

**Before the Hearing Panel
at Wellington**

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF Proposed Natural Resources Plan for the Wellington
Region (Hearing Stream 1)

**LEGAL SUBMISSIONS ON BEHALF OF WELLINGTON FISH AND GAME
COUNCIL:
HEARING STREAM 1**

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Introduction

1. The Wellington Fish and Game Council (“Fish and Game”) is a statutory body under the Conservation Act 1987. Its functions include representing the interests of anglers and hunters and advocating for the Council’s interests, including in relation to habitats.¹
2. The sports and game bird resources in the Greater Wellington Region are significant. In particular the Hutt, Ruamahanga, Otaki, Waikanae, Wainuiomata, Waingawa and Waipoua Rivers offer regionally significant fishing opportunities. There are over 50 significant spawning rivers and streams that are essential to the health and sustainability of the Region’s fisheries.²
3. Fish and Game made a comprehensive written submission on the Proposed Natural Resources Plan for the Wellington Region (“PNRP”). These legal submissions focus on:
 - 1.1 The provisions of the PNRP that deal with the cumulative effects of land use and discharge activities on water quality.
 - 1.2 Comment on the way the objectives and policies of the PNRP are drafted.
 - 1.3 Particular provisions that are the subject of this hearing (the subject of recommendations in the section 42A Reports for “*Overall Policy Framework*” and “*Beneficial Use and Development*”).
- 2 I will be calling:
 - 2.1 Mr Adam Canning, Doctoral Researcher in Freshwater Ecology at Massey University; and
 - 2.2 Ms Lucy Cooper, Planning expert.
- 3 I am aware that further hearing streams will deal with water quantity and water quality issues in detail. However Fish and Game has chosen to call evidence on freshwater ecology at this Hearing so that its position, and the

¹ Section 26Q Conservation Act 1987.

² Further information is set out in the statutory Sports Fish and Game Management Plans that are relevant under section 66(2)(c)(i) of the Act.

basis for its position, is made clear early in the process. Further expert evidence will be filed at later hearings.

Cumulative effects

- 4 “Cumulative effects” have been defined by the US Department of Commerce as:

“... the impact on the environment which results from the incremental effects of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency... or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.”

- 5 I have taken this definition from the Paper “*Predictions in an Uncertain World – assessing effects under the Resource Management Act 1991, NZLS Continuing Education Programme*” 20/10/16 (Jackson J). It is consistent with the reference to cumulative effects section 3(d) of the Act. In this Paper, Judge Jackson comments that ‘cumulative effects’ of multiple stressors are the main considerations in the preparation of district plans and other statutory instruments.³

- 6 In the current context, there is a need to manage adverse cumulative effects across catchments and subcatchments. Issue 4.1 is “[t]he ecosystem health and function of water bodies is being degraded by contaminated discharges from urban and rural land use, and the abstraction of water”.⁴ The associated Explanation states:⁵

“Routine monitoring shows that the health of rivers, streams, lakes, wetlands, ground water and estuaries in the Wellington region is degraded by rural and urban land use, particularly in intensively farmed or urban catchments.”

- 7 It would be surprising if the PNPR did not acknowledge the issue of cumulative effects given recent caselaw, including the Environment Court

³ At paragraph 92.

⁴ GWRC 2014a.

⁵ See also Issue 4.3 “*Land uses and discharges of contaminants reduce the quality of water bodies*” - Explanation for some rivers and lakes: “*The quality of these water bodies is not being managed sustainably and the amount of contaminants getting into them needs to be reduced.*”

decision *Infinity Investment Group Holdings Limited v Canterbury Regional Council* [2017] NZEnvC 36 where the Court stated:

"[126] ... in our view it is now a notorious fact (in a legal sense) that excreta from farm animals on land are a cause of deterioration in down catchment water quality. (As are stormwater and sewerage systems in urban areas). It is equally notorious that increasing intensification of farming with irrigation from water abstraction may exacerbate that deterioration by increasing discharges of contaminants (often rather coyly called 'nutrients' in regional planning instruments) and decreasing river flows (thus increasing concentrations of the contaminants)".

