

**IN THE ENVIRONMENT COURT
WELLINGTON REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

UNDER	the Resource Management Act 1991
IN THE MATTER	of appeals under sch 1, cl 14(1) against the decision of Manawatū-Whanganui Regional Council on Plan Change 2 to the One Plan
BETWEEN	TE RUNANGA O RAUKAWA ENV-2021-WLG-20 NGĀTI TURANGA ENV-2021-WLG-21 ANDREW DAY ENV-2021-WLG-22 WELLINGTON FISH AND GAME COUNCIL ENV-2021-WLG-23 Appellants
AND	MANAWATŪ-WHANGANUI REGIONAL COUNCIL Respondent

**STATEMENT OF EVIDENCE OF CHRISTINE FOSTER
ON BEHALF OF THE MANAWATŪ-WHANGANUI REGIONAL COUNCIL**

PLANNING

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Cooper Rapley Lawyers
227-231 Broadway Avenue
PO Box 1945
Palmerston North
DX PP80001

S Johnston / A J R Sinclair
 06 353 5210
 06 356 4345
sjohnston@crlaw.co.nz

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A. INTRODUCTION

- [1] My full name is Christine Anne Foster. I am a planning consultant and sole director of CF Consulting Services Limited, based in Wellington. I hold a Bachelor of Regional Planning and have worked as a resource management planner in New Zealand for over 40 years.
- [2] My planning experience has included drafting and implementing resource management plan provisions, the compilation of resource consent applications, assessment of the environmental effects of a variety of projects, and community consultation. That experience has been gained in a number of roles including as a staff planner for local authorities, policy analyst with the Ministry for the Environment and, since 1992, as a consultant planner working on contract for a variety of clients including regional councils, unitary authorities, territorial authorities and sector interest groups. I have assisted local authorities with the preparation of district and regional plans under the Resource Management Act 1991 (the **Act** or the **RMA**) and with plan changes and variations.
- [3] I am a qualified RMA decision-maker (with chairperson endorsement) under the 'Making Good Decisions' programme. I have heard and determined a number of proposed plan changes and numerous applications for consent, including applications involving discharges to land and water in the Manawatū-Whanganui Region.
- [4] As a result of the plan preparation and decision-maker work described above, I am broadly familiar with the framework of the Act relating to the functions of regional councils and the control and management of land use and associated discharges to land and water. I also have an understanding of the New Zealand Coastal Policy Statement 2010 (**NZCPS**), National Policy Statement for Freshwater Management 2020 (**NPS-FM**) and regulations introduced as part of the Government's 'Essential Freshwater' package to control and manage the impact of land use on freshwater receiving environments.

Involvement in Plan Change 2

- [5] I have been asked by Manawatū-Whanganui Regional Council (the **Council** or **Horizons**) to prepare evidence for these proceedings.
- [6] I have been involved in Proposed Plan Change 2 (**PC2**) to the Manawatū-Whanganui One Plan (**One Plan**) since late 2020. I prepared the s. 42A report on submissions on PC2 for the Council-level hearing, assisted by Ms Lynette Baish and Ms Melanie McCormick (both Council staff planners at the time who have since left the Council). I had not been involved in the drafting of PC2 or the preparation of the s. 32 report on PC2. These drafting tasks and the pre-notification engagement on PC2 were undertaken by Council officers who have subsequently left the Council.
- [7] In preparation for the Council-level hearing, I assisted the Council in preparing for and attending pre-hearing meetings to facilitate exchange of views between submitters and Council's technical experts on the issues arising in submissions. Having heard the discussions with and between submitters at pre-hearing meetings, I concluded that the publicly notified wording of PC2 would need refinement to achieve its stated purpose. I also attended expert conferencing with the planning experts prior to the Council level hearing on 29 July 2020 and 20 August 2020.
- [8] In my evidence to the Hearing Panel, I proposed numerous amendments to address matters raised in submissions, informed by the pre-hearing discussions and expert conferencing outcomes. I also participated in further discussions with submitters before and at the Council-level hearing about the wording of those suggested amendments, and further refined them before finalising those in supplementary evidence to the Hearing Panel.
- [9] Since the lodgement of appeals on the PC2 decision, I have been working with the Council's technical experts, policy and legal teams to attempt to resolve appellants' concerns about the decisions version of PC2 (**DV-PC2**). I have participated in meetings between Council's staff and the appellants and in expert conferencing of technical experts for the parties (including joint planning and technical expert conferencing).

- [10] I also attended the Court-facilitated mediation meetings held on 12 December 2022 and 15 March 2023.
- [11] I am also currently assisting the Council's Policy Team with the development of the One Plan Regional Policy Statement and Regional Plan changes to give effect to the NPS-FM. This project is referred to as 'Oranga Wai'. This work includes consideration of the values held for freshwater and the impact of land use on the freshwater resources of the Manawatū-Whanganui Region.
- [12] I recently prepared planning evidence in support of Beef+Lamb New Zealand's appeal and s. 274 notices on proposed Plan Change 1 (**PC1**) to the Waikato Regional Council Regional Plan¹. PC1 proposes objectives, policies and methods for managing the diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens from agricultural land use in the Waikato and Waipā River catchments. PC1 addresses similar issues but in a fundamentally different plan structure to PC2, with a different breadth of farming activities regulated, and within a different catchment context.
- [13] After evidence exchange and, recently in the course of the PC1 Court hearing, Beef+Lamb NZ joined with Federated Farmers NZ in presenting a joint case. This came about partly due to the forced absence of Beef+Lamb NZ's lead counsel due to the bereavement of a close family member. I acknowledge that Federated Farmers NZ is a party to these PC2 proceedings.

B. CODE OF CONDUCT

- [14] I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. This statement of evidence has been prepared in accordance with that Code. I confirm that I have not omitted to consider material facts that might alter or detract from the opinions that I express. This statement of evidence is within my area of expertise as a resource management planner, except where I state I am relying on the opinion or evidence of other witnesses. I understand it is my duty to assist the Court impartially on relevant matters

within my area of expertise. I am authorised by the Council to present this statement of evidence.

C. EXECUTIVE SUMMARY

[15] The key conclusions of my evidence are:

- (a) The One Plan intends that 'intensive farming land use activities' will be regulated to maintain the nitrogen losses from those activities at or below limits specified in Chapter 14. The One Plan manages both existing and new intensive farming land use (**IFLU**) activities through provisions in Chapter 14. The nitrogen (or **N**) leaching limits are specified as cumulative nitrogen leaching maximum rates (**CNLM**) expressed as kgN/ha/year) in Table 14.2.
- (b) For existing IFLU activities, the Chapter 14 provisions apply only in 29 'targeted water management sub-zones', being a subset of all of the water management sub-zones in the Region. The targeted water management sub-zones were identified on the basis of being degraded, including by reason of diffuse discharges from IFLU.
- (c) The One Plan intends that existing IFLU activities that do not comply with the Table 14.2 CNLM would be able to apply for resource consent (as a restricted discretionary activity) to exceed the CNLM. The plan framework has prevented this from occurring as originally intended due to two related issues:
 - (i) Firstly, Table 14.2 was based on a version of Overseer® that has now been superseded. Successive Overseer® version changes since 2007 when Table 14.2 was developed have changed the way N leaching is calculated, with the result that N leaching rate is generally substantially higher even where there has been no change in farm inputs or on-farm practices and no increase in actual N leaching from the farm. This means that compliance with Table 14.2 is no longer achievable on most farms using good management practices.

- (ii) Secondly, the Council's experience of implementing the Chapter 14 provisions, including Court decisions, and independent advice has identified a policy obstacle to granting consent for restricted discretionary activity applications that exceed the Table 14.2 CNLMs. In summary, the discretionary matters specified in the relevant rule (Rule 14-3) include the relevant Chapter 14 policies. One of those policies (Policy 14-5) explicitly requires that existing IFLU activities must comply with Table 14.2, except in two narrow circumstances. Those circumstances are not available to many existing intensive farming land uses in the targeted water management sub-zones.
 - (iii) The Overseer® version changes, making it more difficult to comply with Table 14.2 and the policy 'catch 22' requiring compliance with Table 14.2, together, mean there is no longer a workable consent pathway as originally intended.
- [16] PC2 proposed a suite of amendments to overcome both of these issues: updated Table 14.2 values using the most recent version of Overseer®; a 'reference file' method to ensure Table 14.2 remains relevant in the event of future Overseer® changes; and changes to the Chapter 14 policies to create a workable consent pathway.
- [17] The Independent Hearing Panel (**Hearing Panel**) recommended substantive additional amendments to create more certainty of requirements in the rule and policy framework. These included additional controlled activity pathways for existing pastoral and commercial vegetable growing (**CVG**) activities. These new controlled activity pathways require specified reductions in N leaching (20% pastoral and 35% for CVG and an alternative of reduction to below the 75th percentile for dairy farming). The pathways were alternatives to the CNLM limits in Table 14.2. In addition, DV-PC2 confirms a discretionary activity status where the limits in Chapter 14 are not met, with additional policy requirements

to reinforce environmental outcomes. I supported these changes at the Council level hearing.

- [18] Following a report by the Parliamentary Commissioner for the Environment in 2018 on the use of Overseer® in regulation, the Government commissioned a Science Advisory Panel to review the utility of Overseer® as a regulatory tool. The Panel identified several reasons why Overseer® is ill-suited as a regulatory tool (a task it was not designed for). In response, the Government recommended further work on the Overseer® tool (which is underway) and has commissioned work on alternative risk assessment tools. Ministry advice remains that Overseer® should not be used to define an absolute N leaching limit and that additional assessment tools should be used by regional councils. All of the consent pathways for existing IFLU in Chapter 14 currently rely on Overseer® and require the achievement of absolute N leaching limits.
- [19] The Chapter 14 provisions are, therefore, again not able to be implemented, but for a new and challenging reason. Following the Government's response to the Science Advisory Panel's report, the Council worked with appellants and section 274 parties to explore whether an alternative assessment tool could be developed for use in the PC2 rule framework. The expert farm system advisors developed bespoke nitrogen risk assessment tools for pastoral farming and CVG which are tailored to the particular soil and rainfall circumstances of the targeted water management sub-zones.
- [20] The alternative risk assessment tools will ensure the PC2 framework provides a workable consenting pathway, consistent with the objective of the plan change. Further amendments have also been made to the PC2 policy framework to support the risk assessment approach and to respond to the issues raised in the appeals. Collectively, it is my view that the provisions will restore the policy outcomes intended by the One Plan for existing IFLU activities.

[21] I consider the package of further policy amendments, and the proposed risk assessment tools and associated rules will better meet the purpose of PC2 than the available alternatives. As a result of my evaluation, I am satisfied that PC2 will enable the Chapter 14 provisions to be able to be implemented and will give effect to the relevant higher order policy documents (including the NPS-FM and the NZCPS) and to the relevant One Plan objectives. I have evaluated the proposed amended PC2 provisions in terms of s. 32AA and by comparison with the reasonably practicable alternative options. My conclusion is that the proposed amended DV-PC2 provisions represent the most appropriate way to achieve the sustainable management purpose of the Act, the objective of the NPS-FM, and the relevant objectives of the NZCPS and the One Plan. They will also be consistent with the relevant policies of the NPS-FM.

D. SCOPE OF EVIDENCE

[22] In this statement of evidence, I set out:

- (a) An overview of the One Plan framework for managing diffuse discharges of nitrogen from intensive agricultural and horticultural land use, including the basis for the 'cumulative nitrogen leaching maximums' in Table 14.2 and the relevant Chapter 14 rules;
- (b) A summary of the reasons why the Council promulgated PC2;
- (c) The key features of PC2;
- (d) A summary of the pre-notification engagement with tangata whenua and the community;
- (e) An overview of the issues raised in submissions, along with a summary of the pre-hearing meetings and expert conferencing;
- (f) The changes made in the DV-PC2 (compared to the publicly notified PC2);
- (g) The matters at issue in the appeals;

- (h) The challenges created by the Government's Science Advisory Panel's report on the use of Overseer® in regulation and the response developed as part of expert conferencing since June 2022;
- (i) An explanation of how the proposed amended rules and the pastoral and CVG risk assessment tools are intended to be used within the PC2 framework;
- (j) The proposed amendments to DV-PC2 policies;
- (k) Water quality impacts;
- (l) The Council's intentions for implementation of PC2;
- (m) How the Council's proposed amendments respond to the appeals;
- (n) The relevant statutory framework;
- (o) The relevant considerations for the purposes of s. 32AA of the Act and a s. 32AA evaluation of the recommended revised DV-PC2 provisions; and
- (p) My conclusion, based on that s. 32AA evaluation.

[23] In preparing this evidence (and when addressing the matters set out above) I have had regard to the statutory considerations which apply to the DV-PC2.

E. ONE PLAN OVERVIEW

[24] The One Plan is the consolidated Regional Policy Statement (**RPS**), Regional Plan, and Coastal Plan for the Region. The One Plan was notified in 2007 and became fully operative on 19 December 2014. It combined seven first generation regional plans into a single regional policy statement and regional plan for the Region.

[25] The One Plan sets out the strategic direction, and methods, for the regulatory management of, the use and development of natural and physical resources in the Region. I include as **Attachment A** the table of contents from the One Plan, which indicates the scope and structure of the document.

[26] Central to the policy framework of the One Plan is the identification of four keystone issues for the Region. These are referred to as ‘the Big Four’ and are identified in One Plan Chapter 1 (‘Setting the Scene’). They are:

- (a) Surface water quality degradation;
- (b) Increasing water demand;
- (c) Unsustainable hill country land use; and
- (d) Threatened indigenous biological diversity.

[27] The discussion of these ‘Big Four’ issues² sets out the Council’s intended approach to respond to these issues. For the surface water quality degradation issue, the proposed approach is stated as:

Proposed Approach:

Set water quality targets for ecosystem, recreational, cultural and water-use values identified for catchment Water Management Sub-zones*. Identify Water Management Sub-zones* most affected by nutrient enrichment and/or bacterial contamination. Use a mixture of persuasion, advice and rules to manage agricultural run-off in these Water Management Sub-zones*.

Look For:

Objectives, policies and methods that address this keystone issue in Chapter 5 and rules in Chapter 14.

[28] Part of the proposed approach is to identify water management sub-zones that are most affected by nutrient enrichment and/or bacterial contamination and to use a mix of methods to manage agricultural run-off in those sub-zones. These ‘most affected’ water management sub-zones are identified in Table 14.1 (Chapter 14). They are called ‘*targeted water management sub-zones*’. There are 29 such targeted water management sub-zones located in Manawatū River, Lake Horowhenua, Coastal lakes and

² Chapter 1, One Plan, pages 1-2 and 1-3.

lower (coastal) Rangitikei River catchments. This being a subset of the 124 water management sub-zones in the Region, illustrated in Figure 1 below:

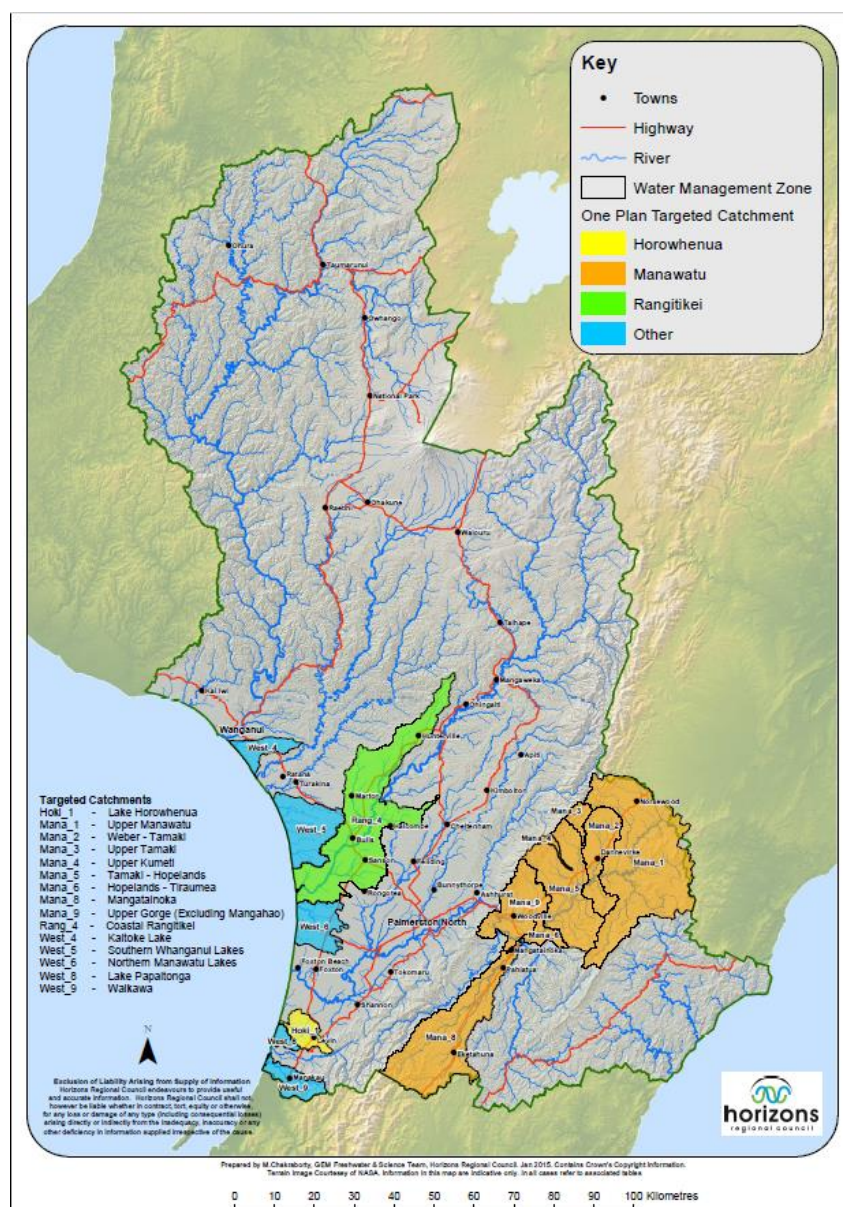


Figure 1: Targeted Water Management Sub-Zones

- [29] Chapter 5 of the One Plan is part of the RPS and addresses water quality. Chapter 14 is part of the Regional Plan and addresses discharges to land and water.
- [30] Issue 5-1, within Chapter 5 attributes the decline in water quality, principally, to:

- (a) nutrient enrichment caused by run-off and leaching from agricultural land, discharges of treated wastewater, and septic tanks;
- (b) high turbidity and sediment loads caused by land erosion, river channel erosion, run-off from agricultural land and discharges of stormwater; and
- (c) pathogens from agricultural run-off, urban run-off, discharges of sewage, direct stock access to water bodies and their beds and discharges of agricultural and industrial waste.

