32 of the RMA. As noted earlier in this report, the Resource Management Amendment Act 2013 (RMAA 2013) amended section 32 with the aim of improving the quality of section 32 evaluations. Section 32 now provides greater detail about the requirements for undertaking and reporting evaluations, particularly in relation to the assessment of benefits and costs, including anticipated opportunities for economic growth and employment.
- 13.7** The RPS provisions in the Freshwater Plan are underpinned by a comprehensive section 32 report - the veracity of which was tested by the hearing process.
- 13.8** 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.

14.0 Findings & Decisions

14.1 BACKGROUND

As noted in section 1.0 of this decision, the development of the Freshwater Plan has been an extensive process with considerable consultation and collaboration with iwi, stakeholders and the FWAG. Feedback gathered through this process was captured, summarised and used to inform and refine the provisions in the Freshwater Plan. Our consideration of submissions and decisions on the matters raised represents a further step in the Freshwater Plan development process.

14.2 MATTERS OUTSIDE THE PANEL'S DELEGATION OR THE SCOPE OF A SUBMISSION

A number of submissions had matters which were either outside the Panel's delegation to resolve (e.g. water ownership) or were outside the scope of the original submission that was made these matters were put aside.

14.3 PLAN STRUCTURE – RPS OBJECTIVES ARE REGIONAL PLAN OBJECTIVES

14.3.1 A number of submitters either expressed their concern or raised questions about the legal requirements between the relationship/juxtaposition of the RPS objectives in Part B with the regional plan provisions in Part C.

14.3.2 Mr Witham, on behalf of the Director-General of Conservation, submitted that the Regional Plan component of the Plan (Part C) should have its own set of objectives and provided the wording for an amendment. Mr Witham expressed the concern that using the objectives in Part B as both RPS and regional plan objectives results in objectives that are too general in their direction and he considered that a proposal to deem RPS objectives may be an appropriate interim approach until such time as a variation or amending plan change is developed.

14.3.3 The Panel came to viewpoint that there is some merit in having general objectives as the region comes to grips with working with the new Freshwater Plan. The Panel resolved that no change was required to include separate objectives in the regional plan section of the Freshwater Plan. The Freshwater Plan is a combined RPS/Regional Plan and it has objectives - the matter of how and when these objectives are amended or differentiated into RPS objectives and Regional Plan objectives will be a matter for the Council to determine at a later date.

14.3.4 Ms Crossen in her legal submission for the Director-General of Conservation⁹⁹ reinforced the point that it is a legal requirement for a regional plan to include objectives under section 67 of the RMA. Mr Hodgson, on behalf of HortNZ, had initially sought¹⁰⁰ clarification on the RPS objectives and Regional Plan objectives. However, he subsequently accepted the Section 42A Report recommendation to include two clear statements in the Introduction and Objectives section of the Plan that the objectives in section 3.3 are both the RPS and Regional Plan objectives.

14.3.5 Ms Begley in her evidence for Federated Farmers notes that the 'Plan' is intended to be both the RPS and the Regional Plan for freshwater in the Gisborne District. The Panel agrees - there is a clear stated intention that the Freshwater Plan as worded is both the RPS and the Regional Plan. We also concur with her observation that reference to a 'plan' has created a level of confusion. She came to the viewpoint that the confusion could be easily avoided by redrafting the 'note' under 3.3¹⁰¹ as follows:

"The Objectives of this Regional Policy Statement and Plan must be read in their entirety..."

14.3.6 The Panel agrees with Ms Begley's observation on the potential for confusion and the need for some form of clarification. The Panel has resolved that to ensure that confusion is not perpetuated, the Plan should include clear statements that for the purpose of this Plan the RPS objectives are also the regional plan objectives as follows:

Section 3.3: *The objectives of the Freshwater Plan are the Regional Policy Statement and Regional Plan objectives. They must be read in their entirety...*

Section 4: *The Objectives for the Freshwater Plan are the same objectives as set out in the Regional Policy Statement.*

⁹⁹ Crossen Legal Submission at [9]

¹⁰⁰ Hodgson EIC at [29 -30]

¹⁰¹ Begley EIC at page 8

- 14.3.7 As noted earlier, the Freshwater Plan will be incorporated into the Tairāwhiti Plan once decisions are finalised. Therefore these amendments should be reflected in the new Tairāwhiti Plan structure by including these amendments in the appropriate place in Part B and Part C of the Tairāwhiti Plan. We totally concur with submissions that noted that section 67 (1) of the RMA provides clear direction that a regional plan must have objectives as set out below. The amendments above make this clear that the regional plan objectives are within section 3.3 of the Freshwater Plan.

67 Contents of regional plans:

- (1) A regional plan must state—
- (a) the objectives for the region; and
 - (c) the rules (if any) to implement the policies.

14.4 PLAN WORDING

- 14.4.1 A number of submissions drew our attention to importance of the wording used in the Freshwater Plan. Mr Palmer in his evidence brief stated that the focus of his submission is to ensure the ability of communities and Council to improve water quality is not constrained, or open to unnecessary challenge, because of the lack of clarity in plan wording¹⁰². Mr Palmer drew our attention to plan wording implications as a direct result of the Supreme Court decision¹⁰³ on the NZ King Salmon proposals.

- 14.4.2 RMA decision-makers are very aware that the King Salmon Supreme Court decision has attracted considerable comment and is an important decision for RMA plan drafting. For example, Beverley and Allen¹⁰⁴ in their 'think piece' noted:

"The NZKS decision is significant for RMA law and practice. In its leave decision the Supreme Court commented that the issues "have not previously been considered by this Court and [the decision] has the potential to affect all decisions under the RMA." While there is no doubt that the NZKS decision will have a fundamental effect on plan change processes under the RMA."

- 14.4.3 Beverley and Allen considered that the key implications of the NZ King Salmon decision for decision-makers on, and drafters of, RMA plans are as follows:

- *"Pay careful attention to the way in which objectives and policies are expressed in all planning documents (the words mean what they say)*
- *More directive objectives and policies carry greater weight than those expressed in less directive terms*
- *Directive objectives and policies to avoid adverse effects should usually be accompanied by a restrictive activity status, such as non-complying or prohibited*
- *There is a hierarchy of planning documents and subordinate plans that must implement the objectives and policies of the NZCPS and an NPS (and arguably a RPS) and, if they are directive, must do so as an "obligation".*

- 14.4.4 Atkins and Dawson¹⁰⁵, in their think piece on the NZ King Salmon decision, highlights further the points made by Beverley and Allen noting that the Court's decision reinforces:

"The hierarchy of planning documents required under the RMA and the importance of the higher level documents in directing those that must follow them;

- *That the planning documents are intentional documents and mean what they say;*
- *That language is important, and wording (and differences in wording) does matter; and*
- *The need to be precise and careful with words, to create certainty of meaning.*

- 14.4.5 All the commentary on the NZ King Salmon decision highlights the need for the Panel to ensure that the objectives and policies of the Part B (the RPS) of the Plan are certain and provide clarity. This does not preclude flexibility - rather any flexibility needs to be specifically determined and clearly applied. It also highlights the importance of making firm decisions on the RPS elements of the Freshwater Plan before moving to make decisions on the regional plan provisions.

¹⁰² Supporting evidence, Murray Palmer, para 1.4

¹⁰³ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38 (the NZKS decision).*

¹⁰⁴ Paul Beverley, David Allen, Implications of the New Zealand King Salmon Supreme Court decision, 30 July 2014.

¹⁰⁵ Helen Atkins & Sarah Dawson – *The King Salmon Decision – a think piece for planners* Atkin Holm Majurey – Boffa Miskell 2014.

14.5 RECOGNITION OF CULTURAL VALUES (24 SUBMISSION POINTS)

14.5.1 The Panel sincerely acknowledges the application and effort that underpinned the various iwi /hapu representations that were made to us during the formal hearings and the way iwi /hapu responded to panel requests for further clarification or explanations. The Panel fully accepts that freshwater is of critical importance to Māori and that it is a highly valued taonga with important spiritual connections and meanings that transcend the analytical approach that is often applied to RMA water quality and quantity management. Rongowhakaata Iwi Trust noted¹⁰⁶:

“The Te Arai River is of great cultural and historical importance to Rongowhakaata. The mauri o the Te Arai represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life”.