- 8 Fish and Game says that the PNRP does not adequately deal with the cumulative adverse effects of multiple 'non-point source' discharges on water quality.

- 9 The PNRP does contain regulatory methods for certain activities such as discharge of fertiliser and of collected animal effluent (Rules 5.3.6). Because there is no permitted activity rule for discharge of 'uncollected' animal effluent,⁶ Rules 92 and 93 may make discharges of all animal effluent from stock animals direct to land a discretionary activity (in circumstances where such contaminant may enter water). It has been argued in other fora that any discharges of contaminants from production land⁷ that may contravene s15(1)(a) or (b) require a resource consent unless the discharge is expressly allowed by a rule in the regional plan. The Environment Court commented on this matter in *Carter Holt Harvey Ltd v Environmental Defence Society* A123/2008 at [172]-[173] and in *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [165]. So, if there are discharges that are not explicitly covered by the Rules of the PNRP, such as discharges direct from stock to land, and these are not specified as permitted activities, under s15 a resource consent is required for them.⁸ Because I understand that the Wellington Regional Council does not accept that interpretation, the remainder of my submissions proceed on the basis that consent is *not* required for such discharges. However I do not concede the point.

⁶ I.e. Direct from stock. Rule 69 "Minor contaminants" is a permitted activity rule but provides "the contaminant shall not enter water."

⁷ As defined in the Act and which means any land and ancillary buildings used for the production (but not processing) of primary products (including agricultural, pastoral, horticultural, and forestry products).

⁸ See also *McKnight v NZ Biogas Industries Limited* (Court of Appeal) CA 526/93.

Facts

- 10 The Regional Council has undertaken an analysis upon which to base measurable limits for periphyton and macro-invertebrates in Table 3.4 and Objective O25 of the PNRP. This Table contains such “limits” developed for different types of water bodies and natural differences between those water bodies. In *“Macroinvertebrate Outcomes for Aquatic Ecosystem Health in Rivers and Streams”*⁹ MCI limits were recommended for the purposes of Table 3.4 based on different River (FENZ) classes (and a differing grading for Rivers and Lakes identified in Appendix 1 of the RPS – *“Rivers and Lakes with significant amenity and recreational values”* and *“Rivers and lakes with significant indigenous ecosystems”*). As stated in the attachment to Mr Canning’s evidence *“MCI reflects the ecosystem health of a stream or river integrating the effects of a variety of anthropogenic stressors, in particular nutrients (Stark, 1985).”*¹⁰
- 11 The Regional Council assessed water quality against these limits in *“Benchmarking of aquatic ecosystem health and contact recreation outcomes in the Proposed Natural Resources Plan ”* Greenfield et al July 2015. Table 2.2 of that technical document set out the assessment for MCI based on 2012 – 2014 Annual Data for each River Class.
- 12 The Regional Council does not sample all reaches of rivers and streams in the Region. Therefore Dr Death has *modelled* MCI for each reach in the Wellington Region using models based on data collected from regional councils and GIS layers. His Figure 1 and Table 1 represent river reaches and whether they exceed the value from Table 3.4 or not.¹¹
- 13 While the evidence will be the subject of further hearing streams¹² both MCI sampling and modelling indicate that, for some River classes, we can expect that the MCI limits in Table 3.4 are not met at the majority of sites in the class.¹³ This represents a position of ‘over allocation’ for those classes of Rivers.
- 14 How does the PNRP intend to deal with this over-allocation?

⁹ Technical Report to Support the draft Natural Resources Plan: S Greenfield June 2014.

¹⁰ R Death “Ecosystem Health and Nutrient Concentrations for Wellington Rivers and Streams” 2015.

¹¹ Ibid.

¹² Dr Death will be appearing at Hearing Stream 4.

¹³ Particularly for Classes 5 (Lowland, large, draining plains and eastern Wairarapa) and 6 (Lowland, small).