[31] Responding to these issues, RPS Objective 5-2 for water quality is, broadly, that:

- (a) surface water and groundwater quality is to be enhanced where it is degraded and;
- (b) otherwise, water quality is to be maintained; and
- (c) accelerated eutrophication and sedimentation of lakes is to be prevented or minimised.

[32] The One Plan's strategies, to achieve Objective 5-2, are set out in Policies 5-2 to 5-6. Policies 5-2 to 5-5 require that surface water quality is enhanced where the water quality targets specified in Schedule E are not met or maintained where targets are met. Policy 5-6 requires that groundwater quality be maintained or, where degraded, is enhanced.

[33] Policies 5-7 and 5-8 are RPS policies which establish a framework for managing land use activities that have the potential to affect groundwater and surface water quality. Policy 5-7 sets out the Council's intention to identify the targeted water management sub-zones identified above, to identify 'intensive farming land use activities', and to actively manage those IFLU activities in the manner specified in Policy 5-8.

F. ONE PLAN MANAGEMENT OF INTENSIVE FARMING LAND USE ACTIVITIES

[34] The One Plan does not regulate the diffuse discharge of N from all farming activities. It focuses on IFLU. The One Plan approach to managing IFLU activities has a degree of complexity. I summarise the key elements of the approach below.

[35] IFLU activities are defined in Policy 14-5(a) of the Regional Plan as:

- (a) Dairy farming;
- (b) Commercial vegetable growing;
- (c) Cropping; and
- (d) Intensive sheep and beef.

[36] These are all terms defined in the One Plan Glossary and are largely, self-explanatory. I note that the expression 'intensive sheep and beef' is defined as sheep and beef farming on properties greater than 4 hectares where any of the land is irrigated; and 'cropping' is defined as using an area of land in excess of 20 ha to grow crops.

[37] RPS Policy 5-8 sets out the One Plan approach to regulating IFLU activities. It addresses nutrients, faecal contamination and sediment. While the policy intention is that IFLU activities will manage all of these contaminants, nitrogen is the only contaminant the One Plan regulates using limits in the Regional Plan rules. It does this by setting CNLMs in Table 14.2. CNLM is defined as the total kilograms of nitrogen leached per hectare for the total area of a farm (including any land not used for grazing).

[38] The CNLM limits are set at progressively reducing values over a 20 year period, as shown in Table 14.2 reproduced below:

Period (from the year that the rule has legal effect ³⁾)	<i>LUC*</i> I	<i>LUC*</i> II	<i>LUC*</i> III	<i>LUC*</i> IV	<i>LUC*</i> V	<i>LUC*</i> VI	<i>LUC*</i> VII	<i>LUC*</i> VIII
Year 1	30	27	24	18	16	15	8	2
Year 5	27	25	21	16	13	10	6	2
Year 10	26	22	19	14	13	10	6	2
Year 20	25	21	18	13	12	10	6	2

Table 14.2 Cumulative nitrogen leaching maximum* by Land Use Capability Class*

- [39] The approach reflected in Table 14.2 is that diffuse discharges of N from IFLU will be progressively reduced over time, and contribute progressively over time to achieving water quality improvement.
- [40] However, the One Plan does not intend that the reversal of water quality degradation is to be achieved solely by managing IFLU activities. Table 14.2 was to be implemented, together with the One Plan's other regulatory and non-regulatory interventions. There are policies and rules in the Regional Plan managing other land use activities (including other farming activities) and point source discharges. In addition, the Council has been funding a Sustainable Land Use Initiative (**SLUI**) to reduce sedimentation from hill country farming activities.

[41] RPS Policy 5-8 sets out the regulatory intention for managing nitrogen, which distinguishes between the targeted water management sub-zones and the rest of the region:

- (a) In the targeted water management sub-zones only, all *existing* IFLU activities must meet the Table 14.2 CNLMs; and
- (b) Throughout the region (including in the targeted WMSZ), *only new* IFLU activities must meet the Table 14.2 CNLMs (existing IFLU activities outside the targeted WMSZs are not regulated).

[42] The expressions ‘existing’ and ‘new’ IFLU activities are defined in Policy 14-5(b). The definition is not completely straightforward. It requires reference to footnotes and Table 14.1 elsewhere in Chapter 14. In summary:

- (a) Dairy farming is considered to be ‘existing’ if it was established before August 2010 and ‘new’ if established after August 2010.
- (b) CVG, cropping and intensive sheep and beef farming are considered to be ‘existing’ if they were established before May 2013 and ‘new’ if established after May 2013.

[43] For present purposes, it is relevant to note that the PC2 policies and rules addresses only *existing* (not new) IFLU activities. For completeness, I note that the updated CNLM in Table 14.2 apply to both existing and new IFLU activities. However, the NES regulations limiting intensification of pastoral farming (which apply separately from and in addition to the One Plan) create a more stringent regulatory requirement for such farming intensification, effectively overriding Table 14.2.

G. THE BASIS FOR THE TABLE 14.2 CNLM

[44] The One Plan’s policy framework for managing diffuse nutrient leaching is based on the ‘natural capital’ of the land. Ms Patterson, for the Council, explains in detail in her statement of evidence the background to this in the development of the One Plan and the definition of the CNLM in Table 14.2.

- [45] The CNLMs in Table 14.2 were based on the land use capability (LUC) classification of land in the targeted water management sub-zones. The CNLMs were estimated based on the assumptions inherent in the LUC classification about the productive potential of different land classes and the inherent drainage properties of that land (these influence the extent of N leaching from the root zone of pasture). Ms Patterson describes in evidence how CNLM calculations were based on the potential stocking rate that could be sustained by a well-managed North Island legume based pasture sward under pastoral (dairying or sheep/beef) production. The potential livestock carrying capacities were transformed to pasture production and modelled in Overseer® to estimate N leaching losses under pastoral use.
- [46] As I understand it, Overseer® is a predictive model that estimates the likely loss of N from a given farm system on a given land type. In other words, the model estimates likely intensity of diffuse N leaching from a range of pastoral farming systems. Overseer® outputs are expressed as modelled estimates of kilograms of N per hectare per year ('kgN/ha/yr'). The CNLMs are also expressed as estimated maximum kgN/ha/yr.
- [47] A modelled approach was adopted within the One Plan because there was, and is currently, no practicable way of measuring diffuse N leaching loss from individual farms. In this way, Overseer® was used to estimate the intensity of diffuse N leaching below the root zone. In turn, Table 14.2 sets limits on the intensity of diffuse N leaching below the root zone from IFLU activities.
- [48] Although the Table 14.2 CNLMs are based on pastoral farming parameters, the Table 14.2 CNLMs also apply to cropping and CVG.
- [49] I understand that the 'natural capital' approach is not universally accepted (this was reflected in opposition to the approach in with the original One Plan and again, in submissions on PC2). Applying the 'natural capital' approach, the highest nitrogen losses occur from the most productive LUC classes (and these are the LUC classes typically farmed more intensively). For present purposes, PC2 does not change this fundamental approach of the One Plan and the 'natural capital' approach is not challenged in appeals.

H. INTENSIVE FARMING LAND USE RULES

- [50] Rule 14-1 provides a controlled activity pathway for existing IFLU activities that have estimated nitrogen leaching loss no greater than the Table 14.2 CNLMs. Rule 14-2 provides a restricted discretionary activity pathway for existing IFLU activities that exceed the Table 14.2 CNLMs or which fail to comply with other Rule 14-1 standards.
- [51] At the time the One Plan became operative, it was expected that compliance with the Table 14.2 CNLMs would be achievable on most farms using good management practices (**GMP**). The GMPs to achieve the reductions in N leaching necessary to demonstrate compliance with Table 14.2 were required to be detailed in a 'nutrient management plan'.
- [52] For completeness, I summarise below the One Plan rules for existing and new IFLU activities.

Rule 14-1	Existing IFLU activities that meet the Table 14.2 CNLM limits	Controlled Activity
	In the targeted water management sub-zones only	(subject to conditions)
Rule 14-2	Existing IFLU activities that exceed the Table 14.2 CNLM limits or fail to comply with conditions	Restricted Discretionary Activity
	In the targeted water management sub-zones only)	
Rule 14-3	New IFLU activities that meet the Table 14.2 CNLM limits (subject to conditions)	Controlled Activity
	Anywhere in the region	(subject to conditions)
Rule 14-4	New IFLU activities that exceed the Table 14.2 limits or fail to comply with conditions	Restricted Discretionary Activity
	Anywhere in the region	

I. REASONS WHY PC2 WAS PROPOSED

[53] Two issues, that have arisen after the One Plan was made operative, caused the Council to revisit the One Plan provisions for IFLU activities:

- (a) Successive versions of Overseer® were introduced, following the operative date, that generated higher estimates for N leaching loss (even though actual N leaching loss from farming activities had not changed); and
- (b) It became apparent that there is a policy obstacle to granting consent for IFLU activities that exceed the Table 14.2 CNLMs.

[54] The second issue compounded the first. That is, because farmers' Overseer® estimates of N leaching loss appeared to be higher than previously (even when not in real terms) less activities fell within the controlled activity pathway. Therefore, Rule 14-2 was triggered by more IFLU activities but a consent pathway was not readily available under the rule.

Overseer® Version Changes

[55] Dr Hanly provides an explanation in his statement of evidence of the impact of the Overseer® version upgrades. I do not seek to duplicate his comprehensive explanation but will summarise here my layperson's understanding of the issue.

[56] As I understand it, adjustments to the variables in the Overseer® model can adjust the predicted nitrogen loss output, even where no change has actually occurred on the ground for the farm system. The CNLMs in Table 14.2 were based on Overseer® version 5.2.6. Overseer® has been upgraded several times since Table 14.2 was prepared for the One Plan. A 2014 upgrade made a significant change to Overseer®, including changes to the default settings which meant that the estimated N leaching losses from the root zone of a range of dairy farming systems increased by between 32.5% and 66%, even without any change in the farm system itself. This means that, applying more recent versions of Overseer®, the N leaching loss for individual activities is estimated has become out of step with that used for Table 14.2.

- [57] As the CNLM limits set in Table 14.2 had not been re-calibrated Overseer® since the One Plan was introduced, very few existing IFLU activities are able to meet the Table 14.2 CNLM limits when calculating their N leaching loss using the more recent Overseer® version. This meant that over time the Table 14.2 CNLMs were no longer achievable on most farms using GMP, as the One Plan policy framework intends.⁴
- [58] The Council determined that the Table 14.2 CNLMs should be recalibrated to reflect the more recent version of Overseer® (which, at the time of preparing PC2, was version 6.2.3). Dr Hanly describes, in his evidence, further changes that have been made to Overseer® since version 6.2.3 (version 6.5.2) and the impact of those changes on the Table 14.2 CNLMs.⁵ The time lag since the PC2 decision was released means the PC2 recalibrated Table 14.2 CNLMs are no longer current. Future updates to Overseer® during the life of PC2 were contemplated at the Council-level hearing, as I discuss below.

Policy Obstacle

- [59] Issues with implementation of Chapter 14 of the One Plan were heard in declaration proceedings before the Environment Court in 2017.⁶ Wellington Fish and Game Council (**Fish and Game**) sought a declaration challenging the way in which the Council was applying the One Plan provisions when processing resource consent applications for intensive farming land use activities. The Court's decision identified flaws in the Council's approach and clarified the requirements to be applied to consents under Chapter 14 rules.
- [60] Following the Court's decision on the declaration, a report on the effectiveness and efficiency of the One Plan⁷ highlighted the same issue. The Council also sought independent advice on some of the implementation

⁴ Policy 5-8 (a)(i)(D).

⁵ Statement of Evidence, Dr Hanly, 6 October 2023, at [22]-[26].

⁶ *Wellington Fish and Game Council v Manawātū-Whanganui Regional Council* [2017] NZEnvC 37.

⁷ Hill Young Cooper, Manawatu-Whanganui Regional Council One Plan Section 35 Report: Intensive Farming, (July 2016), at 4.8.

issues that had been highlighted by the declaration decision.⁸ The advice confirmed difficulties with the Rule 14.2 consent pathway.

- [61] Independent planning and legal advice commissioned by the Ministry for the Environment in 2019 reiterated the issues with the One Plan policy framework.⁹ In particular, the independent MfE advice noted:¹⁰

Overall, while the rule regime implies opportunity for discretion, the policy regime of the Regional Plan does not appear to anticipate that applications can be granted where they do not “comply” with the nitrogen leaching maximums set in Table 14.2, irrespective of the potential environmental outcomes of such a proposal.

- [62] The issues were further highlighted in an Environment Court decision on an application for municipal wastewater to farmland which involved intensive farming (irrigation of farming activity with treated municipal wastewater)¹¹.
- [63] In summary, the issues arise from Rule 14-2 contemplating a restricted discretionary activity consent pathway for existing IFLU activities that exceed the Table 14.2 CNLMs, while the relevant One Plan policies are highly directive in requiring that the Table 14.2 limits must not be exceeded.
- [64] Chapter 14 does provide, in Policies 14-5 and 14-6, for exceedances of the Table 14.2 CNLMs in specified limited circumstances. However, RPS Policy 5-8 (a) (ii) explicitly requires that existing IFLU activities in the targeted water management sub-zones must achieve the CNLMs in Table 14.2. The relevant policies are set out below, with commentary on why, in my view, the intended restricted discretionary activity pathway is not actually available to potential applicants.

⁸ Enfocus and Van Voorthuyson Environmental Limited.

⁹ Kirman and Linzey (2018) Independent Planning and Legal Advice on the Manawatū-Whanganui Regional Council One Plan – Consenting Pathways for Dairy and Horticulture Activities

¹⁰ Kirman and Linzey (2018) Independent Planning and Legal Advice on the Manawatū-Whanganui Regional Council One Plan – Consenting Pathways for Dairy and Horticulture Activities, page 2.

¹¹ *Horowhenua District Council v Manawatū-Whanganui Regional Council* [2018] NZEnv 163.

Policy 5-8: Regulation of intensive farming land[^] use activities affecting groundwater and surface water[^] quality

(a) Nutrients

- i. Nitrogen leaching maximums must be established in the regional plan which:
- In clause (i), these are the CNLMs in Table 14.2.*

(A) take into account all the non-point sources of nitrogen in the catchment

(B) will achieve the strategies for surface water[^] quality set out in Policies 5-2, 5-3, 5-4 and 5-5, and the strategy for groundwater quality in Policy 5-6

In clause (B), 'will achieve' suggests that changes in farming practice by IFLU activities will, alone, achieve the water quality strategies. This this is not the case and was not the One Plan intention.

(C) recognise the productive capability of land[^] in the Water Management Sub-zone*

(D) are achievable on most farms using good management practices

(E) provide for appropriate timeframes for achievement where large changes to management practices or high levels of investment are required to achieve the nitrogen leaching maximums.

- ii. Existing intensive farming land[^] use activities must be regulated in targeted Water Management Sub-zones* to achieve the
- Policy 5-8 (a) (ii) is highly directive: existing IFLU activities must achieve the CNLMs in Table 14.2 (no exceptions are contemplated)*

nitrogen leaching maximums specified in (i)	Policy 14-5: Management of intensive farming land^ uses In order to give effect to Policy 5-7 and Policy 5-8, intensive farming land^ use activities affecting groundwater and surface water^ quality must be managed in the following manner: ... (d) Existing intensive farming land^ uses regulated in accordance with (b)(i) must be managed to ensure that the leaching of nitrogen from those land^ uses does not exceed the cumulative nitrogen leaching maximum* values for each year contained in Table 14.2, unless the circumstances in Policy 14-6 apply. <i>Policy 14-5 (d) is highly directive: the only exceptions provided for are those in 14-6 (b) (i)</i>
Policy 14-6: Resource consent decision-making for intensive farming land^ uses When making decisions on resource consent^ applications, and setting consent conditions^, for intensive farming land^ uses the Regional Council must: (a) Ensure the nitrogen leaching from the land is managed in accordance with Policy 14-5. (b) An exception may be made to (a) for existing intensive farming land^ uses in the following circumstances: (i) where the existing intensive farming land^ use occurs on land that has 50% or higher of LUC <i>The exceptions in clause (b) (i) and (ii) are highly confined circumstances (Professor Horne</i>	

Classes IV to VIII and has an average annual rainfall of 1500 mm or greater; or	<i>described them in his evidence to the Council-level hearing as nearly impossible)</i>
(ii) where the existing intensive farming land [^] use cannot meet year 1 cumulative nitrogen leaching maximums* in year 1, they shall be managed through conditions on their resource consent to ensure year 1 cumulative nitrogen leaching maximums* are met within 4 years.	<i>Year-1 (as defined in Table 14.2) has now passed. This exception is no longer available.</i>

[65] The One Plan policies were developed long before the determination of cases such as *King Salmon*¹² and *RJ Davidson*.¹³ Where planning documents have been prepared in accordance with Part 2 of the RMA and contain a coherent set of policies designed to achieve clear environmental outcomes, these cases confirmed that the proper approach is to ‘implement’ those policies in the terms expressed by the policy framework, without reference to the overall judgement provided for by section 5 of the RMA.