14.5.2 Iwi and hapu expect to be fully involved in freshwater management issues and we were told a number of times that water is taonga and that they should control it as they have both the understanding and the knowledge. Ms Tina Porou submitted that the allocation of water is a core part of the Te Runanganui o Ngati Porou future development and more importantly for Ngati Porou hapu and Ngati Porou landowners¹⁰⁷.

14.6 THE POLICY FRAMEWORK SHOULD BE INTERIM.

14.6.1 Ms Porou on behalf of Te Runanganui O Ngati Porou stated that Ngati Porou consider that an interim policy and rule regime is necessary for the catchments in the Ngati Porou rohe, to ensure that the highly permissive Waipaoa Catchment rules are not applied to freshwater planning in the Ngati Porou rohe. They were of the viewpoint that a ‘one-size fits all’ approach will have a significant adverse effects on the catchments within the Ngati Porou rohe¹⁰⁸.

14.6.2 To address that, Te Runanganui is proposing the following:

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

14.6.3 Ngati Porou firmly told us¹⁰⁹ that there are plan process deficiencies; in particular the failure to provide TRONPnui with a role in the process as intended by the JMA¹¹⁰. This lack of involvement was echoed by other iwi/hapu representatives. Rongowhakaata Iwi Trust submitted that a truly authentic engagement is required with Te Ahi Kaa Rongowhakaata through a Memorandum of Understanding¹¹¹. We have recorded these concerns so that they can be addressed by Council. We are, however, not in a position to provide comment or provide recommendations on the specific concerns other than to note that recent changes to RMA will ensure that Council does fully engage with Māori on planning matters.

14.6.4 The Panel agrees that iwi and hapu must be involved in and appropriately engaged in the development of freshwater policy, this is consistent with recent RMA amendments. These amendments ensure that Council does fully involve and engage with iwi and hapu on RMA planning matters. The current policy framework allows for much more detailed and meaningful participation in the development of the catchment plans. These are noted in the Councils Progressive Implementation Programme adopted by Council in 2015. Our understanding is that the Council are committed to working with Ngati Porou to develop the implementation methods for the JMA. Whilst the Panel supports the intent and application of the JMA it notes that it does not have the mandate to amend provisions of the agreement. Any proposed amendments would need to go through a separate process outside of this hearing. The Panel is not in a position to extend the coverage and application of the JMA between Ngati Porou and the Council.

¹⁰⁶ Rongowhakaata Iwi Trust representations 6 December 2016

¹⁰⁷ Tina Porou EIC 4 October 2016

¹⁰⁸ Te Runanga O Ngati Porou Representation 2 August 2016

¹⁰⁹ Te Runanga O Ngati Porou - Representation

¹¹⁰ A copy of the Joint Management Agreement was tabled

¹¹¹ Rongowhakaata Iwi Trust Representation 2 August 2016

14.7 MAURI

14.7.1 The Panel for the Freshwater Plan have been considering how best to approach the matter of mauri. This question has come about because of submissions to the plan from Te Runanga o Ngati Porou, Rongowhakaata, Te Aitanga a Mahaki and Te Runanga nui a Kiwa with Horouta Iwi Collective. These submissions in general request consideration of mauri in decision-making processes and assessment criteria and giving mauri, as a value, high priority within the proposed plan.

14.7.2 Rongowhakaata have sought a dedicated participatory framework between Council and hapu and iwi groups in order to establish FMU values, and the protection and restoration of the mauri of relevant waterbodies. They have stated that:

Mauri has been identified as having an important role in defining the state of waterbodies, even without numeric descriptors. As has been referred to throughout the FWAG process, and we believe to some degree also during the hearings process, the relevance of mauri as a practical tool for environmental management in our region is well acknowledged, as is its application as a precautionary measure where the scope of effects may be uncertain. Engagement with mana whenua as kaitiaki to identify and prescribe methods for protecting or restoring the mauri of waterbodies should still occur where numeric characteristic data is insufficient or there is uncertainty regarding its interpretation. Indeed, the application of mauri for such purposes is made even more relevant for such waterbodies.¹¹²

14.7.3 Rongowhakaata have identified specific areas where mauri should be considered including;

- Mauri considered when setting targets, and matters of control and discretion for riparian management, including set back depths and vegetation requirements;
- Consideration of mauri as a value within catchment plan development and FMU management;
- Attribute bands that have a mauri indicator(s);
- Methods for monitoring and setting limits (to protect or enhance mauri) be prescribed by mana whenua;
- Rongowhakaata did not support the use of the mauri compass assessment tool in its present form;
- With regard to pumped rural drainage water to wetlands, Council having discretion over effects of the mauri of the receiving waters; and
- The recharge of aquifers will not result in adverse effects on the mauri of the waterbodies involved.

14.7.4 The Rongowhakaata submissions with regard to 'mauri' have been focussed on the quality aspects of the Freshwater plan. There does not appear to be a mauricentric view advocated by Rongowhakaata in water quantity and allocation.¹¹³

14.7.5 Te Runanga o Turanga nui a Kiwa and the Hourouta Iwi Collective consider mauri to be a holistic concept that is not easily compatible with the National Objectives Framework. Much of their submissions seek to protect the mauri of waterbodies and to maintain or enhance the mauri of waterbodies. Mr Ian Ruru from the Te Runanga o Turanganui a Kiwa has developed a mauri compass, which identified twelve indicators for measuring the mauri of waterways. It brings together a collection of Māori and western science indicators. The mauri compass was articulated in the cultural assessment for the Makauri Aquifer. The compass tool is still in its development phase and it is unclear as to whether it has been field tested and could be picked up and utilised as a tool for monitoring mauri across the district.¹¹⁴ It certainly may be an important tool in starting conversations regarding catchment and waterway management.

14.7.6 Mr Raymond Farmer of Te Aitanga a Mahaki submitted that mauri is the missing link between the Maori and Western world views.¹¹⁵ Mr Farmer and three others of Te Aitanga a Mahaki advocated for the use of the mauri compass described above and stated it would be the 'ideal assessment protocol to monitor and restore the mauri of the Waipaoa River and its people.'¹¹⁶

14.7.7 TRONPnui have sought a range of methods and engagement processes to give effect to the joint-management Agreement signed between the Runanganui and Council. On the subject of mauri:

¹¹² Submission of raongowhakaata Iwi Trust. 6 December 2016. p28

¹¹³ Rongowhakaata submission. Key themes for Rongowhakaata in relation to PGRFP s4 water quantity and allocation. 12 October 2016.

¹¹⁴ The Gisborne Herald, Saturday October 22, 2016. pp1-2

¹¹⁵ Submission of Raymond Farmer, 5 December 2016.

¹¹⁶ Submission of Te Aitanga a Mahaki – Ray farmer, Ian Ruru, Joanne Pere, Mona Smith. 5 December 2016 (one page)

- Nga hapu o Ngati Porou will discuss whether water permit transfers appropriately protect the mauri of the water and are consistent with their kaitiaki obligations,
- TRONPnui have considered a number of options and tools that give effect to ...Te Mana o te Wai¹¹⁷

14.7.8 The submitters generally refer to mauri as a distinct and separate characteristic to ecological and other water quality attributes and indicators. One submitter, Mr Murray Palmer described mauri as the sum of all the parts rather than a distinct and definitive value. Submitters have not, however, articulated what the characteristics, attributes or indicators of mauri are or might be. This is further compounded by the emphasis on raising the priority of recognising mauri in decision-making and assessments of water quality and quantity. In these instances, the use of the term requires at least a rudimentary measure or criteria for which planners and decision-makers can implement the plans provisions and likely more so, there needs to be articulate, sound and tested characteristics, attributes/indicators to evaluate, monitor and report.

14.7.9 On this point questions were asked of submitters to articulate or give examples of how the mauri may be protected, maintained or enhanced. The responses were generally supporting participatory management frameworks and undertaking research and field work.