- 15 The PNRP regulates some specific 'on farm' activities, and for other non-specified activities relies heavily on "good management practices". This is defined as follows:

"Practices, procedures or tools (including rules) that are effective at achieving the desired performance while providing for desired environmental outcomes. Good management practice evolves through time and results in continuous improvement as new information, technology and awareness of particular issues are developed and disseminated. Good management practice guidelines can be found on the Wellington Regional Council's website <http://www.gw.govt.nz/good-management-practice/>".

- 16 That website currently contains under the heading "*Nutrient Management – Rural*" the industry agreed good management practices by FAR, New Zealand Pork, Dairy NZ, B+ Lamb, Horticulture NZ and Deer Industry NZ.
- 17 Method 28 of the PNRP provides that the Regional Council will continue to develop good management practice guidelines along with stakeholders. Method 12 is that the Regional Council will encourage sustainable rural land management by *inter alia* providing good management practices and developing and assisting with the implementation of management plans (riparian plans, farm plans and farm environment plans across a number of priority catchments). There is also a method (M10) that water quality investigations will continue including the effects, establishment or causality of water quality issues in catchments and/or ground water zones.¹⁴
- 18 I discuss this approach below and measure it against the Act and the higher level policy documents. As stated in Ms Cooper's evidence, it is the PNRP that must be measured against the Act and higher level documents. Reliance cannot be placed on future (unspecified) plan changes.

Higher level policy documents

- 19 The dicta in *King Salmon* on the importance of higher level policy documents is now widely known. It was discussed in the recent decision *Turners & Growers Horticulture Ltd v Far North District Council* [2017] NZHC 764. In the *Turners & Growers* case it was argued (in the High Court) that the Environment Court had erred when referring to Part 2 of the Act when

¹⁴ Eg (c) Waipoua River and Ruamahingi River "examine reasons for elevated toxic cyanobacteria events, by 2018".

considering a district plan change, because the Environment Court should have 'stuck to' an assessment of the plan change against the settled objectives of the relevant plan.¹⁵

20 This argument was rejected and the High Court found the Environment Court had not erred by referring to Part 2 of the Act. In *King Salmon* there was a directive provision in the New Zealand Coastal Policy Statement. The facts of that case involved the Board of Inquiry disregarding the directive requirement by resorting to Part 2 of the Act. In this way the Board of Inquiry had treated the directive provision in the NZCPS as no more than a relevant consideration.¹⁶ In contrast, in the *Turners and Growers* case there was no relevant "constraint"¹⁷ in the higher order documents to which Council was required to give effect. Rather, the objectives and policies in the district plan left "considerable room for choice as to the methods or rules most appropriate to achieve them."¹⁸ In those circumstances the Environment Court had not been wrong to have regard to Part 2 of the Act.

21 In the context of this Regional Plan, you will therefore need to consider the extent to which the higher level policy documents are directive, or leave 'room to manoeuvre'. As stated in the *Turners & Growers* decision, some higher level plan provisions are relatively abstract and leave a high level of choice. In those circumstances there is no constraint to referring to Part 2 of the Act. Whereas other higher level plan provisions may be directive, leaving less choice. In those circumstances the decision-maker must not revert to Part 2 of the Act in order to override the direction provided in the higher level document(s).

22 Fish and Game's submission is that the NPSFM, NZCPS and the RPS, as well as Part 2, all lead the decision-maker to the same conclusion. Although the NPSFM gives some 'room to manoeuvre' in terms of *timing*, that flexibility must be considered in the context of the factual circumstances of the Region.

New Zealand Coastal Policy Statement 2010 (NZCPS)

23 Ms Cooper considers the NZCPS and I do not repeat that analysis here.¹⁹

¹⁵ In the absence of invalidity, incomplete coverage or uncertainty – the three reasons mentioned in *King Salmon* for reverting to the purpose of the Act.

¹⁶ At [43] – [44].

¹⁷ At [46].

¹⁸ At [47].