[66] In recognition of the issues with the One Plan’s nutrient management rules, the Council commenced work on a plan change which would enable it to administer and enforce the One Plan nutrient management framework as intended. At the same time, the Council was preparing to respond to the (then 2014) NPS-FM, with its “Our Freshwater Futures” programme. In this context, PC2 was not intended to give full effect to the NPS-FM 2014. PC2 was intended as an interim initiative, to address a very narrow issue for existing IFLU activities, for the duration until public notification of a more

¹² *Environmental Defence Society Incorporated v the New Zealand King Salmon Company Limited* [2014] NZSC 38.

¹³ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

comprehensive plan change to give effect to the NPS-FM. These issues are explained in more detail in the s. 32 report that accompanied PC2.¹⁴

- [67] Since the Environment Court declaration proceedings, there has been a lack of confidence in the workability of the One Plan consenting framework for existing IFLU activities. Although many existing IFLU activities did obtain consents to continue operating, prior to 2017, many have not. The Council estimates that there are approximately 235 existing IFLU activities operating without the necessary consents in the targeted water management sub-zones. These are summarised in the following Table 1:

Table 1: Estimated Numbers of Existing IFLU Activities Operating Without Consent:	
Type of IFLU Activity:	Estimated Numbers:
Dairy	167
Commercial Vegetable Growing	48
Cropping	15
Irrigated Sheep and Beef	5
Total	235

- [82] There is a greater degree of confidence held over the number of unconsented dairy farming activities because the Council had access to Dairy New Zealand's records of dairy farms. The evidence on behalf of Dairy NZ to the Council level hearing estimated there were (at that time) 166

¹⁴ Section 32 Evaluation of Proposed Plan Change 2, July 2019, pages 16 – 27.

unconsented dairy farms in the targeted water management sub-zones.¹⁵

There was strong agreement about the number of unconsented dairy farms.

- [83] There is no equivalent consolidated data set for CVG operations or cropping. The evidence of Ms Michelle Sands (for Horticulture NZ) to the Council level hearing referred to 60 growers certified with NZGAP. Further, some cropping is undertaken as part of wider dairy or dry stock operations.

J. PRE-NOTIFICATION CONSULTATION

- [84] Following the Environment Court's declaration decision (March 2017), the Council undertook evaluations and (as I have described above) received independent planning and legal advice on the identified issues and how to address them.
- [85] At the outset, and prior to December 2018, PC2 was focused solely on recalibrating the Table 14.2 CNLMs to the (then) current version of Overseer®. PC2 was prioritised ahead of wider and more substantive changes because it was seen as being an urgent, and essentially administrative, update to the One Plan. At the time, PC2 was viewed as the most practicable pathway to enable the continued implementation of the controlled activity rules (14-1 and 14-3) for existing IFLU activities pending resolution of the NPS-FM plan.
- [86] A streamlined process was considered to be proportionate to the scale and complexity of the proposal. Its purpose – correcting an unintended consequence within Table 14.2 associated with Overseer® version updates – appeared to Council officers to meet the criteria set out in s 80C(2)(d) of the Act. However, engagement with MfE officials indicated that the application would not be successful and the initiative was abandoned.
- [87] In developing PC2, Council staff initiated discussions with tangata whenua and primary production sector and community representatives. These were

¹⁵ Table 1, page 7, of the statement of evidence of Adam Duker on behalf of Federated Farmers NZ and Dairy NZ. The Hearing Panel identifies that the difference of 1 farm, between the Council and Dairy NZ related to an error in the number of farms counted in evidence for Dairy NZ.

described in detail in the evidence of Dr Nic Peet¹⁶ to the Hearing Panel and is summarised in the statement of evidence of Elizabeth Daly (the Council's Group Manager, Strategy, Regulation & Science).

[88] I understand that consultation with tangata whenua began in August 2018 and was generally arranged to align with relevant iwi and targeted water management sub-zones. A summary of the themes raised by tangata whenua during this engagement was included in the s32 evaluation report.¹⁷

[89] I also understand that consultation with primary production sector representatives and the wider community included workshops and one-on-one meetings with key stakeholders, including MfE, industry bodies, environmental and interest groups, and territorial authorities. The feedback from this engagement was summarised in the s32 evaluation report.¹⁸

[90] The engagement outcomes informed refinements made by the Council to the draft PC2.

[91] The following Table 2 summarises the steps the Council followed:

Table 2: Summary of Work Undertaken and Engagement Prior to PC2 Notification

2017 - June 2018	The Council undertook evaluation of the One Plan intensive farming land use activity provisions, including engagement with iwi, industry, territorial authorities and stakeholders focusing on the experience of implementation of nutrient management provisions and economic impact assessments.
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¹⁶ Dr Peet was the Council's Group Manager, Strategy, Regulation & Science at the time and had overseen the development of PC2 and the pre-notification consultation.

¹⁷ Horizons Regional Council, *Section 32 Evaluation of Proposed Plan Change 2*, (July 2019) pages 69 – 72.

¹⁸ Horizons Regional Council, *Section 32 Evaluation of Proposed Plan Change 2*, (July 2019) pages 73 – 77.

July 2018	The independent s. 35 report ¹⁹ was finalised (it identified constraints in the One Plan that are preventing the intensive farming land use activity provisions from achieving the water quality objectives of the RPS).
August 2018	The Council resolved ²⁰ to proceed towards notification of a plan change to update Table 14.2, and prepare a plan change to provide a realistic consenting pathway for intensive farming land use activities aligned to the RPS. Pre-notification consultation commenced (in accordance with clause 3 Schedule 1 Act).
September 2018	The Council resolved ²¹ to pursue a streamlined planning process and commenced preparation of an application to the Minister for the Environment (the Minister).
September – December 2018	Work progressed on preparation of a draft application to the Minister for streamlined planning process to update Table 14.2. Engagement with iwi authorities, stakeholders and community progressed. Social impact assessment and technical reports were commissioned.
December 2018	The Council received the independent Beca/Ellis Gould planning and legal advice ²² provided to the Minister.

¹⁹ Hill Young Cooper. *Manawatū-Whanganui Regional Council One Plan Section 35 Report: Intensive Farming*. (July 2018).

²⁰ Horizons Regional Council Resolution SP18-96 (28 August 2018).

²¹ Horizons Regional Council Resolution SP18-105 (25 September 2018).

²² *Independent Planning and Legal Advice on the Manawatū-Whanganui Regional Council One Plan – Consenting Pathways for Dairy and Horticulture Activities* (Beca/ Ellis Gould - November 2018).

February 2019	The Council resolved ²³ to move towards notification of a plan change including both an update to Table 14.2 and changes to the policy and regulatory framework for nutrient management to provide a realistic consenting pathway. There was no apparent appetite by MfE for the streamlined planning process and work on this initiative was halted.
February – April 2019	Pre-notification consultation on the revised PC2 approach continued (in accordance with clause 3 Schedule 1 of the Act): with the Minister, iwi authorities, local authorities and key stakeholders. Consultation commenced earlier in December 2018 onwards, with some iwi.
May – June 2019	The Council continued consultation with iwi, the wider community and stakeholders. A stakeholder workshop was held to ‘road test’ draft plan change provisions. This involved two teams with resource management consenting, water quality science and agronomic expertise preparing and evaluating a mock intensive farming land use discretionary activity application. Thirty-two observers attended the workshop representing eight of the 24 iwi, local authorities, government ministries, stakeholders, industry, environmental and community groups invited. Feedback was received from four participants. Consultation with iwi authorities continued, including circulation of a draft set of PC2 provisions (in accordance with clause 4A Schedule 1 and section 34A (1A) of the Act).

²³ Horizons Regional Council Resolution 19-418 (26 February 2019).

- [92] Appendices C and D of the Section 32 Report²⁴ set out the key steps in the Council's consultation with iwi authorities and with stakeholders during the development and drafting of PC2. The chronologies included in those appendices record that the Council engaged with iwi, local authorities in the Region, farming sector groups, environmental and community advocacy organisations, rural landowners, and the Minister and his officials.
- [93] Pursuant to clause 3A of Schedule 1 of the Act, a letter was sent to all local authorities on 28 September 2018, signalling the intention to advance PC2 (at that time involving only a recalibration of the Table 14.2 limits). I understand that a meeting was also held with Horowhenua District Council (**HDC**) representatives on 25 September 2018.
- [94] The record of consultation set out in the evidence of Dr Daly demonstrates that, in addition to formal consultation correspondence:²⁵
- (a) Officers sent follow-up emails to iwi, particularly focusing on those whose rohe includes the One Plan target catchments who are likely most affected by PC2;
 - (b) Officers met with those iwi who requested meetings and received feedback for the purpose of informing the plan change;
 - (c) Officers attended meetings (including making presentations on PC2) with industry bodies, and farmers in Tararua and Rangitikei targeted water management sub-zones; and
 - (d) The Council also made information about PC2 available to the wider community via mainstream and social media, and Horizons' website.

K. PC2 AS PUBLICLY NOTIFIED

- [95] Section 1.2 (the Overview) of the s. 32 report states that:²⁶

²⁴ Horizons Regional Council, *Section 32 Evaluation of Proposed Plan Change 2*, (July 2019).

²⁵ Statement of Evidence, Dr Elizabeth Daly, 6 October 2023, Attachment B.

²⁶ Horizons Regional Council, *Section 32 Evaluation of Proposed Plan Change 2*, (July 2019), p. 8.

The purpose of Plan Change 2 is to address issues with the One Plan provisions for controlling existing intensive farming land use activities. While at a high level the existing approach is still considered appropriate to implement the overall policy direction of the One Plan, some of the provisions are no longer working as intended when the One Plan was introduced. Practically speaking it is no longer the case that the nitrogen leaching maximums identified in Table 14.2 (Chapter 14) of the One Plan are achievable 'on most farms using good management practices' (as anticipated by Policy 5-8), with there being only a very limited pathway (if any) for those activities which exceed Table 14.2 to seek resource consent under the existing provisions.

[96] The purpose of PC2 is further explained later in the s. 32 report as being:²⁷

To improve the workability of the provisions for intensive farming land use by updating the nitrogen leaching maximums and providing a viable consenting pathway for activities that do not comply with them, in order to enable a return to effective regulation of existing intensive farming land uses through the One Plan as soon as practicable.

[97] PC2 expressly sought to address the identified difficulties by:²⁸

- (a) Updating the CNLMs in Table 14.2, to reflect improvements in the nutrient modelling software tool Overseer® (and the recalibration was, at the time, based on version 6.2.3); and
- (b) Reinforcing the implementation of 'good management practices' as part of IFLU activities; and
- (c) Providing a workable consent pathway and policy framework for existing IFLU activities that cannot achieve the Table 14.2 CNLMs limits.

²⁷ Horizons Regional Council, *Section 32 Evaluation of Proposed Plan Change 2*, (July 2019) p 30.

²⁸ Horizons Regional Council, *Section 32 Evaluation of Proposed Plan Change 2*, (July 2019) pages 8 & 9.

[98] The s 32 report notes²⁹ that timeliness was an overarching driver for PC2 because:

- (a) It is important that any changes are made as soon as reasonably practicable, so that existing IFLU activities can be granted consent (or, in some cases, consent is declined) to resolve the current uncertainty (which is already having social and economic impacts in and of itself);
- (b) The changes in farming practice necessary to obtain resource and/or comply with consent conditions will drive water quality improvement in targeted water management sub-zones as intended through the objectives of the One Plan (which are currently being realised with existing intensive farming land use activities); and
- (c) There are both practical difficulties and issues of fairness associated with enforcing the operative provisions, when there is no means to comply with Table 14.2 and no viable consent pathway to exceed it. As such, Horizons is currently focussed instead on addressing the issues with the planning framework. However, there is growing pressure to take enforcement action and it is recognised that unconsented activities should not be allowed to continue indefinitely.

[99] The publicly notified text of PC2 was at attachment A of the s 32 Report.³⁰

[100] PC2 makes no change to the One Plan objectives. The changes proposed are to RPS Policy 5-8, Regional Plan Policies 14-3 14-5 and 14-6, Methods 5-12 and 5-13, Table 14.2 and Rules 14-1 and 14-2. A new Rule 14-2A was inserted to provide a new discretionary activity default pathway for existing IFLU activities that do not meet the specified nitrogen leaching limits. A definition

²⁹ Horizons Regional Council, *Section 32 Evaluation of Proposed Plan Change 2*, (July 2019) p 9.

³⁰ Horizons Regional Council, *Section 32 Evaluation of Proposed Plan Change 2*, July 2019, pages 53 – 67.

of ‘good management practices’ was inserted and the definition of ‘nutrient management plan’ (**NMP**) as set out in the One Plan Glossary, was amended.

[101] In summary, the proposed changes addressed the issues identified earlier in this evidence in the following way:

- (a) RPS Policy 5-8 (a) (i) (B): the directive that the regulation of intensive farming land use activities ‘*will achieve*’ the strategies for surface water in the Chapter 5 policies was deleted.³¹
- (b) RPS Policy 5-8 (a) (i) (I): the recalibration of Table 14.2 meant the CNLMs would be ‘achievable on most farms using good management practices’ as originally intended by Policy 5-8.
- (c) RPS Policy 5-8 (a) (ii): was amended to provide for exceptions from the Table 14.2 CNLMs. The exceptions were set out in new sub-clauses (iia) and (iib). The first exception provided for the implementation of GMP and the second provided for transition to a less intensive (compliant) land use activity.
- (d) New RPS Policy 5-8 (d): to support the new GMP exception, a new clause (d) was added to Policy 5-8 which required all IFLU activities to manage nutrient leaching and contaminant losses using GMP.
- (e) PC2 proposed two new methods: Method 5-12 proposed to support initiatives by the community to develop options for sustainable land use in the Region. Method 5-13 committed the Council to collating and publishing information regarding Overseer® version changes and about alternatives to Overseer®.
- (f) Policy 14-3: was formerly concerned with industry-based standards, and PC2 proposed amendments to focus on GMPs.

³¹ PC2 proposed the deletion of all of the text of sub-clause (B).

- (g) Policy 14-5 (d): the directive statement requiring all existing IFLU to not exceed the Table 14.2 CNLMs was amended to provide for an exception detailed in Policy 14-6 (d).
- (h) Policy 14-6 (b) and (d): the two limited exceptions for existing IFLU were deleted and replaced with the two exceptions described in the new clause of Policy 5-8 9a) (ii) (i.e. by implementing GMPs or by transitioning to a lower intensity activity). Requirements to implement GMPs to manage losses from all IFLU of all contaminants of concern (nutrients, faecal contamination, sediment)) were also added.
- (i) Policy 14-6 (e) and (f): additional policy considerations were inserted for the two new exceptions provided for in Policy 14-6 (d).
- (j) The recalibrated CNLMs in Table 14.2 made Table 14.2 workable for the version of Overseer® (6.2.3) that was current at that time.
- (k) Rule 14-1 (controlled activity for existing IFLU activities that meet the Table 14.2 CNLMs): PC2 deleted the reservation of control over compliance with the Table 14.2 CNLMs and replaced it with a reserved matter controlling GMPs and added reference to Policies 14-5 and 14-6 as reserved matters.
- (l) New Rule 14-2A (discretionary activity): PC2 inserted a new discretionary activity consent pathway for existing IFLU activities that do not meet the Table 14.2 CNLMs (the workable consent pathway to respond to the policy conundrum).
- (m) Rule 14-2 (restricted discretionary activity): PC2 made it clear that Rule 14-2 was available only for existing intensive farming land use activities that fail to comply with any of the other Rule 14-1 rules (i.e. everything other than the condition (c) requirement to comply with Table 14.2) and inserted GMPs as a discretionary matter;

- (n) Glossary: PC2 inserted a definition of ‘good management practice’ and amended the definition of ‘nutrient management plan’ to allow for reliance on nutrient modelling tools other than Overseer®.

[102] PC2 is supported by a large body of evaluation reports and technical reports. The primary data relevant to PC2 was identified by the planners in pre-hearing expert conferencing held 29 July 2020 and is listed in the joint witness statement from that session (**Attachment B**).³² I refer to some of the listed material, where relevant, in this statement of evidence.

L. SUBMISSIONS AND ISSUES RAISED

[103] PC2 was publicly notified on 22 July 2019. 84 submissions were lodged by the closing date of 21 September 2019. Thirty two further submissions were lodged following public notification of a summary of submissions. The submissions and further submissions were lodged by a mix of the Director General of Conservation, six territorial local authorities, iwi and hāpu, environmental non-governmental organisations, farming and grower representatives, individual farmers and growers.³³ See **Attachment C**.

[104] I grouped the matters raised in submissions by theme for the purpose of the s. 42A report and I set them out below, simply to illustrate the breadth of issues and perspectives in contention before the Hearing Panel:

- (a) full or partial support for PC2;
- (b) opposition in principle to PC2 and requests to withdraw PC2;
- (c) support and opposition to PC2, questioning the relationship between the Table 14.2, CNLM limits and ‘in-river’ water quality;
- (d) opposition to PC2 due to concerns about impacts on water quality and the risk that PC2 will not do enough in terms of water quality;
- (e) opposition to PC2 based on concerns that the development of PC2 and the section 32 report have not considered, or adequately

³² Joint Witness Statement of planners dated 29 July 2020.