14.7.10 The submissions of iwi have sought a range of methods and processes that would provide for engagement in determining the mauri of a waterway and/or the effects on mauri. This has been done in the absence of any particular certainty of what that may involve. The dovetailing of these Iwi aspirations with RMA statutory processes at the present time is a significant challenge for the Panel to make a specific recommendation. However, we want to ensure that the plan recognises this issue and that Council work with iwi and hapu to develop the concept further for more specific inclusion in the development of future catchment plans. We have achieved that through the recognition of mauri as a value and the various references to mauri throughout the plan.

14.8 CONSENTING

14.8.1 TRONPnui recommends that all permit applications come to the JMA for decision making in the interim until the Council and Ngati Porou can invest adequate time to co-creating a system that works to achieve their mutual water quality and allocation aspirations. The purpose of the JMA is to, “provide a mechanism for Nga Hapu o Ngati Porou to share in RMA decision-making within the traditional Ngati Porou rohe, mai i Potikirua ki te Toka a Taiau, specifically within the Waiapu Catchment”.

14.8.2 Whilst the panel supports the intent and application of the JMA between Ngati Porou and the Council, it notes that it does not have the delegation to amend provisions of the agreement. Any amendment would need to go through a separate process outside of this hearings process.

14.8.3 However, we understand that there is a commitment by Council to establish and implement a JMA decision-making process and body, the comprehensive details of which we did not cite and do not have at our possession to consider. We are confident that this matter is being taken seriously by Council and the implementation of the JMA will be a matter of importance in the near future.

14.9 REGIONAL DEVELOPMENT

14.9.1 Mr Alan Haronga, for the Mangatu Blocks Incorporated and Wi Pere Trust, submitted¹¹⁸ that the PGRFP needs balance and that Gisborne needs to know and understand where the plan fits in with the broader economic development plan, because Gisborne is dying. He told us there is a clear imperative to realise the full potential of their lands and estates to build on the legacy our forebears put in, to build and grow their lands and business for generations to come. Maori want to be a part of the future in this region. In our decision making the panel were very mindful of the sentiments expressed by Mr Haronga.

14.10 WATER PROPRIETARY RIGHTS & OWNERSHIP

A number of Māori submitters made representations on:

- Treaty rights which confirm that Māori have a proprietary right to water; and
- Freshwater ownership.

¹¹⁷ Statement of Evidence of Tina Whaiora Porou on behalf of Te Runanganui o Ngati Porou. 4 October 2016

¹¹⁸ Alan Haronga Representation 29 July 2017

- 14.10.1 Mr Keith Katipa, for Te Whanau a Kai Trust (TWAK) told us¹¹⁹ the Council continued to ignore TWAK's water propriety rights. He explained the resourcing limitations faced by TWAK. He expressed the strong view point that Gisborne must work for the greater good of the whole district rather than pamper o the extremes views of a select few.
- 14.10.2 David Hawea, in his submission, stressed that protecting Māori property rights and customary interests over freshwater resources in the Tairāwhiti region come before any reforms are further developed. Mr Hawea sentiments were echoed Mr Owen Lloyd the Chairman of the Tairāwhiti District Māori Council.
- 14.10.3 The path the Panel has had to follow is clear, where there are statutory acknowledgements that require specific actions then the Council has actioned them. In terms of how Treaty rights may be given effect and water ownership, these are matters that are not the domain of this panel but will need to be resolved at the national level.

14.11 CULTURAL FLOWS

- 14.11.1 Rongowhakaata have sought¹²⁰ a policy recognising and providing for what they termed a 'katiaki flow allocation and/or cultural flow as a method of ring-fencing a water allocation which would acknowledge their kaitiaki role and could potentially be used for future economic uses. Rongowhakaata explained to the Panel that this would ensure development rights are protected and could be utilised in the future. Their submission to the Water Quantity hearing provided a justification for their initiative. Stressing that such an approach embodies the type of partnership that underpins Te Tiriti, and is at the heart of recent co-governance arrangements, and delegations authority, between tangata whenua, local authorities and the crown¹²¹. We are of the view that provision of such a new policy would be significant step that needs to be supported by a comprehensive allocation framework policy analysis coupled with the ability of the pubic to provide their input. We are therefore unable to recommend such an allocation as a result of this current hearing process. Rongowhakaata should take their initiative up with the Council using their submissions of 12 October as a starting point.
- 14.11.2 The issues of Treaty water priority rights and of water ownership were also raised, but these are not matters for our consideration, rather it is a matter that iwi and hapu have to address at the national level with central government.

14.12 CONCERN OVER THE LACK OF ENGAGEMENT AND PARTICIPATION

- 14.12.1 The Panel received an outline of the consultation with iwi, stakeholders and landowners undertaken during the preparation of the proposed Regional Freshwater Plan. We understand that iwi representatives from Te Runanganui o Ngati Porou, Rongowhakaata and Te Runanganui o Turanganui a Kiwa participated in the plan development from an early stage and that this involvement continued up until the notification of the proposed plan. This forum also ensured that hapu interests were also conveyed to those who were drafting the plan document.
- 14.12.2 The Panel is of the view that consultation has been undertaken with appropriately mandated iwi authorities and their representatives have identified their interests and values as they are relevant to the freshwater. We consider there to be an ongoing opportunity to engage, for example, throughout the catchment planning process iwi and hapu are directly involved in a participatory process to establish the values and aspirations for their waterbodies, and ensure that these values and aspirations inform the application of significance to them.
- 14.12.3 There are statutory opportunities presented by the RMA Amendment Act 2017, this being the 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. We also understand that Council also engage directly with hapu and we encourage the continuation of this full range of engagement.

¹¹⁹ *Te Whanau a Kai Submssion 2 August 2017*

¹²⁰ *Rongowhakaata Iwi Trust Submission 12 October at {5.3 – 6.5}*

¹²¹ *Ibid at [7.18.4]*

14.13 AGREEMENTS REACHED AT PRE-HEARING

14.13.1 Cultural interests in freshwater was also discussed at a pre-hearing meeting on 7 July with Hikurangi Takiwa Trust, Rongowhakaata Iwi Trust and TRONPnui. The meeting addressed both the objectives and policies in Part B of the Freshwater Plan relating to cultural values. On 8 July 2016, a pre-hearing meeting was held with representatives of TRONPnui and Hikurangi Takiwa Trust regarding submission points. These pre-hearing meetings are summarised in Appendix A of the Section 42A Report and this report considered any points that were agreed to and has made appropriate recommendations.

14.13.2 The areas of agreement reached at pre-hearing meeting were:

Objective 11 – amendments to recognise and enable the kaitiaki role of iwi and hapu in managing freshwater;

Rongowhakaata Iwi Trust had asked that Objective 11 be amended to “enable the kaitiaki role...” When questioned at the hearing on what they understood ‘enable’ to mean; the reply was on-going resourcing for capacity building. The Panel understand and recognise the need for iwi and hapu to be involved in RMA decision-making. However, in our view, the matter of ‘capacity building’ is one which should be best be addressed under section 81(1)(b) of the Local Government Act 2002 (LGA). This section states:

Local Government Act 2002

Section 81 Contributions to decision-making processes by Māori

A local authority must—

(b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority;

14.13.3 We have had full regard to the agreement that was reached at the pre-hearing meeting. However, given the further information gained at the hearing on what ‘enabled’ meant to the submitters and their stated expectation of this amended objective, the Panel is not in a position to create any open ended expectation that the Council will resource iwi and hapu capacity to undertake their kaitiaki role; that is a matter for the iwi and Council to mutually resolve. We also consider that Objective 11 should be amended to state that iwi and hapu interests should be reflected in “decision-making processes” rather than “outcomes” as this implies too much priority should be given to these interests. Therefore the Panel has adopted the following wording for Objective 11:

“Objective 11

The planning and management of the Region’s freshwater resources is undertaken in a way that recognises the kaitiaki role of iwi and hapu and ensures that their values and interests are reflected in the decision-making processes ~~outcomes~~”.

14.13.4 In addition, we have adopted the following amendments to the RPS objectives and strategic policies to ensure appropriate recognition of cultural values in freshwater planning and decision-making:

- Objective 12 – amendments to recognise and provide for the mauri of freshwater;
- Objective 13 – amendments to specifically include mana whenua;
- Policies 3.2 (having regard to freshwater issues and outcomes identified by iwi and hapu) and 3.10.d (identifying values for catchment plans) – amendments to include reference to governance and partnership arrangements; and
- A new combined policy to collaborate with iwi and hapu to recognise their kaitiaki role and identify their freshwater values and priorities, including the development of cultural assessment frameworks. This is intended for the working together strategic policies.