¹⁹ Relevant provisions:

Regional Policy Statement for the Wellington Region 2013 (RPS)

24 Ms Cooper also considers the RPS and concludes that, although the *Objectives* of the PNRP are relatively consistent with the RPS (leaving aside some specific issues with the PNRP Objectives), the policies and methods would not achieve those Objectives. A key reason for this is the absence of suitable limits against which to measure the appropriateness of activities.

25 Policy 12 of the RPS states:

“Regional plans shall include policies, rules and/or methods that:

(a) require that water quality, flows and water levels, and the aquatic habitat of surface water bodies are to be managed for the purpose of safeguarding aquatic ecosystem health; and

(b) manage water bodies for other purposes identified in regional plans.”

26 The Explanation is that:

“Regional plans will establish management purposes for water bodies in the region and identify limits for water quality, flows and water levels, and aquatic habitat appropriate to the management purposes identified. ... This policy does not prevent the sustainable use of water subject to any limits (including ecosystem health) established in the regional plan.

The limits for aquatic ecosystem health will need to recognise that different types of water bodies (for example, rivers, lakes and wetlands) will require different limits. Natural environmental differences between water bodies (for example, climate, altitude and catchment geology, or a small stream in a mountain catchment versus a large lowland river) will also require different limits to be established. ...”

27 Method 2 of the RPS states that the process to amend regional plans to implement this and other policies will commence “on, or before” the date on which Wellington Regional Council commences the ten year review of its regional plans, or provisions in a regional plan.

28 Fish and Game says that Policy 12 is not “given effect to” because:

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- Objective 1 “*maintaining coastal water quality, and enhancing it where it had deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity*”.
 - Protecting indigenous biological diversity in the coastal environment (Policy 11).
 - Restoration of natural character (Policy 14).
 - Enhancement of water quality (Policy 21).

- 28.1 The parameters in Table 3.4 and Objective O25 are not sufficient for the purpose stated in the Policy (to “safeguard aquatic ecosystem health”). Parameters for Nitrogen and Phosphorus are required.
- 28.2 Leaving the development of further parameters/limits to the Whaitua Committees does not comply with the timing requirements of the RPS. Method 2 of the RPS provided that the limits would be part and parcel of the 10 year review of the relevant regional plan(s). Stating that the process of implementation would commence at the same time means that the limits would be included in the Regional Plan as notified. “Commencement” is not achieved through an establishment of a committee process.
- 29 Under the first point above, there is no argument that limits for periphyton (mg/m² chlorophyll a) and invertebrates (MCI) are important - particularly for assessing the state of the environment. However:
- 29.1 Under the PNRP activities may be undertaken that may affect water quality, yet are not required to be measured against these limits.²⁰
- 29.2 Limits for Dissolved Inorganic Nitrogen (DIN) and Dissolved Reactive Phosphorus (DRP) are also necessary. Although a resource consent for an activity could include conditions and monitoring of an activity under the MCI and periphyton parameters, those parameters provide limited guidance as to whether a consent will be granted. To build on this point, I suggest that it would be very difficult for a water quality scientist to accurately predict the impact of a discharge on MCI, or periphyton biomass, in circumstances where a catchment is already degraded and/or where the discharge on its own may be considered minor. In those circumstances, it may often be possible to “predict” the reduction in DIN or DRP load (e.g. in tonnes) required in order to achieve water quality outcomes, and

²⁰ As explained in Ms Cooper’s evidence: in nutrient discharges from agricultural land uses.

to assess whether the proportionate contribution of a proposed activity to that overall load would be significant.

- 30 I submit that the PNRP does not give effect to Policy 12 RPS. Dr Death will give evidence at Hearing Stream 4 on the need to manage for both Nitrogen and Phosphorus to prevent any significant adverse effects on the ecosystem health of over-allocated water bodies.