³³ As summarised in Table 1 on page 13 of the Hearing Panel Decision.

- considered, values of significance to tangata whenua, including concerns about the adequacy of the Schedule 1 pre-notification process of consultation with iwi authorities;
- (f) opposition in principle to the One Plan nutrient management approach and its reliance on 'land use capability' (and suggested alternative approaches proposed by DairyNZ and Federated Farmers which they referred to as the "Dairy 10 pathway");
 - (g) opposition in principle to PC2 on the basis that it does not properly consider the particular requirements of commercial vegetable growing throughout the Region or the benefits of CVG for domestic food supply and requests for a tailored alternative approach for CVG (with suggested alternative approaches proposed by Woodhaven Gardens Ltd, HortNZ and Potatoes NZ);
 - (h) concerns by the Region's territorial authorities that PC2 does not provide for IFLU activities associated with land irrigation of treated municipal wastewater (and Fonterra's concerns as a further submitter that PC2 does not provide for IFLU activities associated with land irrigation of treated industrial wastewater);
 - (i) concerns about consenting uncertainties and cost;
 - (j) concerns about the utility of Overseer®;
 - (k) concerns about the lack of precise definition of GMPs and their efficacy in reducing N leaching;
 - (l) concerns about the requirement for an annual NMP and who should be able to prepare these;
 - (m) concerns about Methods 5-12 and 5-13;
 - (n) concerns about the proposed changes to RPS Policy 5-8;
 - (o) concerns about the proposed changes to Regional Plan Policies 14-3, 14-5 and 14-6;

(p) concerns about the changes proposed by PC2 to the Chapter 14 rules; and

(q) concerns about the values in Table 14.2.

M. PRE-HEARING MEETINGS AND EXPERT CONFERENCING

[105] Council staff held pre-hearing meetings with submitters and their experts, commencing in March 2020. The programme of pre-hearing meetings was interrupted by the COVID-19 pandemic lockdown, but recommenced in June 2020. Six pre-hearing meetings were held between March and June 2020. The pre-hearing meetings canvassed the following issues raised in submissions:

- (a) Implications for wastewater treatment plant discharges to land (involving representatives of territorial authorities and Fonterra);
- (b) Alternative approaches to agriculture (involving representatives of Dairy NZ and Federated Farmers NZ);
- (c) Alternative approaches to horticulture (involving commercial vegetable growers and grower representatives);
- (d) What constitutes 'good management practice' (involving farmers, farmer and grower representatives and iwi representatives and other submitters);
- (e) Consent cost and uncertainty associated with PC2 and alternative consent pathways; and
- (f) Water quality and the water quality implications of PC2.

[106] Separate pre-hearing meetings were also held with iwi submitters. Invitations were extended to all iwi submitters and either in-person hui or zoom hui were held with:

- (a) Ngāti Tamarangi.³⁴
- (b) Jill Sheehy.³⁵
- (c) Ngāti Kahungunu ki Tāmaki-nui-a-Rua.³⁶
- (d) Rangitāne o Tamaki nui a Rua.³⁷
- (e) Rangitāne o Manawatū.³⁸
- (f) Muaūpoko Tribal Authority.³⁹
- (g) Rangitāne o Manawatū.⁴⁰
- (h) Ngā Waihua o Paerangi / Ngāti Rangī.⁴¹

[107] Two pan-iwi pre-hearing meetings were also held (25 June and 24 July 2020) attended by representatives of some iwi, including Ngāti Raukawa and Ngāti Turanga.⁴²

[108] I attended all of pre-hearing meetings 1 to 6 and some of the iwi pre-hearing meetings (by zoom or in person). The pre-hearing meetings were useful in sharing submitters' differing views of the merits and potential effects of PC2. Some broad conceptual agreements were reached about what constitutes 'good management practice' and 'best management practice' (**BMP**), consent implications, farm system modelling and about water quality state and trends. However, no specific agreements were reached about the changes proposed by PC2 or requested by submitters, and parties reserved their positions for the Hearing.

³⁴ 3 March 2020

³⁵ 18 March 2020

³⁶ 19 March 2020

³⁷ 19 March 2020

³⁸ 30 April 2020

³⁹ 15 May 2020

⁴⁰ 6 August 2020

⁴¹ 12 August 2019

⁴² Charlie Hopkins (at that time a planner employed by the Catalyst Group, attended the 25 June 2020 pan-iwi hui, representing Ngāti Raukawa, Ngāti Whakatere and Ngāti Turanga. Lindsay Poutama and Greg Carlyon (Catalyst Group) attended the hui held 24 July 2020 on behalf of Te Rūnanga o Raukawa.

[109] One agreed outcome of the final iwi submitter pre-hearing meeting was that Horizons would host and provide administrative support for an iwi expert conferencing session.

[110] In addition to the pre-hearing meetings, expert conferencing sessions were held on the topics of farming and growing management practices and farm systems modelling;⁴³ farm-scale economics;⁴⁴ water quality;⁴⁵ RMA planning;⁴⁶ regional scale macro-economic;⁴⁷ and iwi experts.⁴⁸

N. HEARING AND PROCEDURAL DETAILS

[111] The Hearing was held over nine days between 12 October and 22 October 2020. The Council had delegated to the Hearing Panel the authority to hear and make recommendations on submissions. The Hearing Panel's recommendations dated March 2021 were considered by the Council on 13 April 2021. The Council's decision, confirming the Hearing Panel's recommendations, was publicly notified on 21 April 2021.

[112] The pre-hearing process (meetings and expert conferencing) had been successful in confining the issues in dispute at the hearing and in achieving strong agreement between many parties (although not the appellants), for example about:

- (a) The interim nature of PC2;
- (b) PC2 not being the forum for debating the merits of the land use capability approach and 'natural capital';
- (c) Unconsented existing intensive farming land use activities being given a limited window of time in which to apply for controlled

⁴³ JWS Farming and Growing Management Practices and Farm Systems Modelling - 21 July 2020, 22 July 2020 and 12 August 2020.

⁴⁴ JWS Farm Scale Economics - 27 July 2020.

⁴⁵ JWS Water Quality - 28 July 2020 and 13 August 2020.

⁴⁶ JWS RMA Planning - 29 July 2020 and 20 August 2020.

⁴⁷ JWS Regional Scale Macro-Economics - 19 August 2020.

⁴⁸ JWS Iwi Experts - 28 August 2020.

activity consents (at that time a 20-month time period expiring 31 December 2022);

- (d) Consents granted under PC2 having limited duration (no more than ten years); and
- (e) Overseer® being the best tool available at that time (even though it was not tailored explicitly for calculating N leaching loss from commercial vegetable growing, it was accepted by growers pragmatically as the best available tool at that time).

[113] After discussing the issues and potential effects with submitters and the Council's experts through the pre-hearing process, I proposed an alternative controlled activity consent pathway where specified N leaching reductions could be achieved. Based on the technical advice of Professor Horne (pastoral) and Dr Jolly (CVG), I ultimately recommended with reference to a s32AA, a 20% reduction for pastoral farming and a 35% reduction for CVG. I also supported the 75th percentile pathway proposed by Dairy NZ and Federated Farmers NZ. All three alternative pathways had the support of their respective sector representatives and were accepted by the Hearing Panel.

[114] My view was that PC2, as publicly notified, did not expressly limit the scale of N leaching that could be authorised under a restricted discretionary activity consent. Further, in my view, there needed to be greater guidance for discretionary activity applications about the extent of N leaching that would be granted resource consent or, conversely, the extent of N leaching reduction that would be required to secure resource consent. My opinion was that the absence of this guidance created uncertainty around outcomes.

O. DECISIONS VERSION PC2

[115] My overview of the Hearing Panel's decision report (the **Decision**) is that it records the Panel's acceptance that:

- (a) PC2 is an interim initiative which cannot give full effect to the NPS-FM;

- (b) PC2 will contribute to improved water quality in and downstream of targeted water management sub-zones (although this improvement will be modest);
- (c) PC2 is not inconsistent with the higher order policy framework;
- (d) Controlled activity is the appropriate 'entry level' consent pathway for existing IFLU activities, provided they demonstrate substantive specified reductions in N leaching loss within a defined period of time;
- (e) Discretionary activity is the appropriate activity status for existing IFLU activities that cannot meet the controlled activity conditions (in particular, that cannot achieve the N leaching loss reductions required);
- (f) A more stringent policy framework is appropriate for discretionary activities, giving greater scrutiny and consideration of Māori cultural values, water quality state and likely impact, and the impacts on coastal lakes;
- (g) Urgency is required – there should be time limits for lodging applications, for achieving N loss reductions and limited consent duration (maximum ten years);
- (h) Differences in the rule framework for CVG are warranted, requiring a greater reduction in N loss (35% for CVG) to acknowledge that there have been reductions in N leaching loss from pastoral land since the One Plan became operative but generally none from CVG;
- (i) In other respects, all forms of existing IFLU activities should be treated the same; and
- (j) To avoid the prospect of Table 14.2 becoming outdated by future version changes, an Overseer® reference file system should be adopted to monitor and account for changes in Overseer®.

- [116] As explained in the evidence of Professor Horne and Dr Jolly (to the Council-level hearing and in these appeals) the percentage reductions were derived by modelling a range of N leaching reduction mitigations across pastoral and CVG systems. The mitigations applied ranged from relatively low-cost management practices that could be implemented quickly through to more costly interventions involving capital investment and longer time to implement. The N leaching modelling applied progressively more stringent (costly) interventions to see what the impact would be on modelled N concentrations in receiving environments in the targeted water management sub-zones.
- [117] As explained in Professor Horne's evidence, his conclusion from analysis was that the implementation of appropriate GMPs and BMP, tailored for the particular circumstances of an individual farm, would achieve reductions in N leaching loss in the range 10% - 20%. Professor Horne supported the 20% threshold as it would have resulted in a significant reduction in the quantities of N leached from the root zone of dairy farms, while allowing farmers to still run profitable businesses.⁴⁹ There was also very little difference in the modelled water quality scenarios – that is Dr Snelder's modelling showed that there was limit on the water quality improvements that could be made with the 235 (approx.) unconsented IFLU.
- [118] It is also relevant to note that the thresholds adopted do not enable all of the unconsented existing IFLU to qualify for the controlled activity consent pathway. It has never been the Council's intention to facilitate a consenting pathway for all existing IFLU activities, regardless of their N leaching profile. DV-PC2 does not facilitate this. Professor Horne and Dr Jolly are of the view that there will always be a proportion of IFLU that will not be able to meet the specified nitrogen reductions and need to apply for (full) discretionary activity consent. DV-PC2 requires substantive reductions in the risk of N leaching loss to qualify for the controlled activity pathway. These reductions can only be achieved by implementing farm management practice changes from a well-understood toolbox of mitigation measures.

⁴⁹ Statement of Evidence, Professor David Horne, 6 October 2023, paragraph [49].

- [119] The key difference between the publicly notified PC2 framework and the DV-PC2 framework is that the required reductions are specified, whereas the outcomes likely from discretionary activity consents are unknown. Assumptions had to be made for modelling purposes. For comparison purposes, the modelling included simulations for 18kgN/ha/year and 9kgN/ha/year. The conclusion of my s. 32AA evaluation at the time was that the greater certainty of N leaching reduction outcome and lesser administrative cost of the controlled activity pathways, with modelled modest water quality improvement, represented a more appropriate way of achieving the One Plan and PC2 objectives than the publicly notified PC2.
- [120] The intention of Policy 5-8 is that the reductions necessary to achieve the Table 14.2 CNLMs should be achievable on most farms using GMPs. There is a lack of clarity in the background material about exactly what ‘most farms’ means – whether that is 60% of farms or 75% of farms or more. However, Professor Horne was able to calibrate the range of interventions imposed in his modelling to those that had been assumed in the development of the original Table 14.2 CNLMs. Thus, the on farm practices relied on for the purpose for PC2 and the alternative pathways were broadly equivalent to the basis that underlay the ‘achievable on most farms’ intention.
- [121] Many submitters were critical of the absence of defined (listed) GMPs in PC2. The relevant farm and CVG experts considered GMPs at their expert conferencing sessions prior to the Council level hearing and included in their joint witness statements agreed lists of GMPs and BMPs. I advanced the notion at the Council level hearing that PC2 should include these lists in the definition of GMP and BMP. However, the Hearing Panel was reluctant to include listed farming and growing practices lest these be interpreted in a narrow way or become outdated over time. DV-PC2 reflects this approach.
- [122] The DV-PC2 adopts the Hearing Panel’s recommendations in full, which made substantive changes to the PC2 provisions. I summarise the key changes below, by comparison with what publicly notified PC2 proposed:⁵⁰

⁵⁰ At paragraph 114.

(a)	RPS Policy 5-8 chapeau:	DV-PC2 inserts reference to all of the strategic water quality improvement policies (Policies 5-3, 5-4, 5-5, 5-6 and 5-7);
(b)	RPS Policy 5-8 (a) (i) (B): the directive that the regulation of intensive farming land use activities ' <i>will achieve</i> ' the strategy for surface water in the Chapter 5 policies is deleted.	The directive 'will achieve' remains deleted but DV-PC2 inserts a directive that N leaching maximums must <i>contribute to</i> implementation of that strategy.
(c)	RPS Policy 5-8 (a) (i) (D): the CNLMs are 'achievable' on most farms using GMPs.	The CNLMs are 'achieved' (i.e. not just theoretically achievable but actually achieved) using GMPs <i>and</i> BMP.
(d)	RPS Policy 5-8 (a) (ii): two exceptions from the Table 14.2 CNLMs were provided for: (iia) relying on GMPs and (iib) for transition to a lower intensity land use activity.	The exceptions are made more rigorous: the clause (iia) exception is required to reduce N leaching loss to the maximum extent reasonably practicable; the clause (iib) exception requires transition within five years and requires no increase in N leaching during that five year period.
(e)	New RPS Policy 5-8 (d): requires all intensive farming land use activities to use GMPs.	DV-PC2 requires all intensive farming land use activities to, as a minimum, <i>implement</i> GMPs.

(f)	New Method 5-12: proposes to support initiatives by the community to develop options for sustainable land use in the Region.	DV-PC2 inserts explicit reference to N loss mitigation options and the inclusion of tangata whenua.
(g)	New Method 5-13: proposes that the Council will collate and publish information on Overseer®.	DV-PC2 inserts the commitment to register and maintain Overseer® files for synthetic farm systems (the Overseer® reference file method of monitoring and accounting for changes in the Overseer® model).
(h)	Regional Plan Policy 14-3: PC2 inserted reference to GMPs.	DV-PC2 also inserts reference to 'additional measures for decreasing N leaching' to the extent those GMPs and measures 'contribute to decreasing contaminant loads in the relevant water management sub-zone'.
(i)	Regional Plan Policy 14-5 (b):	DV-PC2 attempts to clarify the definitions of 'existing' and 'new' intensive farming land use.
(j)	Regional Plan Policy 14-5 (d): the directive statement requiring all intensive farming land uses to not exceed the Table 14.2 CNLMs was amended to provide for an exception detailed in Policy 14-6 (d).	In addition to retaining Table 14.2, DV-PC2 splits the new exception into three exceptions: i. 20% N leaching loss reduction for non-dairy pastoral farming; or ii. Not exceeding the 75th percentile N leaching loss for the relevant water

		management zone for dairy pastoral farming; or iii. 35% N leaching loss reduction for commercial vegetable growing (provided the baseline growing area is not increased); and iv. For exceptions (i) to (iii) the application must be lodged no later than 31 December 2022.
(k)	Regional Plan Policy 14-6 (b): PC2 sought to 'ensure' the implementation of GMPs.	DV-PC2 changed this to 'require' implementation of GMPs 'and additional measures where necessary'.
(l)	Regional Plan Policy 14-6 (c): requiring exclusion of cattle from surface water.	DV-PC2 requires that the effects of any unavoidable losses of N, phosphorus, faecal contamination and sediment <i>must be</i> avoided, remedied or mitigated.
(m)	Regional Plan Policy 14-6 (d): The two limited exceptions for existing intensive farming land uses were deleted and replaced with the two new exceptions.	Acknowledging the provision for exceptions (i.e. not just Table 14.2 CNLMs), DV-PC2 refers to 'parameters' (not just CNLMs) in the opening paragraph; requires that the nutrient management plans that detail GMPs specify timelines and N leaching targets to 'ensure' contaminant losses are 'reduced to the maximum extent reasonably practicable'.

(n)	Regional Plan Policy 14-6 (e) and (f): additional policy considerations were inserted for the two new exceptions provided for in Policy 14-5 (d).	DV-PC2 expands and makes the policy considerations more rigorous.
(o)	Table 14.2: was recalibrated using Overseer® 6.2.3.	DV-PC2 clarifies that the recalibration was based on Overseer® 6.2.3.
(p)		DV-PC2 inserts a new Table 14.2A setting out the 75 th percentile N leaching rates for targeted water management sub-zones to support the new dairy exception described above.
(q)	Rule 14-1 (a): controlled activity for existing intensive farming land use activities	DV-PC2 inserts a new condition to prevent existing intensive farming land use activities that had obtained consents before the publicly notified date of PC2, but with lower N leaching loss limits than might be possible under PC2, from applying under one of the new PC2 exceptions.
(r)	Rule 14-1: controlled activity	DV-PC2 inserts the controlled activity pathway for the three exceptions provided for in Policies 14-5 and 14-6 and reserves control over the contents and review of the nutrient management plan, GMPs,

		BMPs and additional measures to limit N leaching loss.
(s)	Rule 14-2: restricted discretionary activity	DV-PC2 clarifies that the activity must comply with all of the Rule 14-1 conditions except the limit on N leaching loss. ⁵¹
(t)	Rule 14-2A: discretionary activity for existing intensive farming land use activities that exceed any of the N leaching loss limits	DV-PC2 made some editorial changes to correct errors in the publicly notified condition references and simplified the references, rather than listing all conditions.
(u)	Glossary:	DV-PC2 inserted new definitions to support the three new controlled activity exceptions.