14.14 “OVERS AND UNDERS” APPROACH (3 submission points)

14.14.1 This issue largely relates to Objective A2 of the NPSFM which requires that “the overall quality of freshwater within a region is maintained or improved...” The use of the word “overall” recognises that maintaining or improving all aspects of water quality everywhere may not be possible or desirable, economically or socially. Objective A2 of the NPSFM therefore allows some variability in water quality provided overall water quality within a region is maintained or improved.

14.14.2 As noted in the Section 42A Report,¹²² this matter was discussed at a pre-hearing meeting attended by a number of parties. There was agreement around two principles:

¹²² *Ibid* at [4.4]

- That an “overs and unders” approach will not be applied at a regional level; and
- Freshwater values will not be degraded through the limits setting process.

14.14.3 Forest and Bird requested a clear policy in the Plan stating that an “overs and unders” approach is not supported within the region, a catchment, or a FMU. The Section 42A Report recommended this is rejected. In making this recommendation, it was acknowledged that an “overs and unders” approach to manage water quality at the regional scale has a number of issues.

14.14.4 Council’s approach to “under and overs” was referenced in a number of the submissions made to the hearings. Ms Atkin, on behalf of HortNZ, provided us with a legal review of the status of “unders and overs”. Mr Fleming in his evidence, on behalf of Forest and Bird, revisited the issue expressing his concern that Council staff have not recommended the inclusion of a policy to clearly state that an “overs and unders” approach to water quality is not supported in the region.

14.14.5 The Government has signalled a change in the scale of overall water quality to be maintained under Objective A2 of the NPSFM so that it is based on an individual FMU rather than a region. Given this uncertainty, the Panel considers that it is not considered necessary or appropriate to preclude an “overs and unders” in this Plan or in future catchment plans through a specific policy in the Freshwater Plan. Once clarification on this matter is provided by central government, the Council position can potentially be confirmed by way of a future plan change or variation. The Panel considers that no change is required in relation to this issue at this point in time.

14.15 MAINTAINING WATER QUALITY (11 submission points)

14.15.1 A key issue that has arisen through the development of the Freshwater Plan is the interpretation of the NPSFM around maintaining water quality in Objective A2. The main issue in submissions relates to whether maintaining water quality allows for fluctuations within the attribute states (A, B, C and D bands) in the NOF.

14.15.2 The notified version of the Freshwater Plan proposes that water quality be maintained at the existing state and not to the bottom of the NOF attribute states (or bands). This is expressed in Part E (Catchment Plans) of the Freshwater Plan. This approach was deliberately taken as a precautionary approach in the absence of any other guidance from central government about how to apply the NOF in relation to Objective A2 of the NPSFM.

14.15.3 This issue was discussed at pre-hearing meeting and it was agreed that allowing for natural fluctuations in water quality is appropriate. However, there was no agreement as to whether the Freshwater Plan should focus on maintaining water quality within a band or at the current state.

14.15.4 Council holds the view that there should be no downward trends in water quality under the requirement to maintain water quality. However, submissions from Federated Farmers and HortNZ have requested that the maintenance of water quality should be focused on maintenance within a band.

14.15.5 In their evidence, HortNZ suggested that the explanation to the objectives be amended to explain the FMU limit setting process and to make it clear that fluctuations in water quality within an acceptable range are allowed provided that a downward trend in water quality is avoided. This additional text is supported by the Panel in principle. However, it needs to be further refined to provide greater certainty on acceptable levels of fluctuations and ensure community values are provided for.

14.15.6 It has already been noted that the Government has signalled they may provide more direction on Objective A2 to maintain water quality within a band but this is uncertain.

14.15.7 This issue is addressed in the Panel’s Decisions Report Number 5. This report also deals with the relationship between freshwater objectives, limits and targets which all have a specific meaning in the context of the NPSFM. Clarification and refinement of the use of these terms in Part D of the Plan has also lead to some consequential amendments to provisions in Part B and Part C of the Freshwater Plan.

14.15.8 For example, in several parts of the Freshwater Plan, reference is made to the exceedance of “limits” being a matter for consideration or more stringent management criteria. However, at the present time many “limits” are not able to be defined in quantitative terms, which makes it unclear whether or not they are exceeded. Because “limits” (and “targets”) are set to achieve “freshwater objectives”, many of the references to limits in the Freshwater Plan have been amended to also refer to “freshwater objectives” or degraded waterbodies. Given that “freshwater objectives” are often defined in quantitative terms for a freshwater management unit, these amendments are intended to help ensure that the correct aspects of the Freshwater Plan are applied to the appropriate circumstances, as intended by the Panel’s decision.

14.16 CONSISTENCY WITH NPSFM (9 submission points)

14.16.1 There are no significant points of contention under this general topic. The Section 42A Report recommends that most of the submission points on this issue are accepted in full or in part to ensure consistency and alignment of the Freshwater Plan with the NPSFM.

- The importance of “giving effect to” higher level policy instruments under the RMA was highlighted in the NZ King Salmon ruling discussed in section 13.5 above. This case highlighted the fact there is a hierarchy of planning documents under the RMA and subordinate plans that must implement the objectives and policies of a NPS (and a RPS) and, if they are directive, must do so as an “obligation”.
- The sections of most relevant to the Freshwater Plan in terms of giving effect to the NPSFM are section 60(3) and 67(3) as set out below:

62 Consents of regional policy statements

(3) *A regional policy statement must not be inconsistent with any water conservation order and must give effect to a national policy statement, a New Zealand coastal policy statement, or a national planning standard.*

67 Contents of regional plans

(3) *A regional plan must give effect to—*

- (a)** *any national policy statement; and*
- (b)** *any New Zealand coastal policy statement; and*
- (c)** *any regional policy statement*

The Quality Planning¹²³ Web page notes:

“This requirement for plans to ‘give effect’ to regional policy statements is designed to give regional policy statements more influence over local policy. It is important that local policy reflects the priorities of the region and is proactive in helping support the integrated management of natural and physical resources of the whole region. Similarly, the requirement to give effect to national policy statements ensures a nationally consistent approach on relevant issues.”

14.16.2 A plan needs to give effect to (or implement) a NPS and RPS if these are framed in a directive way. The words ‘give effect to’ are intended to convey that plans should actively implement the NPS or RPS (the policies, the methods, or both, as applicable). The Quality Planning web page gives the following advice:

“In determining if a plan that is being prepared ‘gives effect to’ a regional policy statement, check to include:

- *what parts of the national or regional policy statement have direct relevance to the plan (are there similarities in topics covered, issues, or objectives and policies that relate to the same area that is covered by the plan?).*
- *whether the national or regional policy statement contains specific sections, formatting or wording that shows the objectives, policies, or methods that must be given effect to through the plan.*
- *to see if the national or regional policy statement expresses objectives and policies in a way that suggests that their implementation is mandatory (for instance using words like ‘shall’ ‘all councils must’).*

¹²³ “Giving Effect” – A Quality Planning Resource - www.qualityplanning.org.nz

- *if the plan being prepared reflects the mandatory provisions contained in the national or regional policy statement (through expressing the same or similar wording or intent in objectives, policies or both).*
- *if the plan being prepared contains rules, or provides a recognisable framework for other methods that implement the objectives and policies of the regional policy statement.*

14.16.3 We were reminded a number of times during the hearings that the RMA requires the Freshwater Plan to “give effect” to the NPSFM. Of particular importance are Objectives A1 and A2 which are set out below:

Objective A1

To safeguard:

- a) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and*
- b) the health of people and communities, at least as affected by secondary contact with fresh water; in sustainably managing the use and development of land, and of discharges of contaminants.*

Objective A2

The overall quality of fresh water within a region is maintained or improved while:

- a) protecting the significant values of outstanding freshwater bodies;*
- b) protecting the significant values of wetlands; and*
- c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated*

14.16.4 A key requirement is that the objectives in the Freshwater Plan must be the most appropriate way to achieve the purpose of the RMA (section 32 (1)(a) of the RMA), and plan provisions (policies and methods) are to be the most appropriate way to achieve the objectives (section 32 (1)(b) of the RMA).