National Policy Statement for Freshwater Management 2014 (NPSFM 2014)

- 31 Ms Cooper agrees that the Council does not have to “give effect to” Policy CA 2 of the NPSFM 2014 at this time.²¹ Policy E1 provides a time period for the “implementation by a regional council” of policies of the NPSFM. In the meantime, I submit that the PNRP must be consistent with or “in accordance with” the NPSFM 2014.²²
- 32 More is required than to insert the NPSFM’s interim policies into the PNRP (inserted in Policy P66 and P110: being Policies A4 and B7 of the NPSFM). Policy P66 applies to activities involving “*any taking, using, damming or diverting of fresh water or draining of any wetland*” that are likely to result in a more than minor adverse change. Policy P110 applies to activities involving “*any taking, using, damming or diverting of fresh water or draining of any wetland...*”. The NPSFM 2014 provisions requiring that Policies A4 and B7 must be incorporated into regional plans in the interim period before full implementation of the NPSFM 2014, does not mean that the Objectives of the NPSFM 2014 are not also relevant in the interim.²³ Objective A1 NPSFM 2014 is wider than these policies as it deals with land use.
- 33 Policy B5 of the NPSFM 2014 states:

“By every regional council ensuring that no decision will likely result in future over-allocation – including managing fresh water so that the aggregate of all amounts of fresh water in a freshwater management unit

²¹ Ms Cooper at [31] - Policy CA 2 requires freshwater objectives and limits be set through the process specified.

²² S66(1)(ea) of the Act, inserted by the 2017 amendments. This is separate to s67(3) which contains the words “give effect to”.

²³ The words state “*To safeguard ... in sustainably managing the use and development of land, and of discharges of contaminants.*” See also Horizons One Plan Declaration proceedings, above-cited, at [108] – where the Environment Court points out the differences between coverage of this Policy and Objective.

that are authorised to be taken, used, dammed or diverted does not over-allocate the water in the freshwater management unit.”

(Emphasis added)

34 Although this Policy appears in Part B of the NPSFM under the heading “Water Quantity”, the issues of water quantity and water quality are interrelated.

35 “Over-allocation” is defined in the NPSFM as applying both to water quality and water quantity, and is a situation where the resource:

- a) *“has been allocated to users beyond a limit”*; or
- b) *“is being used to a point where a freshwater objective is no longer being met”*.

36 It is not necessary to await the limits-setting process of the Whaitua Committee in order to conclude that certain catchments and subcatchments of this Region have been allocated beyond an acceptable limit for ecosystem health.

37 Ms Cooper’s evidence contains a discussion of other regional planning documents.²⁴

38 The *Infinity* decision contained discussion of the approach in the Canterbury Land and Water Regional Plan, which has a Table showing freshwater outcomes for River classes not unlike Table 3.4 of the PNRP. The Court accepted that the outcomes stated in that Plan did not need to be met until 2030, but said “... *it is difficult to see how they can be achieved in the Hakataramea when some of the limits have already been breached and the trend is getting worse*”. The Court noted that the Plan contained a permitted activity rule that could allow an increased intensity of farming to occur as of right.²⁵ However:²⁶

“A method for avoiding, remedying or mitigating the downstream effects of increased land use appears to be absent from the CLWRP. In particular it is difficult to see how the Table 1a outcomes for 2030 will be achieved when the CRC has been permitted activities which will have the opposite

²⁴ Otago, Canterbury, Manawatu-Whanganui and Auckland regions.

²⁵ Rule 5.53 provided certain conditions as to farm management plans are met any farming use that does not result in a discharge of more than 20kg/N/ha/Year at the root zone is a permitted activity).

²⁶ At [205].

effect. To that extent the CLWRP is both incomplete and appears not to give effect to either the CRPS or the NPS-FM 2014.