P. THE APPEALS

Ngāti Turanga

[123] The appeal by Ngāti Turanga sets out five claims, summarised as:⁵²

- (a) Inadequacy of (the Council's) evidence and information, evaluative baseline scenario and scope;
- (b) Impacts on Māori values including Māori freshwater values;
- (c) Reliance on PC2 as an interim measure and reliance on future freshwater planning processes;

⁵¹ I note that although this was the intention in the restricted discretionary rule, there had been some errors in the publicly notified wording.

⁵² Under Heading 1, page 1, of the Notice of Appeal.

- (d) Consistency (or inconsistency) with the NPS-FM 2017 Objective D, NPS-FM 2020 Objective 1 and Te Mana o te Wai; and
- (e) Process.

[124] These five claims are expanded on in the subsequent sections of the notice of appeal. The appeal seeks the following relief:⁵³

- (a) That DV-PC2 be refused except for the recalibration of the CNLMs in Table 14.2 and the consent pathway for existing intensive farming land use activities that transition to less intensive land use activities (provided for in DV-PC2 Policy 14-6 (d) (ii));
- (b) That all surface water management sub-zones in the Coastal Manawatū surface water management zone (Mana_13) are added to the One Plan Table 14.1 list of targeted water management sub-zones; and
- (c) Such further or other relief as the Court considers appropriate or is consequential on the primary relief requested.

Te Rūnanga o Raukawa

[125] The appeal by Te Rūnanga o Raukawa sets out the same five claims noted above under the Ngāti Turanga appeal, and seeks the following relief:

- (a) That DV-PC2 be refused except for the recalibration of the CNLMs in Table 14.2 and the consent pathway for existing intensive farming land use activities that transition to less intensive land use activities (provided for in DV-PC2 Policy 14-6 (d) (ii));
- (b) That all surface water management sub-zones Mana_13a, 13b, 13c, 13d, 13e and 13f (all in the Coastal Manawatū surface water management zone Mana_13) are added to the One Plan Table 14.1 list of targeted water management sub-zones;

⁵³ Under Heading 2, page 13, of the Notice of Appeal.

- (c) In the event the primary relief is refused, then secondary relief as the Court considers appropriate or is otherwise consequential.

[126] I note that Te Rūnanga o Raukawa have not been involved with the appeal, since filing their notice in 2021.

Andrew Day

[127] The appeal by Andrew Day sets out six reasons for the appeal. In summary:

- (a) Lack of regard to the fundamental concept of Te Mana o te Wai and, instead, protection of the most intensive farms as a priority for the region;
- (b) The consenting pathway for existing pastoral IFLU activities (the lesser of 20% reduction or 75th percentile N leaching loss) is based on unspecified good management practices;
- (c) The inclusion in DV-PC2 of 'grandparenting' as an option for consent applicants which will allocate the most resource in resource constrained catchments to those most responsible for the water quality degradation in those catchments;
- (d) The 'signals' sent to other resources users by the introduction of 'grandparenting';
- (e) DV-PC2 is highly unlikely to result in improved water quality across the region; and
- (f) Preference for the 'natural capital' approach which has been endorsed by the Environment Court and by the High Court.

[128] Mr Day's appeal seeks the following relief:

- (a) Formal recognition of farmers to trade N loss entitlements, within Table 14.2 limits, within the same water management zone;

- (b) Recalibration of Table 14.2 using Overseer® 6.2.3 or a subsequent version of Overseer® (following the same methodology as the original table);
- (c) Any exceptions to Table 14.2 to be based upon the 'natural capital' of the land; and
- (d) Such other and further relief as would meet the concerns stated in the appeal.

Wellington Fish and Game Council

[129] Fish and Game confirms its support for updating the Table 14.2 CNLMs.⁵⁴ It otherwise opposes the DV-PC2. Twelve reasons are provided for its appeal. In summary:

- (a) Intensive farming land use activities individually or collectively make a significant contribution to nutrient contaminant levels;
- (b) The One Plan provisions altered by PC2 have been scrutinised by the Environment and High Courts which have confirmed the approach - in particular, the 'natural capital' approach to regulating nitrogen leaching from IFLU;
- (c) Changes since confirmation of the One Plan provisions do not warrant the wholesale changes to provisions in the DV-PC2;
- (d) Apart from updating Table 14.2, the balance of DV-PC2 provisions do not provide confidence that the Region's water quality will be maintained or improved;
- (e) PC2 will create a legacy issue for the future NPS-FM freshwater planning instrument because there is a lack of guidance in PC2 on what GMPs and BMPs are and a loose policy framework that would permit longer term consents. The extent of N leaching loss reductions ultimately required under a future freshwater planning

⁵⁴ At paragraph 7.5.

instrument may require more than GMP and BMP. Some farms may require expensive mitigations, creating unrealistic expectations as to consent duration;

- (f) Without further guidance on minimum farming standards, extensive resourcing will be expended for little benefit, with potential for inequities across farms;
- (g) The alternative controlled activity consent pathway in Rule 14-1 (d)(ii) (the 20% reduction in N leaching loss or 75th percentile N loss) involves 'grandparenting' which has been rejected by the Environment Court;
- (h) The One Plan never intended that all farms would be granted consent, even on an interim basis;
- (i) The individual fortunes of farming businesses is not a good reason for rejecting submissions seeking non-complying activity status for non-compliance with Table 14.2;
- (j) PC2 fails to manage cumulative adverse effects on water quality through limits that are uncertain; and
- (k) PC2 is contrary to the objectives and policies of the One Plan, NPS-FM, NZCPS and the Act (including s. 30 functions of regional councils).

[130] Fish and Game seeks as relief:

- (a) Rejection of all of DV-PC2 except the updated Table 14.2; and
- (b) Such further or other relief as the Court considers appropriate or is otherwise consequential on the relief sought by the appeal.

[131] As I discuss below, there has been considerable effort by the Council and its expert team to resolve appeal matters. There were meetings with the appellants to determine the scope of issues and get a better understanding of appeal matters. Then, throughout the expert conferencing process, and

mediation, discussions continued collectively and individually on a range of matters. This included, as I understand it, a series of hui between Ngāti Turanga and Dr Peet, in his role as GM Strategy, Regulation and Science. There has been a level of agreement on some points, as recorded within the various JWSs, however, there remains differences of opinion, including with regard to the risk assessment tool, and (it appears) the rule and policy framework that should apply in its place.

Q. OVERSEER⁵⁵

[132] Overseer[®] is a predictive model, initially developed to help farmers make more efficient use of nutrients with the aim of boosting productivity and profitability.⁵⁶ As I understand it, Overseer[®] is a model that describes nutrient flows in farming systems. Overseer[®] estimates nutrient flows and provides a 'nutrient budget' for seven nutrients (nitrogen, phosphorus, potassium, sulphur, calcium, magnesium and sodium). Overseer[®] uses inputs of soil type, climate, topography, farming type, farm management practices and farm nutrient inputs to estimate how and at what rate nutrients leave the farm system. Overseer[®] outputs include modelled estimates of nutrients lost to the atmosphere, nutrients lost in runoff and via leaching through the soil (specifically, through the root zone of pasture legumes growing in soil). For example, Overseer[®] can estimate the likelihood and likely rate of N leaching through the root zone (expressed as kilograms of N per hectare per year).

[133] In my opinion, the risk of diffuse N leaching from a farming system can be characterised as being a product of the inherent properties of the land (e.g. soil type, drainage, rainfall) and the intensity of the farming system (e.g. farming type, stock and crop type, management practices, irrigation practices, nutrient inputs). Overseer[®] attempts to account for the inherent properties of the land that are relevant for N leaching loss. Overseer[®] also

⁵⁵ The explanation of Overseer[®] given here draws on the report '*Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways*' (Parliamentary Commissioner for the Environment, December 2018).

⁵⁶ '*Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways*' (Parliamentary Commissioner for the Environment, December 2018), pg 6.

comprises a series of sub-models that analyse nutrient flows through different farm management practices. In this way, conceptually at least, the Overseer® N leaching loss rate provided an indication of the risk of N leaching loss and of the intensity of N leaching loss from different farm systems.

- [134] Overseer® is not designed to describe or quantify the impact of nutrients that travel from the root zone beneath the farm to receiving water environments. Overseer® is not designed, either, to model sediment or microbial pathogen flows through or from farm systems.
- [135] The Table 14.2 CNLMs were originally calculated using Overseer® (updated to version 6.2.3 in DV-PC2). They are used as a fixed upper limit which determines the activity status of intensive farming land use activities (as I have explained earlier, those IFLU activities below the CNLM are controlled activities, while those that exceed the CNLMs are restricted discretionary activities under the original One Plan rules).
- [136] The 2018 report *‘Overseer® and regulatory oversight: Models, uncertainty and cleaning up our waterways’* by the Parliamentary Commissioner for the Environment (**PCE Report**) concluded that⁵⁷ *‘a significant amount of information needed to confirm Overseer®’s use in a regulatory setting is lacking’*. The report continued that *‘a comprehensive and well-resourced evaluation of Overseer® needs to be undertaken’*.
- [137] The PCE Report also addressed the question: *‘what should happen in the meantime?’* The Parliamentary Commissioner stated in the report that *‘The best way forward is to speedily address important gaps and the shortcomings in transparency, peer review, corroboration, uncertainty and sensitivity analysis, and model documentation raised in this investigation’*.⁵⁸ *‘Speedily’* has turned into a years-long exercise in investigating and attempting to bolster Overseer® for use in regulation that is not yet finished (although at

⁵⁷ *‘Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways’* (Parliamentary Commissioner for the Environment, December 2018) pg 118.

⁵⁸ *‘Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways’* (Parliamentary Commissioner for the Environment, December 2018) pg118.

the time of writing I became aware of the recent September 2023 report on the Overseer® Redevelopment Review).⁵⁹

- [138] In response, MPI and MfE commissioned a review of Overseer® by a Science Advisory Panel. The Panel's report '*Overseer® whole-model review: Assessment of the model approach*'⁶⁰ (the **Science Advisory Report**) identified eight concerns with Overseer®. It concluded:⁶¹

'As a result of these concerns, we do not have confidence that Overseer®'s modelled outputs tell us whether changes in farm management reduce or increase the losses of nutrients, or what the magnitude or error of these losses might be. Although some of Overseer®'s components, such as the animal metabolisable energy sub-model, appear sound, these coherences are outweighed by overarching structural problems. We, therefore, consider that Overseer®'s structure is not adequate to provide more than a coarse understanding of a farm's nutrient losses (except for surface flows since these are not included in the model). It cannot reliably estimate how changes in farm management would affect those losses.'

- [139] In relation to Overseer®'s use in regulation, it went on to conclude that:⁶²

A key requirement of the use of Overseer® in regulation is its ability to give reasonable estimates of long-term average nutrient losses from agricultural enterprises to help guide regulatory decisions as listed in 2.2. Guidance to regional councils (Freeman et al., 2016; Willis, 2018) notes that Overseer®'s estimates should be interpreted as long-term average nitrogen leaching rates (because Overseer® uses 30-year average climate data) and it is

⁵⁹ Ministry for Primary Industries and Ministry for the Environment, *Overseer Redevelopment Programme Report*, August 2023.

⁶⁰ MPI Technical Paper No. 2021/12.

⁶¹ Science Advisory Panel, *Overseer whole-model review: Assessment of the model approach*, July 2021, page 5.

⁶² Science Advisory Panel, *Overseer whole-model review: Assessment of the model approach*, July 2021, pages 92 – 93.

best used to assess relative, rather than absolute, differences in nutrient losses.

Overseer®'s structure, data, and behaviour suggest predictions of absolute and relative nutrient losses are likely inaccurate. In addition, nutrient losses vary from year to year and within years in response to climate variability. Average climate data and constant plant growth cannot be guaranteed to generate results consistent with the real world. A more accurate calculation of longterm average nitrogen leaching would be to average daily nitrogen leaching rates modelled using 30 years of actual daily climate data, as previously discussed (see 5.2, 9.2, Appendix Two).

- [140] The Science Advisory Report creates real and significant challenges to those regional councils which had built Overseer® into their regulatory frameworks in relation to N leaching loss. This included the Council, given the One Plan, and DV-PC2, was reliant on Overseer® in many ways. In my view, this includes the Overseer® based CNLM which acted as regulatory limits within Table 14.2, and under DV-PC2, the specified nitrogen reduction pathways.
- [141] The Government responded to the Science Advisory Report conclusions and recommendations, in the MPI/MfE report *'The Government response to the findings of the Overseer® peer review report'* (2021) (the **MPI/MfE Response**). The MPI/MfE Response set out a commitment to investigate and put in place one or more of the following options:⁶³
- (a) the creation of a new risk index tool, potentially using elements of Overseer® (including the user interface); and
 - (b) development of a next generation Overseer® to address the issues raised by the Review Panel and to ensure that it is fit for purpose as a tool to use in appropriate regulatory settings; and/or
 - (c) greater use of controls on practices and inputs to manage nitrogen leaching (including through amendment to the NES-F); and/or

⁶³ Ministry for the Environment and Ministry for Primary Industries, *The Government response to the finding of the Overseer peer review report*, August 2023, page 19.

- (d) a completely new approach to understanding and managing diffuse nutrient loss risk.

[142] All of these initiatives are taking time and, although progress has been made with some, there is as yet no comprehensive 'next generation' Overseer[®] and no agreed and road-tested risk index tool. Neither the Science Advisory Report or the August 2023 Overseer[®] Redevelopment Report⁶⁴ provides confidence that Overseer[®] could by itself (at this time) provide a defensible basis for the DV-PC2. In my view, decisions have to be made by the Council on the best available information and options available to it now.

[143] Given the challenges raised through the various Overseer[®] reports, the Council, appellants and s. 274 parties agreed to explore whether there were alternatives Overseer[®] approaches to managing N to support DV-PC2. There followed a series of joint expert conferencing sessions at which a risk based alternative to Overseer[®] was developed and evaluated. The findings of the expert conferencing sessions were captured in twelve joint witness statements,⁶⁵ as between farm system experts and planning experts.

[144] I attended all the conferences which involved planning matters (as I discuss below). The outcomes of the farm system conferences are further explained in the statements of evidence of Professor Horne, Dr Jolly, and Dr Le Mierre.

R. EXPERT CONFERENCING AND DEVELOPMENT OF RISK SCORECARDS

[145] Professor Horne and Dr Jolly detail in their evidence the development of the two risk assessment tools the Council now proposes to supplement the Chapter 14 rule framework's reliance on Overseer[®]. This point is important: the Council is not proposing to delete Table 14.2. As a result of the Government's work programme, responding to the Science Advisory Report, a revised Overseer[®] may at some time have utility.

⁶⁴ Ministry for Primary Industries and Ministry for the Environment, *Overseer Redevelopment Programme Report*, August 2023,

⁶⁵ As filed with the joint memorandum of counsel dated 14 June 2023.

- [146] I set out below how the two risk assessment tools are intended to be used in the rule framework within Chapter 14 under an amended DV-PC2.
- [147] Conceptually, the risk assessment scorecards represent the risk of N leaching from intensive pastoral and commercial vegetable growing systems in the particular climate and soils conditions that prevail in the targeted water management sub-zones. Overseer® accounted for the inherent risks of the land through its climate, soils and drainage sub-models. The risk tools have been tailored to the confined geographic areas of the targeted water management sub-zones. The experts have focused on the two characteristics of the land and location that are the primary drivers of N leaching: soil drainage (expressed as 'pore available water') and rainfall. Professor Horne describes the relevance of these factors in his evidence. These characteristics vary between targeted water management sub-zones (so the risk associated with these characteristics also varies between targeted water management sub-zones).
- [148] The above factors are presented in the two new Tables 14.2A (pastoral) and 14.2B (commercial vegetable growing) immediately following Table 14.2. Within the targeted water management sub-zones, the range in profile available water can be (broadly) grouped into three ranges and rainfall can be (broadly) grouped into four ranges:
- (a) Profile available water: 151-350mm, 61-150mm and <60mm; and
 - (b) Rainfall (mm/year): <1000, 1000-1300, 1300-1600 and >1600
- [149] The resulting twelve cells in the tables represent the range of susceptibility to N leaching ('riskiness') associated with different combinations of soil drainage and rainfall circumstances. The tables do not have the complexity of the climate and soil drainage sub-models within Overseer®. The tables are, in this respect, coarser than Overseer®. However, they address what has been agreed by the experts as the key drivers of N leaching, they are transparent, and they are tailored to the particular circumstances of the targeted water management sub-zones at issue within PC2.