14.16.5 This submission of Mr Murry Palmer includes a number of pertinent points about ensuring the Freshwater Plan wording is clear and that it gives effect to the NPSFM. This submission has informed all of our decision reports to ensure the wording of the objectives and policies:

- Creates certainty;
- Clearly states the intent; and
- Gives effect to NPSFM.

14.16.6 As noted above, we have also made changes to the Plan in relation to the reference to freshwater objectives, limits and targets to ensure this is consistent with the NPSFM.

14.17 IMPLEMENTATION OF THE PLAN (15 submission points)

14.17.1 There are limited points of contention under this general topic. The Section 42A Report recommends that a number of the submission points are accepted or accepted in part. For example, the Section 42A Report recommended that the introduction section of Freshwater Plan be amended to provide greater clarity on the relationship between the Freshwater Plan and other RMA instruments and the catchment plan process. While the Panel agrees with the intent of these recommendations, the introduction of the Freshwater Plan has been rationalised in the Tairāwhiti Plan. Therefore we are not accepting any recommendations in relation to section 1 of the Freshwater Plan.

14.17.2 The Section 42A Report recommends that the non-notification clauses are removed from the Freshwater Plan. Submitters were divided on this issue but the majority were opposed to the non-notification clause or considered it should be limited to controlled activities. As freshwater is a limited, shared and valued resource, the Panel has resolved that Council should retain discretion to notify applications for water take, use and discharge on a case-by-case basis in accordance with sections 95A-G of the Act consistent with the Section 42A Report recommendation.

14.17.3 There were requests from DOC and Forest and Bird in their submission to include a policy framework for biodiversity offsetting. Council reporting officer’s recommended that this needs to be considered in a more integrated manner across the region (terrestrial, freshwater, coastal) and this should occur as part of the development of the combined Unitary Plan of the Gisborne region. The Panel are of the view that biodiversity offsetting has considerable merit but it is a matter that requires a wider integrated approach so there is consistent approach for terrestrial, freshwater and coastal biodiversity offsetting. As such, the Panel agrees that it should be considered in an integrated manner as a future plan review topic for the Tairāwhiti Plan.

14.17.4 With regards to the requests made to include more specific provisions on how the implementation of the Freshwater Plan and specific initiatives (e.g. stock exclusion) will be funded, the Section 42A Report noted that the general sentiment of these submissions is supported. However, it was not considered appropriate for the Freshwater Plan to refer to specific funding sources, which sit outside the RMA. The Panel view this matter as one which would be best handled under the provisions of the LGA and concur that no amendments to the Freshwater Plan are necessary.

14.17.5 Submitters also made requests for other supporting non-statutory plans. For example, Forest and Bird requested that an implementation plan and non-statutory Freshwater Strategic Plan be developed, and Mangatu Blocks and Wi Pere Trust requested that an economic plan be developed. These plans are not considered to be a high priority or necessary at this stage but may potentially be developed in the future. As such, the Panel has determined no changes to the Freshwater Plan are required in response to these submissions.

14.18 RPS ISSUES (12 submission points)

14.18.1 There are no significant points of contention under this general topic. Minor amendments are recommended in the Section 42A Report which are largely consistent with requests in submissions to highlight the importance of water quality and water quantity (in the selected areas) in Gisborne and to better recognise iwi and hapu interests and concerns about freshwater management (see the above discussion). The Panel accepts these recommendations.

14.19 RPS AND REGIONAL PLAN OBJECTIVES (65 submission points)

14.19.1 The Section 42A Report recommends a number of amendments to the objectives. The main focus of these amendments is making the objectives clearer, more concise and aligned with the NPSFM and the Act. Key changes in this respect relate to:

- **Objective 1** – amendments to refer to safeguarding the life supporting capacity of freshwater rather than maintain. It was noted that this is consistent with the section 5 of the RMA, the NPSFM and requests in submissions;
- **Objective 2** – amendments to refer to FMU and amending definition of degraded waterbody. It was noted that this is consistent with submissions and supported by HortNZ;
- **Objective 7** – amendments to refer to relevant national and community values rather than “significant” values as it was considered that this wording was unclear; and
- **Objective 8** – referring to reducing existing over-allocation consistent with Objective B2 of the NPSFM.

14.19.2 In the hearing, Council reporting officers indicated that there were issues related to Objectives 2, 3 and 4 where they did not agree with relief sought by submitters that would need to be addressed by the Panel. Specific issues identified included:

- **Objective 2** – rejecting submission points from FANZ and Ravensdown to only improve water quality where it is degraded. The Section 42A Report noted that the intention is that improving water quality should also be required when necessary to meet the relevant objectives for the FMU and recommended amendments to make this clear.
- **Objective 3** – it was noted that FANZ and DOC requested that this be separated into two objectives or two clauses that: 1) provide for the preservation of the natural character of waterbodies and their margins; and 2) provide for the maintenance and enhancement of visual amenity and recreational values. The rationale is that these two matters are given different weight under the RMA and only one is a matter of national importance. Council reporting officers recommended that Objective 3 should be retained as one objective but noted that it could be split into two clauses as recommended by DOC in their supplementary evidence.
- **Objective 4** – staff recommended that this objective focus on Scheduled waterbodies and not be applied to all wetlands as requested by DOC.

14.19.3 At the conclusion of the hearing, the Panel asked Council reporting officer’s to review their Section 42A Report recommendations on the wording of objectives in light of different wordings proffered by submitters. Staff provided the Panel with a tabulated analysis of all the different wordings. After considering the different wording recommended by Council reporting officers and submitters, the Panel has adopted some different wording for certain objectives as outlined below.

14.20 OBJECTIVE 1

The Panel has adopted the following wording for Objective 1:

Objective 1

~~The quality and quantity of the Region's freshwater bodies and their catchments is managed so that ecosystems are able to continue to function, including supporting habitat and feeding, breeding, migratory and other requirements of indigenous species, and that the life supporting capacity of freshwater is maintained.~~

Land and freshwater is sustainably managed in a way that safeguards the life-supporting capacity of freshwater, including ecosystem processes and indigenous species, and the health of people and communities.

Rationale:

- We were reminded by a number of submitters and Council reporting officers that this objective is intended to give effect to Objective A1 of the NPSFM along with Objective 4 which relates to scheduled waterbodies (including outstanding waterbodies and regionally significant wetlands). We have amended the wording to more fully represent NPSFM Objective A1.
- The amendments recommended in the Section 42A Report were intended to make the objective more concise, clear, and also to refer to "safeguarding" rather than "maintain" to be more consistent with the NPSFM. The new wording was questioned by a number of submitters. For example, Chris Hansen acting on behalf of Ravensdown pointed out to us that the objective could be better worded as the new emphasis could be read as 'safeguarding freshwater from use and development. However, Fish and Game presented us with a counter viewpoint endorsing the Section 42A Report recommendation.
- The wording suggested in the Section 42A Report changes the focus from active management of land and freshwater, to protecting freshwater from the use and development of land and freshwater. We are of the view that, given the addition of the phrase safeguarded from the use and development of land, this shift in focus was a significant one and a step too far therefore those words have been removed.
- No change is required to the underpinning Section 32 analysis.

14.21 OBJECTIVE 2:

The Panel has resolved that wording for Objective 2 recommended in the Section 42A Report should be adopted.

Rationale:

- The Panel is of the view that amendments suggested by DOC do not add any value and the proposed wording in the Section 42 Report adequately covered the situations where freshwater may need to be improved. For example, the objectives set for a FMU may involve the protection (or enhancement) of certain freshwater values which may require improvements in water quality.
- The course of action suggested by Federated Farmers to respond to downward trends in water quality through initiating investigations is supported and indeed expected. However, it is not considered necessary to amend Objective 2 to specifically state this.
- The definition of 'degraded waterbody' is important to understand the meaning and effect of Objective 2 and other provisions in the Freshwater Plan that refer to degraded waterbodies and freshwater objectives or limits not being met. The Panel has decided to adapt an expanded definition provided by Witham on behalf of the Director-General of Conservation, with the deletion of his reference to coastal water, which is outside the scope of the Freshwater Plan.