(Emphasis added)

- 39 The PNRP does not contain a permitted activity rule of the type contained in the Canterbury Land and Water Plan. Indeed, in the absence of a permitted activity rule, section 15 would require resource consents for diffuse discharges from intensive land use activities. However if one rejects that interpretation then there is no method in the PNRP that would “*avoid, remedy or mitigate the downstream effects of increased land use*”.
- 40 In the interim period, the PNRP relies on good management practices (“GMP’s”). But the way GMP’s are provided for in the PNRP provides no certainty that water quality will be maintained.
- 41 The approach of relying on GMP’s was rejected in the Environment Court decision on the Horizons One Plan in the context of ‘over allocated’ catchments and sub-catchments. Under the heading “*Should there be a reference to reasonably practicable farm management practices?*”²⁷ the Environment Court recorded that Fonterra had argued such management practices would be a suitable approach.²⁸ The Environment Court accepted Fish and Game’s arguments that implementation of “*reasonably practicable farm management practices*” will not necessary reduce nitrogen leaching because it is not possible to quantify an amount of nitrogen leaching reduction that would be achieved by implementation of them.²⁹ Those reasons similarly apply to the use of the term in the PNRP - for example in Policy 65, Policy 96 and the Methods.
- 42 The problem with these approaches is uncertainty. Unless there is a systematic process for accepting or rejecting practices across farms,³⁰ the phrases invite inequity. Although one could argue an independent check could be made to promote consistency, Fish and Game considers that the better approach (and one that does not involve arguments regarding the

²⁷ Page [5-62].

²⁸ Fonterra argued tier 1 and tier 2 mitigation measures should be defined in that regional plan.

²⁹ In subsequent declaration proceedings (*Wellington Fish and Game Council and others v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37) a Regional Council resolution that provided that discretionary activity consents would be granted for applications showing N reductions “*achievable on the farm*” was found to be in contravention of the One Plan.

³⁰ Mr Philip Percey giving evidence for Rangitāne o Wairarapa discusses this in his planning evidence at [62].

individual circumstances of each farming operation on a case-by-case basis) is a limits-based approach.

- 43 The Horizons One Plan did build in a 'period of grace' for *existing* farms to obtain consents as measured against an Nitrogen leaching limit. However, in doing so it signalled expectations for the future in a clear way. Ultimately the Environment Court there said:³¹

"The phrase reasonably practicable farm management practices (or variations on the theme) should not appear in the surface water quality objectives, policies or the rules of the One Plan."

- 44 I submit that the PNRP is not consistent with, or in accordance with, the NPSFM 2014 as its methods to ensure water quality is maintained are inadequate.

- 45 In *Ngati Kahungunu Iwi Inc v Hawkes Bay Regional Council* [2015] NZEnvC 50, in the absence of the full process of setting freshwater objectives and limits (under Policies CA1-CA4 NPSFM 2014), the Environment Court said that the objective should at least be to *maintain* the existing level of water quality and to strive for management practices that will prevent degradation as that is the plain requirement of s30(1)(c)(ii) as well as 30(1)(f) ("*the control of discharges of contaminants*" inter alia "*into or onto land*").³² I turn now to the Act's provisions.

Resource Management Act 1991 (the Act)

- 46 It is a function of a Regional Council to control the use of land for the purposes of³³ "*the maintenance and enhancement of the quality of water in water bodies and coastal water*" and "*the maintenance and enhancement of ecosystems in water bodies and coastal water.*"(emphasis added)
- 47 In *Ngati Kahungunu* the Environment Court said that Objective A2 of the NPSFM ("*the overall quality of freshwater within a region is maintained or*

³¹ [5-181]

³² [69]. On the issue of the 'load to come', the Court said: "*It was recognised that the issues relating to the load to come may make maintenance of existing water quality a moving target.*" and "*to say we can do nothing because there may be a load to come is as illogical as saying ...we can do nothing because next week there might be another Cyclone Bola which may cause massive sediment and nutrient runoff into the regions water bodies.*" ... "*To not aspire and attempt to at least maintain the quality of water abdicates the functions of a regional council under s30 (see para [29]) and the requirements of a regional policy statement under s62(3) (see paras [32] and [33]) and fails to implement the role of such a document in the hierarchy of planning instruments.*"

³³ Sections 30(1)(c)(ii) and (iia).