- [150] Sitting alongside these tables of underlying (soil and rainfall) risk are the Schedules setting out the risk of N leaching attributable to various farm and vegetable growing (or cropping) management practices. The farm system experts have identified the management practices that present the most risk for N leaching. The score cards build on the Nitrogen Risk Scorecard used by Fonterra, but have been adapted for pastoral to reflect One Plan requirements (effluent disposal for example) and for CVG, with a focus on nitrogen practices. Both scorecards, as I understand it, represent a subset of the complexity of management variables built into Overseer®. In this way as well, the scorecards are coarser than Overseer®, but still focused on the same management tools.
- [151] The intensity of potential N leaching increases across a range for each of the practices (from low to high intensity-related risk). The experts have assigned risk scores for the various levels of intensity-related risk and have derived limits for each of the twelve combinations of 'risk' represented in Tables 14.2A and 14.2B. I understand the limits are set to represent the lowest reasonably practicable. I also understand from Professor Horne and Dr Jolly that these limits achieve at least the extent of reductions that would have been required to achieve the 20% and 35% N leaching reductions on farms, for each combination of soil drainage and rainfall. For example, the limit for a farm that has a poor ability to hold water (i.e. low pore available water) and high rainfall is lower than for a farm that has good ability to hold water and low rainfall. In this way, Tables 14.2A and 14.2B relate the N leaching limits to the natural capital of the land, as intended by the policy framework.
- [152] Table 14.2B, for CVG, initially had fewer populated cells due to CVG generally being confined to the targeted water management sub-zones in the Lake Horowhenua and coastal Rangitikei vicinities. In these areas, there is only a limited range of combinations of soil available water and rainfall. However, Dr Jolly and Mr Barber have since collaborated on amendments to Table 14.2B to populate all the quadrants in the CVG risk assessment tool. To do so they have adopted a risk score approach (similar to the pastoral risk

assessment tool).⁶⁶ The revisions to the risk assessment tool (Table 14.2B) ensure that any CVG operation within a targeted water management sub-zone have the ability to utilise a risk assessment approach if they wish.

- [153] I understand that all farm system experts have endorsed the ranges of soil available water and rainfall, the limits in Tables 14.2A and 14.2B, and the risk scores in the most recent versions of the two risk scorecards.

S. HOW PROPOSED AMENDED RULES AND RISK ASSESSMENT TOOLS WORK

- [154] To qualify as a controlled activity, the IFLU activity must demonstrate (through a NMP or a freshwater farm plan) that the combined risk score for all of the management practices undertaken in that farming or growing system will be less than the limit specified in Table 14.2A or 14.2B. Where this cannot be demonstrated, the activity requires consent as a discretionary activity. DV-PC2 proactively amended the definition of NMP to foreshadow that the information that would formerly have been required in a NMP can, now, be included in a Freshwater Farm Plan under Part 9A of the Act.
- [155] The publicly notified version of PC2 proposed that applications not meeting the Table 14.2 CNLM should be restricted discretionary activities. My view, endorsed in DV-PC2, is that setting a more stringent default activity status (with the greater rigour demanded by the DV-PC2 policy framework and therefore likely greater cost) creates an incentive for intensive farming activities to try hard to achieve the risk reductions necessary to qualify for the controlled activity pathway.
- [156] For CVG, the proposed rule framework retains the requirement that the area of vegetable growing must not exceed the baseline growing area of the baseline year. The baseline area accommodates the full area that growers have occupied for growing vegetables, including areas periodically left fallow for crop rotation purposes. The baseline year is set at 2012/2013 because this pre-dates the operative One Plan date. The Council has issued few

⁶⁶ Statement of Evidence, Dr Jolly, 6 October 2023, at paragraphs [56]-[59].

consents for existing commercial vegetable growing activities.⁶⁷ As noted by Dr Jolly, CVG enterprises have largely not adopted widespread changes in management practices or reductions in N leaching since 2012/2013. Accordingly, it is appropriate in my view to retain the baseline year confirmed in the DV-PC2. That date has been endorsed by growers and grower representatives and their experts.

- [157] The reductions achievable from the various changes in on-farm management practices will occur in ‘chunks’ as explained to me by Professor Horne and Dr Jolly, rather than in a constant linear fashion. For example, reducing the fertiliser application rate from 75kg/ha to 50kg/ha per application will see an instant ‘chunk’ of reduction in N leaching loss risk.

T. THE PROPOSED AMENDED POLICIES

- [158] Amendments recommended by the Hearing Panel, in response to submissions, in my view, expanded and ‘tightened’ the policy framework set out in RPS Policy 5-8 and Regional Plan Policies 14-5 and 14-6.

- [159] In addition, discussion with the appellants’ representatives and experts, since lodgement of appeals, has highlighted further refinements that could be made to address particular concerns raised in the appeals. In particular:

- i. It is proposed to create a hierarchy within Policy 14-6: requiring *particular regard* to be given to the matters in sub-clauses (i) to (v) and inserting, as a new first matter in the list, ‘*the contribution made to the maintenance and enhancement of values held by mana whenua for the relevant catchment*’. All planning experts have endorsed the inclusion of this additional matter. Policy 14-6 is referenced in the list of reserved matters for controlled activities. I do not anticipate that these will be publicly or limited notified. For applications that exceed the risk limits set out in Table 14.2A or 14.2B, which require discretionary activity consent, I anticipate that

⁶⁷ Horizons advises that there have been two consents granted for existing CVG since 2016; both within the Waikawa WMZ, with one surrendered, and the other due to expire in 2024.

applicants will need to engage with the mana whenua of the relevant targeted water management sub-zone (easily identified by checking with the Council) and commission a cultural values assessment. I note that the wording has been endorsed by all planning experts.

- ii. Proposed new Policy 5-8 (a) (i) (A) is to set limits that *minimise* the risk of N leaching from intensive farming land use activities. Policy 5-8 (d) requires that, (all) intensive farming land use activities must be regulated to, as a minimum, implement GMPs to *minimise* the risk of nutrient leaching and run-off. The DV-PC2 wording was to 'manage'. The expression 'minimise' was preferred by submitters who were concerned that diffuse discharges from intensive farming land uses should be reduced to the smallest amount reasonably practicable. The Hearing Panel endorsed the 'minimise' approach.
- iii. Policy 14-3 explicitly requires the implementation of GMPs (an amendment from 'have regard to'). The policy is directive in my opinion and, combined with the clear assignment of N leaching risk scores in the proposed schedules, will ensure that poor practices are displaced by the adoption of good management practices.
- iv. The policy framework now includes the concept of 'proportionality' in proposed Policy 14-6 (e) (iii): *'Proportionality in ensuring that the existing intensive farming land uses that have high risk of nitrogen leaching relative to the relevant limit set out in Policy 14-5 (d) (i) or (ii) are required to make proportionate reductions in nitrogen leaching.'* Where an application is made because the farming or growing activity cannot achieve the Table 14.2A or 14.2B limits, that application will be treated as a discretionary activity and particular regard must be given to the first five matters in Policy 14-6(e) including the policy about proportionality. The basis for proportionality can be clearly understood by comparing the actual N leaching profile of the proposal with the limits specified in Tables 14.2A and 2B. In my opinion, it is inconceivable that an application could be granted under the proposed policy framework to continue

current N leaching. The combined heft of the amended proposed Policy 14-6(e) will, in my opinion, require reduction in N leaching risk. For activities that currently have high N leaching risk, my expectation is that the reduction will have to be substantial. The proposed amended policy and rule framework will not protect the most intensive farming land uses (a point of concern in Mr Day's appeal).

- v. Policy 14-6 (d) is proposed to be amended to require that nutrient leaching (and other contaminant losses) are reduced to the maximum reasonably practicable extent and as soon as practicable. This replaces the wording in DV-PC2 'as soon as reasonably feasible' and 'progressively over time'. In my opinion, the new proposed wording is more stringent. There remains an element of reasonableness inherent in the expression 'practicable' (as there must, in my view) but the intention is clear.
- vi. It is proposed to insert into Policy 14-6 (e)(iv) consideration of the need for water quality improvement by reference (explicitly) to the difference between current state and relevant One Plan Schedule E water quality targets. This addresses, in part in my view, the concerns of the appellants about the management of cumulative adverse effects of diffuse N discharges on water quality.
- vii. Consent duration is explicitly limited to no longer than ten years in Policy 14-6 (e)(v) and less than ten years where continued high risk of N leaching from the land remains. This addresses the concerns of Fish and Game about the possibility of long duration (legacy) consents. I note the wording has been endorsed by all planning experts including Fish and Game's expert planner.
- viii. The combined effect of the proposed amended policies will also, in my view, address the concern of Fish and Game about the prospect of long-duration legacy consents. I include in **Attachment D** a table examining the known expiry dates of the existing intensive farming land use activities that have been consented. It indicates that any legacy beyond the date of public notification of the future

freshwater planning instrument will, in my view, be relatively brief. More importantly, in my view, the clear directive in the policy framework to reduce N leaching risk to meet Tables 14.2A and 14.2B and, otherwise, to reduce N leaching risk to the maximum extent reasonably practicable should mean that any legacy consents present relatively low risk to water (both in number of consents and N leaching risk profile).

U. WATER QUALITY IMPACTS

[160] The in-river soluble inorganic nitrogen (**SIN**) concentration modelling undertaken in preparation for the Council-level hearing is described in the evidence of Dr Snelder and Dr Cox. Dr Snelder considered 28 simulations (combinations of assumptions). Six simulations were found to be most relevant to understanding the water quality impacts of PC2:

- (a) The 'pre-regulation' simulation: the estimated N leaching loss for 283 dairy farms for which the Council had relevant farm data, set to their 2012 production levels (modelled through Overseer®);
- (b) The 'post-regulation' simulation: which accounted for the fact that 213 of the 283 dairy farms had obtained consents (with known N leaching loss limits set less than in 2012) and 70 remained unconsented (representing a reduction in N leaching, compared to the 'pre-regulation' simulation);
- (c) The 'proposed consented' scenario: represents the implementation of PC2 where all unconsented dairy farms comply with Table 14.2 (with no consents granted as discretionary activities) and the 213 consented farms continue to leach at their consented rates;
- (d) The 'proposed year-20 pathway A scenario': reflects the publicly notified PC2 provisions (controlled activity for compliance with recalibrated Table 14.2 and otherwise discretionary activity consent) and assumes that existing intensive farming land use activities are required, through discretionary activity consents, to reduce N leaching by 9 kg/ha/year;

- (e) The 'proposed year-20 pathway A scenario': also reflects the publicly notified PC2 provisions (controlled activity for compliance with recalibrated Table 14.2 and otherwise discretionary activity consent) and assumes that existing intensive farming land use activities are required, through discretionary activity consents, to reduce N leaching by 18 kg/ha/year;
- (f) The 'proposed consented strict scenario': represents implementation of PC2, where all unconsented dairy farms comply with Table 14.2 (with no consents granted as discretionary activities) and the 213 consented farms are also required to adhere to their consented N leaching rates if these are less than Table 14.2 and to reduce N leaching to meet Table 14.2 where they are currently consented to exceed Table 14.2.

[161] Although the dataset of dairy farms used in the SIN modelling is not the complete data for all unconsented dairy farms (or all existing IFLU activities) in the targeted water management sub-zones, it does reflect the reality that there are 213 existing dairy farms already consented. The modelling represents the improvements that could be expected from altering the N leaching from the remaining 70 unconsented dairy farms from that data set⁶⁸. Because of the fixed (authorised) N leaching contribution of the existing consented farms, the improvement able to be contributed by the remaining (substantially fewer) dairy farms is relatively small. In reality, there are more unconsented dairy farms and additional cropping and CVG enterprises that were not able to be included in the modelling because the Council does not have data for those. The modelling outcomes should be seen as conservative, in this respect.

[162] The SIN modelling confirmed modest water quality improvements associated with limiting N leaching to the extent proposed for the alternative controlled activity consent pathways. These modest water quality improvements have since been confirmed by Dr Snelder assuming

⁶⁸ It is important to note that this does not equate to all of the current unconsented existing intensive farming land use activities (this figure just represents the data set available for the SIN modelling).

implementation of the risk assessment tools. The nitrogen leaching reductions under the DV-PC2 and DV-PC2 amended with the risk assessment tool, are so similar, that Dr Snelder has been able to conclude that both scenarios would result in similarly modest water quality outcomes.⁶⁹

V. IMPLEMENTATION

[163] There was criticism in submissions and at the Council-level hearing of the Council's implementation of the One Plan intensive farming land use provisions. The appeal by Ngāti Turanga comments on the absence of enforcement of the provisions. I am aware that the appellants are concerned about the Council's commitment to enforcing compliance.

[164] Council staff and I have been working on a draft implementation plan to accompany DV-PC2. Work on that plan progressed during, and was informed by, discussions with the appellants. However, once it became clear that there was no agreed basis for settling the appeals (and, in particular, no settled agreement about the risk assessment tools) work has been on hold.

[165] I can however confirm that the Council's Regulatory Manager has asked me to prepare (in conjunction with his Consents and Compliance Team and the Council's Rural Advice Team) an implementation plan that addresses the following matters:

- (a) Introduction: This will introduce and describe the purpose of the Implementation Plan – that is, to explain the rule framework, including the risk assessment tool, and to provide information to assist the Council, tangata whenua, landowners, primary industry representatives and stakeholders through consenting and compliance.
- (b) Overview of PC2 provisions: The provisions and their scope will be explained in plain English.

⁶⁹ Statement of Evidence, Dr Ton Snelder, 6 October 2023, paragraph [71].

- (c) Implementation strategy: The plan for the initial 'roll out' of PC2 (which will be finalised as soon as there is clarity about exactly what the settled PC2 provisions will be). This will include:
- (i) Meeting with sector representatives to identify unconsented farms;
 - (ii) Ensuring that information is provided directly to those farms;
 - (1) The expected timing for those steps; and
 - (2) Proposed support and follow up actions.
- (d) Engagement with tangata whenua: there will be explanation about the processes Horizons will use to engage with tangata whenua about approaches to consent applications for existing IFLU, and the extent of the role that they wish to have in that process (to the extent enabled by the PC2 framework). This will also set out how meetings will be used to provide updates on the consenting process. Feedback from iwi and hāpu will be sought to inform this section.
- (e) Application Requirements: Information will be provided for applicants on the requirements for the content of an application, guide them through the PC2 notification provisions, and explain the audit process for information provided as part of applications.
- (f) Nutrient Management Plans: This section will expand on application requirements and specifically set out the role of nutrient management plans for consent applications under both Table 14.2 and the risk scorecards. Guidance on how to prepare compliant NMPs will be provided. The relationship between NMPs and freshwater farm plans will also be explained.
- (g) Application process: The forms for consent applicants (and how they work) will be described and/or set out, as well as how to lodge those

forms on the planned online portal (discussed further below), the consenting costs, and the expected timeframe for decisions.

- (h) Implementation Assistance: Strategies for pre and post-application guidance will be outlined, including communication plans, infrastructure and data support, guidance on the use of the application portal, and audit information.
- (i) Compliance: A significant number of existing unconsented IFLU activities will become part of a compliance framework. This section will describe Horizons' model for compliance and monitoring – the 4 'E's Model (i.e. Engage, Educate, Enable and Enforce) for newly consented farms. It will also set out the draft engagement processes for sector leaders (to assist with compliance), as well as detail provisional monitoring and reporting processes.
- (j) Contacts: Contact information, helpful links, and support groups will be listed.

[166] The Council proposes to provide an online portal for the lodgement of consent applications under the PC2 framework. The two risk assessment tools would be incorporated into the online portal, to:

- (a) Provide the framework for applicants to specify the scope of information required in the application and to assist applicants to enter the information needed to process the application;
- (b) To enable applicants and the Council to determine the overall risk score for the particular farming or growing system applied for, to determine activity status and to direct the applicant to the appropriate consent pathway (and relevant application fees); and
- (c) To provide the Council with an electronic data base of information for ongoing compliance monitoring, auditing and reporting (as proposed below). This will help inform the Council's decision making on future land management policy.

- [167] Part of the implementation process will be internal training for the regulatory team on processing applications and assisting applicants with the process. I understand that officers have discussed developing some exemplar applications to demonstrate how the controlled and discretionary pathways would be applied.
- [168] It is important that the Council provides adequate information and guidance for applicants to make consent applications. This will include developing forms and templates, as well as guidance documents for using the online portal and inputting data. It will also be important for the Council to have the requisite capacity and capability to process applications and communicate with applicants throughout the implementation of PC2.
- [169] I am aware that one of the concerns raised by the appellants in this proceeding relates to how transparent the consenting process under the PC2 will be. As I understand the concern for the appellants it is the limitations in testing the veracity of the data within a consent application, with consent applicants reluctant to share on-farm data publicly beyond the Council.
- [170] I understand the Council proposes to provide the community confidence in the consents granted under the PC2 framework, in two ways:

Six-monthly reporting

- [171] The Council plans to publish at least 6-monthly reporting to the Council on the following information:
- (a) The number of consent applications received under the PC2 framework, and where they are in the process;
 - (b) Of the consents applications that have been processed, the number granted and declined;
 - (c) The number of the consent applications processed as controlled or discretionary activities;

- (d) Conditions of consents imposed (likely reported on in terms of any variations from standard conditions, particularly for controlled activities);
- (e) A report on the amount of compliance monitoring that has been undertaken;
- (f) The number of non-compliances and their associated grading (low risk, moderate risk or significant risk non-compliance);
- (g) The action taken in relation to identified non-compliances including the number of formal warnings, infringement notices, abatement notices and enforcement orders; and
- (h) The number of prosecutions.

[172] Horizons is investigating the method by which this information will be made publicly available. At a minimum, it will be in a publicly available Council report, however, with developments in Council's online/website capability, there may also be the possibility of interaction via the Council's website.

Independent Expert Advisory Panel

[173] As part of monitoring the implementation of PC2, I understand that the Council is considering establishing an independent expert advisory panel (**Expert Advisory Panel**), consisting of the farm system experts involved in the PC2 process to date,⁷⁰ to undertake independent reviews/audits of the farm data provided as part of consent applications. Consent applicants, and then, consent holders, will be expected to record/hold onto evidence of farm practices (fertiliser records, etc) for the purpose of consent application audits and compliance monitoring. The review would be a confidential independent audit of the information by the Expert Advisory Panel, so as to test the veracity of the application and its supporting information, without disclosing confidential individual farm data into the public domain.

⁷⁰ For example, Professor Horne, Dr le Mierre, Dr Parlato, Dr Jolly, and Mr Barber.