Degraded waterbody means:

~~A waterbody which fails a minimum acceptable state, exceeds the ANZECC (2000) ISQG Low sediment quality guidelines in relation to toxicants, or where the mauri has been identified as degraded.~~

A. Where a freshwater body does not meet a freshwater objective, limit or target set in a relevant catchment plan; or,

B. Where a fresh waterbody is not located within a catchment plan and does not meet a national bottom line as set out in Appendix 2 of the NPSFM 2014.

14.22 OBJECTIVE 3:

The Panel has adopted the following wording for Objective 3:

Objective 3

~~The natural character of lakes, rivers, wetlands and their margins are protected from the inappropriate effects of land and water use, and recreational and visual amenity values are maintained and enhanced.~~

Lakes, rivers, wetlands and their margins are managed in a way that:

- Preserves their natural character and protects them from inappropriate subdivision, use and development;
- Maintains or enhances their amenity values.

Rationale:

The natural character and amenity values associated with lakes, rivers, wetlands and their margins have been retained as a single objective. Council reporting officers have noted that each matter has different statutory weight under the RMA (i.e. “recognise and provide for” under section 6(a) and “have particular regard to” under section 7(c)). Based the submitters’ evidence, it is considered that it is clearer and more consistent with the Act to include these matters as two clauses within a single objective as requested by DOC. This would allow for Objective 3 to apply a targeted level of direction to both:

- Natural character (preserve and protect); and
- Amenity values (maintain or enhance).

14.23 OBJECTIVE 4:

14.23.1 The Panel has adopted the following wording for Objective 4:

Objective 4

~~The values of outstanding and regionally significant freshwater bodies and their margins are protected or improved where degraded.~~

Scheduled waterbodies and their margins, and the significant values of both outstanding waterbodies and wetlands, are protected or enhanced to provide for their values.

Rationale:

Objective A2 of the NPSFM directs councils to protect the “significant values” of all outstanding waterbodies and wetlands as set out below:

NPSFM - Objective A2

The overall quality of fresh water within a region is maintained or improved while:

- a) protecting the significant values of outstanding freshwater bodies;*
- b) protecting the significant values of wetlands; and*
- c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated*

The Panel are of the viewpoint that neither the notified version nor the Section 42A Report version of Objective 4 adequately gave effect to NPSFM Objective A2. Objective A2 directs councils to protect the “significant values” of all outstanding waterbodies and wetlands. There may be wetlands with significant values that are not included in the schedules therefore limiting protection to regionally significant wetlands¹²⁴ may not fully give effect to Objective A2 of the NPSFM.

We acknowledge that the “key values” of outstanding water bodies are articulated in Schedule 4 of the Freshwater Plan and the “key values” of regionally significant wetlands are articulated in Schedule 3. However, submitters¹²⁵ drew our attention to the wording of Objective A2 of the NPSFM which does not refer to ‘regionally significant wetlands’ but rather to ‘wetlands’. The amended wording of Objective 4 now better reflects the requirement of NPSFM Objective A2.

¹²⁴ Witham EIC at [57 – 72]

¹²⁵ Herbert EIC at page 9 and Witham EIC at [57 -72]

14.24 OBJECTIVES 5 & 6

The Panel has adopted the following wording for objectives 5 and 6 as a single objective:

Freshwater is available, within limits, to meet the present and future needs of communities to support the social, cultural and economic wellbeing of the Region

Rationale:

Objectives 5 and 6 address basically the same issue – ensuring water is available to meet the needs of people and communities to provide for their economic and social well-being within limits. The Panel has therefore resolved that these two objectives can be combined into a single objective. The rewording of Objectives 5 and 6 also recognises that the availability of water will be subject to limits which is consistent with the submission of the Director-General of Conservation.

14.25 OBJECTIVE 7

The Panel is of the view that Objective 7 is unnecessary and is achieved by other objectives (such as objectives 1, 5, 6 and 8) so can be deleted to remove unnecessary duplication.

14.26 OBJECTIVE 8

The Panel has adopted the following wording for Objective 8:

Objective 8

~~*Any water taken is used efficiently, is reasonable for its intended use and is not allocated or abstracted beyond the minimum flows set in this Plan*~~

To manage the allocation and use of freshwater so as to:

- *Avoid over-allocation and phase out any existing over-allocation; and*
- *Improve and maximise the efficient allocation and use of freshwater, and ensure it is reasonable for its intended use.*

Rationale:

Mr Witham on behalf of the Director-General Conservation submitted that there should be a specific objective to address water over-allocation. The Panel concurs that the issue of addressing over allocation needs to be addressed and have included it in Objective 8.

The “reasonable for intended use” has been re-included in Objective 8 contrary to the recommendation in the Section 42A Report to emphasise the importance of this. Both the Director-General of Conservation and Federated Farmers requested that the reasonable use test be included in the Objective. Overall, this ensures Objective 8 now gives effect to Objective B2 and B3 of the NPSFM and this is done in a concise and efficient manner.

14.27 OBJECTIVE 9

The following wording for Objective 9 has been adopted by the Panel:

~~*Freshwater and the use and development of land in whole catchments is managed in an integrated way, including the interactions between freshwater, land, associated ecosystems and the coastal environment to ensure that freshwater values are maintained or improved.*~~

The interactions between land, land use and development, freshwater, the coastal environment and associated ecosystems are recognised and provided for through the integrated management of freshwater resources to maintain or improve their values.

Rationale:

The intent of the notified Objective 9 was the emphasis on integrated management to ensure that water values are maintained or improved. The Section 42A Report recommended changes to this objective significantly changed the intent. The Director-General of Conservation in their proposed wording of Objective 9 emphasised ‘integrated management’ but took the objective a step too far with the addition of the phrase ‘coastal water quality improved where degraded’. The wording above better gives effect to Objective C1 of the NPSFM while ensuring it is still focused on the values specified for freshwater resources.

14.28 OBJECTIVE 10

The Panel has adopted the following wording for Objective 10:

~~*Research and monitoring is undertaken to develop a good understanding of the freshwater resources, values, significance, potential stressors and impacts of climate change in the Region to better inform freshwater management.*~~

Freshwater accounting systems are established, and research and monitoring is undertaken that improves the understanding and sustainable management of freshwater resources, including the potential impacts of climate change.

Rationale:

The Panel has accepted the Section 42A Report recommendation for Objective 10. The wording better reflects the intent of the NPSFM. The words proffered by the Director-General of Conservation addresses the same issues but in a slightly more complex way.

14.29 OBJECTIVE 11

The Panel have adopted the following wording for Objective 11 from the notified version of the plan:

The planning and management of the Region's freshwater resources is undertaken in a way that recognises the kaitiaki role of iwi and hapu and ensures that their values and interests are reflected in the decision-making processes.

Rationale:

The amendments requested by Rongowhakaata Iwi Trust do not reflect the intent of the notified version to ensure that particular regard would be given to RMA sections 7(a) (kaitiakitanga) and 7(aa) (stewardship). The addition of the word 'enable' changed the intent to one of capacity building. As already noted in section 14.13 above, it is not the Panel role to create an open expectation of on-going funding for capacity building therefore this has been removed from the objective. Stating that iwi and hapu interests should be reflected in "decision-making processes" rather than "outcomes" is also preferred as the latter implies too much priority should be given to these interests.

14.30 OBJECTIVES 13, 13 (NEW) AND 14 (OLD 13)

The Panel has adopted the wording contained in the Section 42A Report for the reasons outlined in that Report.

14.31 NEW OBJECTIVE – HUMAN HEALTH AND CONTACT RECREATION

Mr Witham for the Director-General Conservation requested a new objective to address human health and contact recreation. The Panel has not adopted the recommendation.

Rationale:

The Panel accepts that human health from secondary contact with freshwater is an important part of Objective A1 of the NPSFM; it is also a national bottom line in the NOF. However, the Government is considering amendments to the NPSFM to remove the reference to secondary contact and amend this value within the NOF. As such, the Panel considers that a separate objective on human health from secondary contact with freshwater is not necessary or appropriate to introduce at this point of time.