improved...”) does not allow for an *unders and overs* approach - as was the intent of the objective under consideration in the case. The current state of the law is that the Environment Court has expressed difficulty in seeing how such an approach can be consistent with the unqualified function imposed on Regional Councils by s30(1)(c)(ii).³⁴ The Court also saw such an approach as incompatible with the requirements of s69(3).³⁵ The Court also saw there would be issues with s107.³⁶

48 This case is authority that a regional plan should at least aspire and attempt to *maintain* the quality of water.

49 The PNRP does not address the issue of *increased* diffuse discharges through further intensification. The PNRP lacks methods to enable assessments of these discharges to be undertaken with respect to the outcomes proposed in Table 3.4.

50 I submit that methods need to be introduced independently from Waitaitua Committee process completion so that a holding pattern is established.

51 If you accept that appropriate limits *should* be adopted, then an allocation methodology should also be signalled. The default position (‘first-in first-served’) could result in inequity and a ‘gold rush’ mentality. Therefore, for existing land uses, Fish and Game also considers that a regulatory regime to distribute assimilative capacity in over-allocated catchments should be signalled now in the PNRP itself.

52 The decision is no doubt difficult, because as stated in the One Plan case:

“...economic consequences for private individuals are an inevitable corollary of regulation in the public interest.”

53 However, it is important to ensure those consequences are evenly and fairly distributed.

³⁴ [56].

³⁵ [57]. Section 69(3) provides that a regional council may not set standards in a plan that result, or may result, in a reduction of the quality of water in any waters at the time of public notification of the proposed plan unless it is consistent with the purpose of the Act to do so (subject to the need to allow for reasonable mixing).

³⁶ [58].

54 The Ruamahanga Whaitua Committee has said it does not consider 'grandparenting' would constitute an even and fair distribution of consequences.³⁷ Fish and Game agrees. However it is not a question of waiting for the point at which tools to administer an allocation regime (such as OVERSEER) become adequate and trusted.³⁸ In the absence of regulatory provisions signalled in the PNRP itself I suggest there is the potential for perverse behaviours in those catchments and subcatchments where water quality needs to be improved.

55 Mr Canning has calculated the existing current annual loads of DIN and DRP in 13 catchments across the Wellington Region and compared that to loads required to meet the DIN and DRP concentration limits that the Table 3.4 MCI states that the PNRP seeks to achieve.³⁹ This enables an analysis of catchments where DIN and DRP loads are such that MCI states set in Table 3.4 PNRP would be likely to be exceeded⁴⁰ and the amount of reduction required to bring loads back to a position where the MCI states in Table 3.4 would be likely to be met.⁴¹

56 For rural dominated zones⁴² Mr Canning has estimated average on-land per hectare loss loads required to meet the proposed in-stream MCI states in Table 3.4. Recognising that some soils are more versatile than others⁴³ he has also suggested relative leaching ratios for different land types based on LUC (Land Use Capability) class – a similar approach to that adopted in the Horizons One Plan.⁴⁴

Summary

³⁷ The meeting of the Ruamahanga Whaitua Committee 27 March 2017 agreed with a draft preference around allocation of diffuse nitrogen to "test with a community", being

1. "Allocation of diffused discharges of nitrogen is not feasible at present.
2. The Regional Council could consider nitrogen allocation in the future (for example at the next regional plan review i.e. 10 years) in the following circumstances:
 - (a) Limits are not being met in an FMU and/or freshwater objectives were not being achieved.
 - (b) Tools to administer an allocation regime (e.g. for measuring or estimating leaching at the property scale) are adequate and trusted.
 - (c) Other alternative management methods have been considered and rejected.
3. The Regional Council should signal now what allocation regimes might be considered in the future, in order to provide some certainty and reduce 'gaming'. Allocation regimes considered should be confined to the following types: equal allocation or allocation based on soil type or leaching risk. The Committee is clear that grandparenting should not be considered in the future."

³⁸ It is not necessary to have perfect information or models: *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182 at [5-8].