- [174] This Expert Advisory Panel would undertake reviews of a particular number of applications, at agreed times, but the intention would be for it to disestablish no later than 18 months after PC2 becomes operative or when 80% of the consent applications have been processed, whichever is earlier.

Resourcing

- [175] The Council is aware that it will need to resource the processing of applications under the PC2 framework. Dr Daly explains in her evidence that Horizons is committed to resourcing the PC2 consenting programme, with planning underway as part of the Long Term Plan process.
- [176] Dr Daly's evidence confirms that the Council is committed to implementing PC2 successfully. PC2 is a strategically important plan change for the Region, particularly with regard to ensuring its One Plan is able to be implemented with benefits to water quality, and by providing certainty to farmers who have had unconsented farming operations for several years.
- [177] In my view, once the preparatory work described in my evidence is completed, the Council will be well-placed to implement PC2 effectively and efficiently.

W. HOW COUNCIL'S PC2 AMENDMENTS RESPOND TO APPEALS

- [178] I turn now to discuss how the proposed amendments to DV-PC2 respond to and address the matters raised in the appeals:

Why continue with PC2 – why not abandon?

- [179] The estimated number of unconsented existing IFLU activities is only a proportion of the total number of these farming activities. However, completing the consenting (and regulating) of the remaining farms and growing operations, is expected to improve water quality. The Council's modelling of instream N concentrations that would result from implementing PC2 found that modest reductions in instream N concentrations would result (i.e. modest water quality improvements) in the targeted water management sub-zones.

- [180] As I note above, these improvements have since been confirmed through the water quality assessment undertaken by Dr Snelder in regard to implementation of the risk assessment tool. Dr Snelder's evidence confirms that the proposed amendments to the DV-PC2 (with the risk assessment tool) would result in similarly modest water quality improvements in the target catchments of the Region to those that were predicted for DV-PC2.⁷¹
- [181] The water quality modelling for the Council level hearing also identified the potential for some increases in N concentrations if existing intensive farming activities with CNLMs lower than the Table 14.2 limits were able to increase their N leaching up to the CNLM within Table 14.2 through varied/new consents. This was largely addressed by the NES-Freshwater regulations, which prevent intensification and conversion of land for dairy farming. However, on my recommendation, an adjustment was also made in the DV-PC2 rule framework to prevent this occurring.⁷²
- [182] The intention of the One Plan was that existing ILFU in the targeted water management sub-zones would be regulated as a minimum from the operative date of the One Plan (2014). The modest improvement in water quality attainable from regulating the remaining unconsented intensive farming land use activities was considered worthwhile when PC2 was publicly notified in 2019. Given the then (and current) state of degraded water quality, any contribution to reducing instream contaminant concentrations must still, in my opinion, be considered beneficial.
- [183] Some appellants have questioned the merit of continuing with PC2 at this time, when a freshwater planning instrument to give effect to the NPS-FM is due to be publicly notified by 31 December 2024. The policy and rule framework intended by the DV-PC2 will, in my opinion (supported by the evidence of Professor Horne and Dr Jolly), require all remaining unconsented IFLU activities to implement mitigations and operational changes that reduce N leaching. The rule framework proposed by the Council requires

⁷¹ Statement of Evidence, Dr Ton Snelder, 6 October 2023, paragraph [71].

⁷² Recommendation Report of the Independent Hearing Panel – Plan Change 2, March 2021, Appendix 2, pages 240 – 264.

these IFLU activities to apply for consent within twelve months of the date PC2 becomes operative. It also requires the mitigation measures they propose to reduce N leaching to be implemented within two years of the grant of consent. On an optimistic basis (depending on the date of the decisions on appeals), that might mean: applications before April 2025 and implementation before mid-2027, with N leaching loss reductions achievable from that date (or earlier).

- [184] Part of the justification put forward in support of abandoning PC2 is that more time is needed to settle on a better risk assessment tool and that more stringent controls may result from the freshwater plan notified in 2024. Under that ('defer') scenario, the rules of the freshwater plan would have immediate legal effect (i.e. 1 January 2025). The freshwater plan may set more stringent limits on N leaching loss, and/or require consents in addition to those granted under PC2. It is unlikely, in my opinion, that a rule framework in the freshwater plan would require farmers to apply immediately for consent. Most similar regimes in other council jurisdictions recognise and allow for the transitional time necessary to prepare and lodge the necessary consents. Even after any transitional period for lodgement of consent applications, the implementation of N leaching reduction measures would still be sometime later. It is my view that the risk assessment tool would not create an impediment to consenting in these circumstances.
- [185] There is also uncertainty about when any more rigorous N leaching reduction measures required by the NPS-FM freshwater plan might 'kick in' after 2026. Part of that uncertainty lies in the time taken to resolve the policy and rule requirements of the freshwater planning instrument through the new freshwater planning process under s. 80A of the Act. That is intended to be a 'streamlined' process taking no longer than two years from the date of public notification (assuming there are no appeals relating to recommendations of the Freshwater Hearings Panel not adopted by the Council). This could mean a confirmed plan framework as soon as 1 January 2027. But, if the specific N leaching reductions remain in dispute until 2027, it is my opinion that full implementation of any more stringent freshwater planning instrument requirements will not practicably be able to be

implemented until consents are then applied for, granted and implemented. That could take months (or years) more.

[186] Even without appeals (which have been the hallmark of all One Plan initiatives involving the management of diffuse nutrients from farming activities), there would conceivably be delay in the consenting and implementing of N leaching reductions, potentially beyond 2027.

[187] I accept that the window of benefit has shrunk since PC2 was publicly notified. However, resolution of PC2 as soon as possible, with implementation of N leaching reductions as soon as practicable, remains preferable in my opinion to deferring decision making until the NPS-FM freshwater plan is settled. The Council's proposed PC2 provisions have the support of pastoral and CVG sector representatives. The regulation of existing IFLU activities has been hampered by uncertainty to date. The uncertainties and delays are causing a lack of business confidence and stress, as described in the evidence of Dr Collins. There is an apparent willingness in the sectors to 'get on with it'. As I have discussed earlier, and return to below, the proposed PC2 provisions include a ten-year limit on duration, to minimise the potential for 'legacy' consents.

[188] In my opinion, progressing PC2 secures N leaching loss reductions sooner. Delaying action secures no immediate reductions and allows the uncertainty that has prevailed for these activities since 2017 to persist until at least 2027. All in a context of acknowledged water quality degradation in the targeted water management sub-zones.

Impacts on Māori values including Māori freshwater values:

[189] I referred earlier to the amendment to Policy 14-6(e). This was proposed during expert planning conferencing and I understood the agreed view of all planning experts is that this will go some way to ensuring Māori values are identified and acknowledged and that impacts on them are addressed through the consent process. All of the rule pathways under DV-PC2 require some sort of consent. There are no permitted existing intensive farming land use activities provided for by the One Plan, by PC2 or by the DV-PC2 or the

amendments to DV-PC2 now proposed. The policy framework, including this policy consideration, is 'live' for all applications made under the DV-PC2 rules.

[190] I accept that this amendment does not address the concerns expressed by appellants about the absence of Māori values from the s. 32 reporting and concerns about the pre-notification engagement with iwi. Mindful of those concerns, Council staff and I attempted to provide opportunities for iwi and hapū submitters to give voice to the values they considered were missing, through the pre-hearing hui and the iwi and planning expert conferencing sessions. Some amendments to the PC2 policy were made as a result of these hui. It remains my view, as expressed at the Council level hearing, that the environment is better served by continuing with PC2 for the interim purpose it was intended to serve, pending the broader NPS-FM process.⁷³

[191] I say this, not in any way to diminish the mana and significance of iwi and hapū or the importance of Māori freshwater values, but with an eye to the objective of the plan change, and its limited (and interim) role in delivering the necessary changes for freshwater in the Region. As I noted, before the Council level hearing, at the time (and to this day) the Council is aware that the statements of values contained in Schedule B of the One Plan need to be refreshed, due to the passage of time since they were first drafted and in order to reflect Te Mana o te Wai at a regional/local level under the NPSFM. This review will need to be supported by a comprehensive understanding of cultural health indices and assessment of cultural values. The focus of that review will inform choices between substantive options for managing and allocating resources and setting limits, including limits on absorptive capacity of water bodies(potentially). By contrast, PC2 was a plan change with very narrow scope and the choices under consideration did not involve substantively different outcomes. The work undertaken as a response (in large part) to feedback from iwi in pre-notification engagement supported that view – i.e. the marginal differences between the N modelling scenarios.

⁷³

It should be noted that there were also submissions in support from iwi and hapū. In particular, Rangitāne o Tamaki nui a Rua (Submitter 71) provide an oral narrative in support at the Council level hearing.

- [192] I otherwise rely on the s 32 Report,⁷⁴ consultation record,⁷⁵ and my understanding of the process from discussions with Council officer (no longer employed by the Council) regarding engagement with iwi and hapū. The chronologies provided in the s32 Report and the evidence of Dr Daly indicate that Horizons implemented a deliberate and genuine process of engagement with all potentially affected iwi about the issues that had been identified in the IFLU provisions, from as early as March 2018.
- [193] I note that Dr Daly's evidence points to the fact that water quality, and the need for PC2 to maintain and improve water quality was an important factor informing PC2, and additional modelling undertaken on water quality.⁷⁶ The broader NPSFM discussions to inform the fulsome review of freshwater, were also seen as important to iwi and hapū as part of the feedback received on PC2 (as recorded in the s 32 Report). I cannot speak for the intent of iwi and hapū at the time, however, I do note that those discussions were beginning around 2018, and were, and remain, a significant focus for the management of freshwater in the Region.
- [194] There are lessons for the Council from the PC2 process. As Dr Daly explains in her evidence, the Council has reached out to all iwi of the Region to set up more formal engagement arrangements to inform the process of developing the future freshwater planning instrument. Engagement agreements are in place with some iwi and engagement hui have been held over the last few years and months with those hapū and iwi that have indicated interest. The Council has committed funding and kaiwhakahaere (iwi liaison personnel) to facilitate this engagement. It is not the case that the Council has been inactive in relation to the wider Region-wide challenge of understanding and genuinely incorporating Māori values in freshwater management. Dr Daly's evidence describes this process further.⁷⁷

⁷⁴ Including, for example, section 2.5, at page 15.

⁷⁵ As recorded in the section 32 Report (at Appendix C) and at as further particularised at Attachment B in the Statement of Evidence of Dr Elizabeth Daly, 6 October 2023.

⁷⁶ Statement of Evidence, Dr Elizabeth Daly, 6 October 2023, paragraph [73].

⁷⁷ Statement of Evidence, Dr Elizabeth Daly, 6 October 2023, paragraph [83].

- [195] The Council has also engaged in direct (without prejudice) discussion with Ngāti Turanga representatives. I am not privy to the content of those discussions, only aware that they have been held with Dr Peet. I understand that Dr Daly wishes to continue these discussions going forward.

Reliance on PC2 as an interim measure:

- [196] PC2 is intended as an interim initiative. That is clear in the statement of purpose. That is, to fix identified issues with the One Plan provisions to overcome an obstacle to implementation of the Plan provisions. I am aware that the appellants do not agree with the premise that the provisions are unworkable. I take a different view. So did the independent reviewers on whose advice the Council relied. PC2's purpose was not to revisit the One Plan's overall framework for managing diffuse discharges of contaminants from agricultural land use. That challenging task has a much broader scope and is part of the Oranga Wai work programme currently under way.
- [197] The appellants also suggest the Hearing Panel was wrong to grant PC2 on the basis that it is an interim plan change. They consider that PC2 must meet the same RMA tests whether it is intended to be temporary or long-lasting (and the Act does not differentiate between the requirements for interim and longer term proposals). This suggests that the Hearing Panel applied an incorrect statutory test or consideration. I do not agree. For the reasons I later explain, I consider that DV-PC2 (including as proposed to be amended) does meet all of the statutory requirements applied to an 'amending proposal' under the Act.

Inclusion of additional water management sub-zones in PC2:

- [198] The State of the Environment reports confirm that the surface water quality in the lower (coastal) Manawatū water management zone is degraded, including by contaminants sourced from agricultural and horticultural production. I agree that this degradation needs to be addressed. I am aware that this is also part of the Oranga Wai work programme.
- [199] I do not agree that it is a simple matter of inserting these additional water management sub-zones into Table 14.1 as the appellants request. The

procedural reality is that PC2 as publicly notified was clear that it pertained only to the current list of targeted water management zones and did not signal an intention to widen the scope of the Chapter 14 rules to wholly new water management sub-zones affecting existing farming and growing activities previously not 'captured' by the rules. Affected farming activities have not had, in my opinion, a transparent or fair opportunity to become appraised of their inclusion in the rule framework or to participate in the process of determining whether and how that should proceed.

- [200] My opposition to inclusion of the additional water management sub-zones is on procedural fairness grounds; and not with regard to the substantive merits of the request which have not been considered within PC2. In my view, any work to support inclusion of additional water management sub-zones would need to revisit Table 14.1 as a whole. This would require work that is outside of this process. Review of Table 14.1 will be undertaken as part of the NPS-FM plan process which has to conclude by 31 December 2024. Given the procedural realities I describe above, the Oranga Wai process is the appropriate forum for this review, in my view.

'Grandparenting'

- [201] I understand the expression 'grandparenting', when used in relation to the management of diffuse contaminant discharges, means setting limits on diffuse nutrient discharge at current or historical levels (or rates) of discharge. I do not agree that the provisions the Council now proposes adopts a 'grandparenting' approach. I accept the criticism that the alternative pathways proposed in DV-PC2 required reductions from historical baseline N leaching rates. The DV-PC2 rules do not, though, enable existing IFLU activities to continue unchanged at those historical baseline rates. The rule framework requires existing IFLU activities to *reduce* estimated N leaching loss risk (by 20% or 35% or to below the 75th percentile) to qualify as a controlled activity. As I have explained earlier in this statement, where consent is required as a discretionary activity, it is my opinion that the policy framework is sufficiently rigorous to ensure that

existing farming activities will not secure consents to continue their historical baseline rates of N leaching loss.

- [202] The amendments now proposed by the farm experts actually take things a step further and require existing IFLU activities to make reductions to a defined 'low' level of N leaching risk in order to qualify as a controlled activity. The fixed level is not related to any historical farm baseline, but is derived from the management practice risks and risk inherent in soil type and climate.

Water quality:

- [203] The appeals assert that DV-PC2 is highly unlikely to result in improved water quality across the Region. I agree. Given the narrow scope of PC2 (confined to the targeted water management sub-zones) PC2 cannot be expected to achieve water quality improvements across the entire Region. However, as Dr Snelder explains in his evidence, implementing PC2 with the risk assessment tool would result in similarly modest water quality improvements in the target catchments of the Region impacted by IFLU, including when DV-PC2 is amended as proposed.⁷⁸ As I have noted earlier, this is due to the similarities in nitrogen loss rates between implementation of the proposed risk assessment tool and the DV-PC2.⁷⁹ In my view, these outcomes meet the intent of the One Plan.

Preference for retaining the 'natural capital' approach:

- [204] For the reasons I have already explained in this evidence, I do not consider the DV-PC2 provisions depart from the One Plan's natural capital approach. This was a deliberate decision given the scope and interim effect of the plan change. The alternative pathways were instead considered a pragmatic exception of Table 14.2.⁸⁰ That remains my view.
- [205] Further, the amendments now proposed to the DV-PC2 do not alter the natural capital approach. Proposed Tables 14.2A and 14.2B express

⁷⁸ Statement of Evidence, Dr Ton Snelder, 6 October 2023, paragraphs [22](h), [71].

⁷⁹ Statement of Evidence, Dr Ton Snelder, 6 October 2023, paragraphs [68]-[70].

⁸⁰ Decision of Hearing Panel, at 3.136, pages 52-53.

transparently the connection between underlying natural characteristics (soil drainage and rainfall) and the risk of N leaching loss.

Legacy consents:

- [206] The Chapter 14 IFLU management rules are ‘hybrid’ land use and discharge rules. Consents granted under these rules are consents to continue operating an existing farm (subject to conditions). They will not lapse once the rules of the future freshwater planning instrument is publicly notified and establish a right to continue farming. Providing for, and consenting, the remaining unconsented existing intensive farming activities will (according to Dr Snelder) yield modest water quality benefits.⁸¹
- [207] As evidenced by Dr Snelder’s initial modelling, water quality benefits likely to be gained by forcing these existing IFLU to implement more mitigations is likely to generate only marginal water quality benefits over the relatively short (ten-year) period of their duration. Even if the future freshwater planning instrument ‘tightens’ the settings in the rules, the additional water quality benefit may not be as great as the benefit obtained in the immediate term of regulating the activities in the first place.
- [208] In these terms, the risk associated with ‘legacy consents’ is limited for the amended DV-PC2, in my opinion. The greater gain, in my opinion, lies in ensuring they are regulated and achieving N leaching loss reductions as soon as practicable.
- [209] I should note also that recent amendments to Part 6 of Schedule 12 of the Act impose additional limits on the duration that may be granted for discharge permits that permit discharges of any contaminant onto or into land in circumstances that may result in contamination entering freshwater⁸². Such permits are not able to be granted for a duration exceeding five years after the date the relevant rules of the first ‘natural and

⁸¹ I understand that the SIN modelling scenarios also included a proportion of non-compliant IFLU activities (i.e. discretionary activities) so these are accounted for in the modest improvement result accounted for at the Council-level hearing.

⁸² Clauses 38 and 39 Part 6 Schedule 12 Resource Management Act 1991, amended by s 805 (4) of the Natural and Built Environment Act 2023.

built environment plan' for the Region have legal effect. At present, it is not clear when those relevant rules will have legal effect, but the intention of the legislation is clear. The restriction may, or may not, coincide with the ten year duration proposed in the amended DV-PC2 provisions but will apply in addition to and override any duration provisions in the One Plan.