14.32 STRATEGIC POLICIES: WORKING TOGETHER (28 submission points)

14.32.1 There are no significant points of contention under this general topic. The main changes the Section 42A Reports recommends is to rationalise the Working Together Strategic Policies from six policies to nine without undermining the intent. The changes also seek to clarify the catchment plan process for each FMU and emphasise the importance of collaborating with iwi, stakeholders and local communities through this process. The Panel generally supports these recommendations noting this is consistent with the NPSFM and requests in a number of submissions.

14.32.2 The other main changes recommended to the Working Together Strategic Policies relate to referring to "good management practice" rather than "best management practices" in policies 3.8 and 3.9 with consequential changes to the definitions and other sections of the Freshwater Plan. The Panel agrees with these recommendations noting that this is consistent with requests in submissions from industry organisations and terminology used elsewhere on the use of good management practices. The changes also do not preclude best practices being implemented. FANZ has also requested that the definition of 'good management practices' refers to an example from Environment Canterbury. The Panel is of the view that this is not considered necessary within the Freshwater Plan as these guidelines may become outdated.

14.32.3 As a consequence of the Panel's decision in relation to Objective 11, the new combined policy relating to the kaitiaki role of iwi and hapu has been amended to recognise their role rather than enable their kaitiaki role. The wording we have adopted for this Policy is as follows:

14.32.4 Policy 3.2 (new numbering)

Collaborate with iwi and hapu to recognise their kaitiaki role and identify their freshwater values and priorities, including the development of cultural assessment frameworks for mauri and other freshwater values.

14.32.5 Council reporting officers noted that the following policies remained in contention:

- Policy 3.3

Council reporting officers recommended rejecting request from Federated Farmers to clarify the concept of kaitiakitanga. They considered that this is not appropriate or necessary as this concept is already defined in the Act and iwi and hapu should be able to exercise kaitiakitanga as they choose according to their own tikanga. The Panel concurs with this viewpoint.

- Policy 3.5

Council reporting officers recommended rejecting a request from Forest and Bird to refer to 'equal representation' of stakeholders. Council officers considered that this term is not appropriate and the term is also likely to be debated and interpreted differently. FANZ has also requested that the reference to rules be deleted from this policy in their supplementary evidence as this can create complexity. Council officers also did not support this request as catchment plan should be able to include rules where appropriate. After considering the representations made, the Panel found no reason to reject the recommendations from Council officers in relation to Policy 3.5.

14.32.6 New Policy 3.5

The Section 42A report has recommend a new policy (3.5 in the Section 42A Version of the Plan) which relates to working collaboratively with local communities, including iwi and hapu, landowners, resource users through the catchment plan process. This incorporated Policies 3.5-3.8 of the notified Freshwater Plan. Panel has resolved to retain the wording in the Section 42A Report with minor amendments to refer to outstanding water bodies in clause b), refer to methods in clause c) and to include a new clause e) "to improve the quality of degraded freshwater bodies".

These changes are consistent with the amendments sought by HortNZ and FANZ with the exception of the request to remove the reference to rules by FANZ. Consistent with Policy 3.5, the Panel concluded that the Strategic Policies in the Freshwater Plan should not preclude catchment plans to include rules when this is deemed to be appropriate.

14.32.7 Policy 3.8 and Policy 3.9 (new policy 3.6)

The Panel supports retaining the proposed wording set out in the Section 42A Report. Policy 3.8 of the notified Plan is very similar to Policy 3.19 as these both relate to non-regulatory projects to improve water quality and quantity, which is why the Section 42A Report recommended it be deleted. The Panel agrees that it is appropriate for these initiatives to generally be delivered at the catchment scale.

Mr Witham, on behalf of the Director-General of Conservation,¹²⁶ disagreed with this assessment, as he considered that it confuses the purpose of Policy 3.8, being the development of Council led initiatives to demonstrate examples of good management practices in relation to water quality, with the possible implementation of these initiatives in catchment plans. In his view, the purpose of these policies is clearly different although he acknowledged the language is similar. We disagree with the assessment of Mr Witham, preferring the Section 42A reasoning. The three-year timeframe sought by DOC to implement non-regulatory projects s also considered to be unrealistic as these initiatives will be developed and delivered throughout the life of the Freshwater Plan.

14.33 STRATEGIC POLICIES: CATCHMENT PLANS (47 submission points)

There are no significant points of contention under this general topic. The Section 42A Reports recommends that a number of the submission points are accepted or accepted in part. The main changes recommended in the Section 42A Report relate to:

- Referring to FMU rather than sub-catchment or sub-zone consistent with the NPSFM;

¹²⁶ Witham at [11+7 – 121]

- Deleting Policy 3.14 - which is consistent with the request of HortNZ. It was considered that this objective which relates to recreational and drinking water values is sufficiently covered by other policies;
- 14.33.1 Policy 3.21 - removing reference to ANZECC Guidelines and simply referring to relevant water quality standards. This responded to a HortNZ submission but FANZ subsequently sought the reference to these Guidelines be retained; and
- 14.33.2 Policy 3.22 - deferring consideration of this policy so that the default low flow levels can be considered with the water quantity provisions.

Council reporting officers noted in the opening of the hearing that the main outstanding points of contention in relation to the Catchment Plan Strategic Policies relate to:

- 14.33.3 Policy 3.10 - Council officers recommended rejecting a request from FANZ that guidance be developed to identify outstanding and significant waterbodies and that experts undertake this process. Council officers considered that it was not appropriate for this to be a tightly prescribed technical exercise but rather the emphasis should be a collaborative, iterative process with input from all relevant stakeholders. It is acknowledged that experts will often play an important role in this process alongside stakeholders. The Panel concurs with this view.

Council officers considered that the amendments sought by FANZ are not considered to add any value to Policy 3.10. It was also considered inappropriate to refer to “and governance or partnership agreements, or other means appropriate for mana whenua” as requested by Rongowhakaata Iwi Trust. The reference to governance and partnership agreements is supported but not the reference to “other means as this can potentially be interpreted very broadly. Based on this reasoning, the Panel considers that the proposed wording set out in the Section 42A Report should be retained.

- 14.33.4 Policy 3.12 - the Panel has adopted the following wording for Policy 3.12:

Policy 3.12

For each freshwater management unit or water quantity or quality sub-zone, establish objectives and methods, including limits and rules, that:

- *Maintain or improves freshwater quality;*
- *Safeguard the life-supporting capacity of freshwater including the ecosystem requirements of indigenous species; and*
- *Provide for the freshwater values, including any improvements required for degraded waterbodies.*

Rationale:

Council officers recommended that the wording should be that of the notified version with some minor amendments to remove reference to zones or sub-zones and we concur. As a result of reviewing the evidence of Mr Witham on behalf of the Director-General of Conservation, we have added ‘or improves’ to sub-clause a. for Policy 3.18. We also concur with the advice of Council officers that it is not appropriate to preclude the use of rules to achieve the outcomes in clauses a)-c) as requested by FANZ so the reference to rules at the start of Policy 3.12 has been retained.

- 14.33.5 Policy 3.14 - The Panel has adopted the following wording for Policy 3.14:

Where community drinking water supplies exist, manage land use, discharge and water treatment activities to ensure that adverse health effects on consumers are avoided.

Rationale:

The Panel considered that the changes give better effect to NPSFM. This is contrary to the Section 42A Report recommendation for this policy to be deleted. The Havelock North water contamination incident has graphically highlighted the importance of the need to protect community supplies. It is appropriate that there is a policy which specifically focusses on protecting the quality of supplies of community drinking water.

- 14.33.6 Policy 3.17 - The Panel has adopted the following wording for Policy 3.17

Recognise and take into account cultural and spiritual values, and the mauri of water, when setting water quality and quantity limits and managing freshwater.

Rationale:

The Panel are of the viewpoint that “take into account” is better wording than “provide for” as recommended in the Section 42A Report. This will ensure that appropriate consideration can be given to all the factors that must be taken into account when setting water quality and quantity limits and managing freshwater. This is particularly the case when the iwi submitters indicated there is still work to be done to define these cultural and spiritual values and the concept of mauri. It would be remiss of us to require that these characteristics must be provided for without understanding the full implications of such a requirement.