³⁹ The concentration limits are taken from R Death 2015 attached to Mr Cannings evidence.

⁴⁰ Mr Cannings Figures 1 and 2

⁴¹ Table 1.

⁴² Based on Agribase 2013: Mr Canning's evidence at [24].

⁴³ A matter that is also recognised in the RPS at Chapter 3.11 and Objective 30.

⁴⁴ Table 5 on page 13.

57 The absence of appropriate interim limits does not “give effect to” Policy 12 of the RPS, is not in accordance with the NPSFM 2014, and does not meet the requirements of the Act. Including appropriate parameters and limits in Table 3.4 would enable forward looking management for discharges (i.e. at the point of consenting rather than following the monitoring of effects). I submit that this is required in order to manage cumulative adverse effects.

The way the objectives and policies of the PNRP are drafted

58 The way the objectives and policies of the PNRP are drafted is such that they are listed as a series of disconnected matters. Unlike as seen in many other regional plans, there is no guidance as to the relationship between them. There is a direction that when considering a consent application the Objectives should be read together to: *“gain an understanding of what the Plan is seeking to accomplish, the natural resource management priorities for the region and the manner in which they are to be addressed”*.⁴⁵ However the Objectives do not effectively set priorities. They do not provide direction to potential consent applicants.

59 Although Objectives O24 and O25 together with policies such as P25 (natural character), P26 (natural processes), P31 (aquatic ecosystem health and mahinga kai) and P32 (adverse effects on aquatic ecosystem health and mahinga kai) appear to recognise important matters in ss6 and 7 of the Act, it is unclear how those provisions interact with provisions such as those under the topic *“Beneficial use and development”*.⁴⁶

60 The Worked example set out in Ms Cooper’s evidence (an example cultivation activity within 5 metres of a river) illustrates the difficulties that an applicant would have in obtaining guidance as to whether the activity is consistent with, or provided for, by the objectives and policies. Ms Cooper says:

“In my opinion, the balancing act being asked of plan users is unreasonable, and will result in conflicts between uses being determined on a case-by-case basis, at potentially significant expense to applicants and affected parties.”

⁴⁵ 2.1.1.

⁴⁶ Policy P7 uses of land and water, Policy P12 benefits of regionally significant infrastructure and renewable electricity generation facilities.

61 The Objectives of the PNPR need to provide guidance for this balancing act. Fish and Game has a fundamental objection to the way the objectives and policies have been drafted. Its submission sets out a way in which amendments could be made to provide sufficient direction for the processing and decision making on resource consent applications.

Recommendations on specific provisions in the section 42A Reports for “Overall Policy Framework” and “Beneficial Use and Development”.

62 Policy P3 refers to the “Precautionary approach”. Ms Cooper discusses this Policy.⁴⁷ The Officer has recommended that the adverse effects must be “potentially significant” before the precautionary approach applies. The words recommended by the Officer will simply invite argument as to whether adverse effects are “potentially significant”. This “potentially significant” prerequisite is inappropriate.

63 For activities in the coastal environment beyond the EEZ the relevant legislation provides for a precautionary approach. Section 61 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 states: *“If, in relation to making a decision under this Act, the information available is uncertain or inadequate, the EPA must favour caution and environmental protection”*. The words “potentially significant” are not found in this section. Those words should not be inserted in Policy P3.

64 I attach a Table to these submissions that cross-references Ms Cooper’s planning evidence on other specific provisions the subject of this hearing.

Conclusion

65 The interim period (prior to the reporting of the Whaitua Committees) should be met with an approach that is precautionary, stops water quality from getting worse, and does not result in future over-allocation.

66 The methods in the PNRP do not achieve this.

⁴⁷ At [126] – [127].

67 It is also Fish and Game's position that existing over-allocation should be phased out over time. In the circumstances of this Region, it is necessary and appropriate to signal now, in the PNRP, mechanisms for achieving that.

DATED this 24th day of May 2017


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SJ Ongley

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