- 14.33.7 Policy 3.18 - Council officers recommend rejecting requests from Balance Agri-Nutrients and FANZ to limit protections to outstanding waterbodies. They noted that this policy is intended to apply to all identified values of waterbodies not just outstanding waterbodies. The Panel concurs. The Panel also considers that the changes sought by DOC, while generally supported, are not necessary as they are now provided in other policies, particularly Policy 3.12 above.
- 14.33.8 Policy 3.19 - The Section 42A Report recommended that Policy 3.19 refer to good practice rather than best practice with consequential changes to other policies and the definition of “good management practice” in the Freshwater Plan. The reasons for this change are set out in 4.11.2 of the Section 42A Report. The Panel recommends that the reference to good practice is included in the Freshwater Plan as this is more consistent with terminology used by industry, the Land and Water Forum (LAWF) and does not prevent best practice being implemented.
- 14.33.9 Policy 3.20 - The Panel is of the view that this policy should remain focused on groundwater surface waters and there are other policies that require the consideration of the interactions between freshwater and coastal waters. The Panel has therefore adopted the wording in the Section 42A Report.

14.34 STRATEGIC POLICIES: INTEGRATED MANAGEMENT (43 submission points)

There are no significant points of contention under this general topic. The Section 42A Reports recommends minor changes to the policies and that a number of the submission points are accepted or accepted in part.

- 14.34.1 Policy 3.21 - The Panel has adopted the following wording for Policy 3.21

Where there are no attribute states identified in the National Objectives Framework, objectives shall be informed by relevant water quality and quantity standards, guidelines such as the ANZECC Guidelines (2000) trigger values and any relevant water quality and quantity data.

Rationale:

The Section 42A Report recommended that the reference to ANZEGC Guidelines be removed as it appeared to be placing a strong emphasis on these guidelines. Having considered the evidence of FANZ (with support from Ravensdown¹²⁷), it is agreed that the ANZECC Guideline (2000) should be referred to in Policy 3.21 with the clear reference that the standards are trigger values not standards that must be met.

- 14.34.2 Policy 3.25 - The Panel has adopted the following wording for Policy 3.25:

To improve integrated management of natural and physical resources by recognising and providing for the interactions between freshwater, land and its uses, and the coastal environment and associated ecosystems when developing or reviewing planning provisions.

Rationale:

Consistent with our decision on Objective 9, it is considered that Policy 3.25 can be improved by referring to the uses of land in order to be more consistent with Objective C1 of the NPSFM. However, the reference to “quality of the coastal water” sought by DOC is not supported by the Panel as Objective C1 of the NPSFM refers to “the coastal environment”.

- 14.34.3 Policy 3.29 - The Panel has adopted the following wording for Objective 3.29:

Manage the adverse effects of land use intensification to maintain water quality, or improve it where it is degraded, and protect the physical form and character of rivers, lakes and wetlands and their margins.

¹²⁷ Hansin EiC at [33 -37]

Rationale:

The amendments in the Section 42A Report are supported as these changed the wording from ‘physical structure’ of rivers, lakes and wetlands to “physical form and character” which is more appropriate. The amendments sought by DOC also refer to the margins of these waterbodies are supported as they are aligned with section 6(a) of RMA.

The main outstanding points of contention where the Section 42A Report does not agree with submissions on the Integrated Management Strategic Policies relates to:

- 14.34.4 Policy 3.27 - Council officers recommended rejecting the request from Agnes Walker for the Policy to also refer working with iwi on cross-boundary issues. The Panel agrees with the recommendation of Council officers as working with iwi and hapu if this is suitably covered by other objectives and the Working Together Strategic Policies.
- 14.34.5 Policy 3.29 - Council officers recommended rejecting the request from HortNZ to define or clarify land use intensification. Staff considered that this term is reasonably well understood and the regional plan provisions provide more direction on specific land use intensification activities. The Panel have accepted the advice of staff.
- 14.34.6 Policy 3.30 - Council officers recommended rejecting requests from Balance Agri-Nutrients and FANZ to only apply the policy where sediment discharges are resulting in water quality standards not being met. Staff have noted that there are no nationally acceptable sediment standard to apply and it is considered that the focus should be on reducing sediment runoff into waterways generally not just when this is causing water quality issues. The Panel concurs with the Council staff advice.
- 14.34.7 Policy 3.32 - Council officers recommended rejecting requests from Forest and Bird to refer to safeguarding ecosystem health and the life supporting capacity of freshwater in this Policy as this is considered to be sufficiently covered by other provisions in the Freshwater Plan. The Panel agrees. The Panel also does not consider that it is necessary to refer to water harvesting in the strategic policies, and this is better considered and addressed through the more specific sections of the Freshwater Plan. However, the Panel have made a minor a minor word change to Policy 3.32. “Where possible” has been replaced with “where practicable” as the Panel consider it is better wording as outlined below:

Promote and help investigate where practicable water storage and aquifer recharge opportunities that provide for the economic, social and cultural well-being of communities.

14.35 STRATEGIC POLICIES: RESEARCH AND MONITORING (32 submission points)

There are no significant points of contention in relation to the Research and Monitoring Strategic Policies. The Section 42A Report recommends minor changes to the policies and that a number of the submission points are accepted or accepted in part.

The main concerns raised relating to Policy 3.37, Policy 3.38 and Method 3.18 and the potential cost-implications for applicants associated with requiring baseline monitoring where there are information gaps. To respond to these concerns, the Section 42A Report recommends that the policy clearly state that any monitoring required should correspond to the scale of the activity and its effects. This is consistent with requests in submissions and the Panel agrees with this recommendation.

The Section 42A Report also recommends that Policy 3.36 be amended to emphasise that the opportunities to collaborate with stakeholders in all forms of research and monitoring. This responds to requests from industry and iwi that they be closely involved in freshwater monitoring and research. The Panel agrees.

14.36 NEW POLICY ON WETLAND SIGNIFICANCE CRITERIA

Mr Witham for the Director-General of Conservation sought a new policy defining Wetland Significance Criteria. The Panel are of the viewpoint that the intent of the submission has merit. However, the key values for regionally significant wetlands have already been identified in Schedule 3 and any criteria would need to be consistent with these values. As these values have been defined, it is not considered necessary or appropriate to include new Wetland Significance Criteria in the Plan at this point of time and this could be considered as part of the future review of the wetland provisions in the Plan.

14.37 NEW POLICY – BIODIVERSITY OFFSETTING

Mr Witham in his evidence for the Director-General of Conservation¹²⁸ requested the introduction of a policy on biodiversity offsetting. As noted in section 13.10, the Panel considers that a policy framework for biodiversity offsetting should be considered in an integrated manner as a future plan review topic for the Tairāwhiti Plan. This will allow for a more integrated consideration of all aspects of biodiversity (terrestrial, freshwater, coastal).

15.0 Concluding Comments

15.1 We find that the Section B (RPS) of the Freshwater Plan, as amended by the Section 42A Report and our amendments as a result of subsequent submissions, will be an effective means to promote the purpose of Act – sustainable management as it sets the framework for freshwater management in the Gisborne region. It is balanced, transparent, and appropriate and it gives effect to NPSFM.

15.2 Section B of the Freshwater Plan as refined through the public submission and hearing process should be easy to understand and implement and clear to use.

16.0 Section 32AA Evaluation

16.1 For the purposes of section 32AA of the RMA, the Section 42A version of the Plan has been considered in terms of section 32(1) to section (4). The Panel accepts the Council reporting officers' recommendations for many aspects of the RPS and finds that RPS provisions 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 the RMA and the NPSFM. The Panel clearly understands the cost implications of having to give effect to the NPSFM and has endeavoured to put in place objectives and a policy 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.

16.2 The changes proposed by the Council reporting officers to the notified version of the Plan, and the changes which the Panel have made as a result of hearings and an evaluation of the evidence, representations, submissions and further submissions, will make the Plan provisions more efficient and effective in achieving the purpose of the RMA and giving effect to the NPSFM.

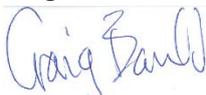
Mark Farnsworth MNZM
(Panel Chair)



Rehette Stoltz



Craig Bauld



Peter Callander



Antoine Coffin



¹²⁸ Witham EIC at [161 -168]