One Plan never intended that all existing farms would be granted consent:

- [210] Neither does the DV-PC2. Professor Horne and Dr Jolly clarify in their evidence that a proportion of IFLU activities will struggle to meet the proposed risk score limits and will require consent as a discretionary activity. The policy framework now proposed for assessment of these as discretionary activities is, in my opinion, stringent, and appropriate.

Non-complying activity default:

- [211] I do not support a non-complying activity rule for existing IFLU activities that fail to meet specified limits for N leaching loss (or N leaching loss risk). The One Plan does not feature such a rule. DV-PC2 amended the 'default' rule to full discretionary activity. The Hearing Panel considered the request for non-complying activity status for the default rule and did not consider this approach to be either necessary or appropriate.
- [212] In any event, I do not support the use of a non-complying activity status where activities are anticipated at the time of plan development. The potential environmental effects of an activity are broadly understood at that time and it is possible to craft a policy framework that articulates clearly how those effects are to be managed. In my view, this is the case with existing IFLU activities in PC2. Also, I endorse the approach of assigning the lightest regulatory touch necessary to achieve the relevant objectives. It remains my opinion that the proposed discretionary activity, with the comprehensive policy framework proposed, represents a rigorous response and is the most appropriate to achieve the relevant objectives of the One Plan.
- [213] While the DV-PC2 policy framework has expanded and become more detailed, it is my view that it provides the necessary clarity about how applications involving N leaching loss risk greater than the limits specified in

Tables 14.2A and 14.2B are to be considered. This directly responds to concerns at first instance that the discretionary pathway facilitates exceedance of N leaching limits by an unquantified and unknown amount. Therefore, the discretionary activity consent pathway remains available where required (as intended by PC2) but with stronger policy guidance for decision making and more explicit consideration of effects and values.

- [214] I am aware of some appellants' criticisms of the length and detail of the DV-PC2 policy framework but, as I have indicated, I consider the level of detail is appropriate and necessary to address the potential effects in this case.

N leaching loss 'trading':

- [215] Mr Day has consistently called for the establishment of a N leaching loss trading system in the One Plan framework in proceedings involving Chapter 14. In my opinion, the narrow purpose of PC2 is not the vehicle for such a fundamental shift in approach. Investigation of such a system would (logically in my view) need to embrace all contaminant discharges, more widely than just the unconsented existing IFLU activities that are the focus of PC2. That exercise falls outside the narrow scope of PC2 as well described in the objective of the notified plan change.

Lack of specificity about what 'good management practice' means:

- [216] While the recommended PC2 framework does not include lists of specified GMPs (as requested by Fish and Game and Ngāti Turanga) the risk scorecards and Tables 14.2A and 14.2B are explicit about the limits on N leaching risk and the (as described in my terms) 'credits' and 'demerit points' associated with the influence of specified management practices on the risk of N leaching from farming activities. In this way, I consider the proposed amendments provide improved certainty of outcome, compared with the publicly notified PC2 and the DV-PC2 (and, in my opinion, by comparison with the original One Plan).
- [217] In my view, there is transparency around the farm management practices informing the scorecards (and how these practices will influence the risk of N leaching), while providing for a farmer or grower to have consideration of

the natural resources and constraints of the land and the specifics of the farm system when determining the management response.

Scope

- [218] Lastly, I am aware that at least some appellants challenge whether there is scope to introduce the proposed risk assessment tools into PC2. While the question of scope is a matter for legal submissions, I offer the following comments from a planning perspective.
- [219] The submissions on behalf of individual farmers and growers and their sector representatives requested alternative and more practicable consent pathways to enable them to continue their existing farming and growing operations. As I recall the evidence to the Council level hearing, those parties accepted that they could not necessarily continue their existing farming and growing operations at their historic N leaching rates and that they would need to make on farm changes to reduce them (and, in some cases, significantly). Other submitters, such as Fish and Game, Mr Day and Ngāti Turanga were concerned about the lack of definition of exactly what farmers and growers would be expected to do on-farm in the way of GMPs and BMPs and concerned about providing for 'grandparenting' in the plan framework.
- [220] I recommended to the Hearing Panel the alternative 20% and 35% N leaching reduction and the 75th percentile controlled activity pathways, and the requirement to adopt GMPs and BMPs to achieve the necessary reductions, included as limits in PC2, in response to these concerns in submissions.
- [221] The concerns expressed in the appeals remain similar. For example, section 7.6 of the Fish and Game notice of appeal states there is a lack of guidance in DV-PC2 on the appropriate basis for granting consents and what constitutes GMP/BMP. In section 7.8 of the Fish and Game notice of appeal, 'grandparenting' is opposed. Mr Day opposes 'grandparenting' and is concerned to retain the natural capital approach⁸³. Fish and Game, similarly,

⁸³ Sections 7.4 and 7.6 of the notice of appeal by Andrew Day.

oppose ‘grandparenting’⁸⁴ and is concerned that PC2 fails to manage cumulative adverse effects on water quality through limits that are certain.⁸⁵

[222] As a result of these concerns Fish and Game and Ngāti Turanga requested deletion of DV-PC2 provisions, other than recalibrated Table 14.2, along with (in summary) any consequential relief the Court considered appropriate. The breadth of that request when considering a planning response is significant.

[223] I also note that the proposed risk assessment approach (as set out in the Council’s proposed provisions),⁸⁶ including the pastoral and CVG risk assessment tools, directly addresses the concerns raised by the appellants⁸⁷ by specifying clearly the on-farm changes and mitigations farmers and growers must adopt to reduce N leaching to qualify for the controlled activity consent pathway. The rules and the proposed risk assessment tools also account for the inherent capability and N leaching ‘riskiness’ of the land. In this way, they do not represent ‘grandparenting’.

[224] The recalibration of Table 14.2 responds to the requests in the appeals by Mr Day⁸⁸, Ngāti Turanga⁸⁹ and Fish and Game⁹⁰.

[225] The amendments proposed to the policy framework, including insertion into Policy 14-6 (e) of the requirement to have particular regard to values held by mana whenua for the relevant catchment, are (in part) a response to the concerns raised in the appeal by Ngāti Turanga and Te Runanga o Raukawa.⁹¹

X. STATUTORY FRAMEWORK

[226] I set out in Chapter 4 of my s 42A report to the Hearing Panel the statutory framework relevant for determining their recommendations on submissions

⁸⁴ Section 7.8 of the notice of appeal by Fish and Game.

⁸⁵ Section 7.11 of the notice of appeal by Fish and Game.

⁸⁶ See the provisions filed with the Court and parties on 22 September 2023.

⁸⁷ As requested in section 8 of the Fish and Game notice of appeal.

⁸⁸ Section 8.2 of the notice appeal by Andrew Day.

⁸⁹ Under Heading 2 (1) (a) of the notices of appeal by Ngāti Turanga and Te Runanga o Raukawa.

⁹⁰ Section 8.1 of the notice of appeal by Fish and Game.

⁹¹ Under Headings 1.2 and 2 of the notice of appeal by Ngāti Turanga.

and the wording of PC2. Those statutory requirements are largely unchanged, and I list them here with regard to the DV-PC2:

- (b) The Council's functions under s 30 of the Act (including s 30(1)(c): the control of land use for the purpose of soil conservation, the maintenance and enhancement of ecosystems, and the quality of water in water bodies and in coastal water; and s 30(1)(d) the control of discharges of contaminants into or onto land or water);
- (c) The s 59 purpose of the RPS (being to achieve the purpose of the Act);
- (d) The ss 61(1) and 66(1) requirements that the RPS and regional plan must be in accordance with the Council's s 30 functions, Part 2 of the Act, relevant national policy statements (including the NZCPS) and regulations;
- (e) The s 61(2) requirement that the RPS shall have regard to management plans and strategies prepared under other Acts;
- (f) The s 61(2A) requirement that the RPS must take into account any relevant planning document recognised by an iwi authority that is lodged with the Council, to the extent its contents have a bearing on the resource management issues of the region;
- (g) The s 63 purpose of regional plans (being to assist the Council carry out its functions to achieve the purpose of the Act);
- (h) The s 66(2) requirement that the regional plan shall have regard to the RPS and plans and management plans and strategies prepared under other Acts;
- (i) The s 67(3) requirement that the regional plan must give effect to any national policy statements, the NZCPS and the RPS;
- (j) The s 67(4) requirement that the regional plan must not be inconsistent with any water conservation order or any other regional plan for the region;

- (k) The provisions of Part 2 of the Act, noting in particular:
- (i) the sustainable management purpose of the Act set out in s5;
 - (ii) the s6(a) obligation to recognise and provide for the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands and lakes and rivers and their margins, and the protection of them from inappropriate use and development;
 - (iii) the s6(e) obligation to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
 - (iv) the s6(g) obligation to recognise and provide for the protection of customary rights;
 - (v) the s7 requirements to have particular regard to kaitiakitanga, the ethic of stewardship, the intrinsic values of ecosystems, the maintenance and enhancement of the quality of the environment, any finite characteristics of natural and physical resources (such as any limit on the absorptive capacity of freshwater) and the protection of the habitat of trout and salmon (noting that trout habitat is a listed value in some targeted water management sub-zones); and
 - (vi) The s8 requirement to take into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi).

Y. NPS-FM 2020

[227] The relevant NPS-FM at the time PC2 was developed and publicly notified was the 2017 version. The August 2020 NPS-FM was gazetted on 3 August 2020 and came into force on 3 September 2020 (just a month before the PC2

hearing commenced and a month after the s 42A reports for the hearing were due). Part 4 of the NPS-FM requires that local authorities must give effect to the NPS-FM as soon as reasonably practicable.

[228] Section 22 of the Resource Management Amendment Act 2020 inserted a new ‘freshwater planning process’ in s 80A of the Act. Section 80A(4) requires Council to publicly notify the freshwater planning instrument that is intended to give effect to the NPS-FM by 31 December 2024.

[229] As explained in Dr Daly’s statement of evidence, the Council has commenced, but not concluded, the Oranga Wai process to develop the freshwater planning instrument. Given its highly confined purpose and timing in relation to the NPS-FM, PC2 was not promulgated as a plan change to give full effect to the NPS-FM. It simply could not achieve that and was not intended to.

[230] Unless the NPS-FM directs that certain provisions are to be included in plans,⁹² the Act’s Schedule 1 process must be used to amend plans to give effect to the NPSFM.

[231] Part 3 of the NPS-FM sets a non-exhaustive list of things that regional councils must do to give effect to the objectives and policies of the NPS-FM. Subpart 2 of Part 3 sets out a ‘National Objectives Framework’ (**NOF**). The Council is implementing this NOF through its Oranga Wai process.

[232] Clause 3.1(1) of the NPS-FM also states that *“nothing in this Part (Implementation) limits the general obligation under the Act to give effect to the objectives and policies in Part 2 of this NPS”* Accordingly, I have considered the single objective and 15 policies of the NPS-FM.

[233] Te Mana o te Wai is the fundamental concept underlying the NPS-FM and is described in Clause 1.3:

⁹² For example, Parts 3.22, 3.24 and 3.25 of the NPS-FM that require every regional council to include policies in their plans (addressing natural inland wetlands, rivers, fish passage) without using the Schedule 1 process (as detailed in Part 1.7 of the NPS-FM).

1. Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.
2. Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement.

[234] Clause 1.3 sets out six principles encompassed by Te Mana o te Wai, intended to inform the NPS-FM and its implementation.

[235] The sole Objective of the NPS-FM is to ensure that natural and physical resources are managed in a way that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems;
- (b) second, the health needs of people (such as drinking water); and
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

[236] It is my opinion that PC2 gives effect to the hierarchy of obligations set out in the objective: the purpose of PC2 is to address One Plan workability issues so that progress can be made with regulating, and requiring reductions in N leaching from, existing intensive farming land use activities to contribute to improving the health and well-being of water bodies and freshwater ecosystems. Dr Snelder's evidence confirms that, although the modelled N load reductions are modest, DV-PC2 (incorporating the risk assessment tools) will result in reduced in-river SIN.

[237] If the criticism of PC2 is that it does not go far enough, I do not read the first priority of the NPS-FM objective as directing the specific end point the One

Plan must achieve. The obligation is to 'prioritise'. My opinion is that PC2, more so now, as proposed to be amended, clearly prioritises improving as quickly as practicable the quality, health and well-being of freshwater. Delaying the implementation of PC2 would do the opposite.

[238] On the matter of achieving improvement as quickly as possible, I note that all of the planners who participated in expert conferencing for these appeals endorsed the proposed time frames included in the PC2 policies and rules. This includes timeframes around when consent applications must be lodged and on-farm mitigations implemented to reduce N leaching.⁹³

[239] To the extent that PC2 will contribute to reducing diffuse nutrient contamination of water, making it safer to drink or to use, it must be said to also contribute to (prioritise) the health needs of people.

[240] The evidence of Dr Collins and Mr Mayes confirms that, although the PC2 provisions will impose restrictions on farming activities, these will enable people and communities to provide for their economic and social well-being. In particular, PC2 will provide the certainty that has been absent since 2017 and which Dr Collins describes as being so important to the farming communities in the targeted water management sub-zones.

[241] There are 15 policies that follow the NPS-FM objective. It is my opinion that most of the policies set out in Part 2.2 of the NPS-FM cannot be given effect until the Council has concluded the Oranga Wai NOF and community engagement process Dr Daly describes in her statement of evidence.

NPS-FM Policy 1

[242] For example, Policy 1 requires that freshwater is managed in a way that gives effect to Te Mana o te Wai. The Oranga Wai process has resulted in a draft

⁹³ The JWS dated 24 February 2023 records that Christine Foster would circulate a clean version of the proposed objectives and policies by 24 February 2023 and that the other planners would advise their comments by 1 March 2023. No comments were received which altered the time frame for lodgement of applications (Policy 14-5 (1) (d)). The time frame within which on-farm mitigations are to be achieved was discussed at a conferencing session held 13 March 2023 and agreed as recorded in a set of amended provisions circulated to planners by email dated 14 March 2023.

objective for how Te Mana o te Wai could be applied in the Region and the Council has invited feedback from tangata whenua and the community on that. That process is not, though, complete. There is not yet, in my opinion, a settled understanding of what Te Mana o te Wai means in different catchments in the Region. Therefore, in my opinion, it is not reasonable to test the extent to which PC2 gives effect to Te Mana o te Wai (except, as assessed above, that is, the extent to which PC2 aligns with the hierarchy of obligations captured in the Objective, as it forms part of Te Mana o Te Wai).

NPS-FM Policy 2

- [243] Policy 2 of the NPS-FM requires that tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for. The NPS-FM 2017, that was in effect when PC2 was being developed, contained Objective D1, which was to provide for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water.
- [244] The s 32 report supporting PC2 records the engagement touch points with iwi authorities prior to public notification of PC2. I have also had discussions with the staff who were responsible for the engagement with iwi at the time (all of whom have since left the Council). The engagement record in the s 32 report shows some, but not a lot of, feedback from that process. As I understand it from Council officers there were also informal discussions across individuals and groups. Dr Daly's evidence further expands on the engagement process undertaken by Council officers, which spanned correspondence, hui and workshops, on an individual and collective basis.
- [245] Ultimately, the Hearing Panel found the Council had met its Schedule 1 obligations to consult with iwi authorities but considered that the nature and timing of the consultation with iwi and hapū could have been better. I rely on the evidence of Dr Daly, as well as the record of consultation undertaken since 2018 in this regard.⁹⁴

⁹⁴ Statement of Evidence, Dr Daly, 6 October 2023, Appendix B.

[246] In acknowledging the drivers and urgency around the plan change,⁹⁵ the Hearing Panel concurred with my approach that the absence of a cultural values assessment at that stage was not sufficient cause to delay PC2. That was my opinion in 2021 and remains my opinion today. I support the amendments that were made to the PC2 policies in the DV-PC2 and I support the insertion of proposed DV-PC2 Policy 14-6(e)(i). This additional policy is to ensure that the values held by mana whenua of the relevant catchment are given particular regard in considering applications for consent.

[247] I also discuss elsewhere in this statement of evidence the discussions held between Dr Peet (the Council's former Group Manager – Strategy, Regulation and Science) and Ngāti Turanga. It is not the case that the Council has sat on its hands since the PC2 decision. It has been engaged in responding to the challenges raised in appeals and in the structured approach underway with hapū and iwi through the Oranga Wai freshwater process. In the context of the progress made with those discussions and engagement, my opinion remains that nothing is achieved by halting PC2 at this stage. Certainly, there would be no benefit for water quality.

NPS-FM Policy 3

[248] Policy 3 of the NPS-FM is that freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

[249] The One Plan water management *zones* are subsets of larger catchments⁹⁶ and the water management *sub-zones* are a more finely grained subset of those zones. As already noted, the targeted water management sub-zones are a yet smaller group of sub-zones.

[250] The One Plan is framed on the basis of whole catchment management. The RPS objectives and policies attempt to respond, in an integrated way, to the

⁹⁵ Paragraph 3.261 of the Report and Recommendation of the Hearing Panel.

⁹⁶ As detailed in Table A.1 of Schedule A to the One Plan.

‘Big Four’ issues. However, the One Plan was not developed explicitly in terms of integrated whole-of-catchment management.

[251] Clause 3.5(1) of the NPS-FM (titled ‘Integrated management’) requires that, adopting an integrated approach (ki uta ki tai as required by Te Mana o te Wai) regional councils must:

- (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and
- (b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and
- (c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and
- (d) encourage the co-ordination and sequencing of regional or urban growth.

[252] Clause 3.5(2) of the NPS-FM requires that the Council must change its RPS to the extent needed to provide for the integrated management of the effects of:

- (a) The use and development of land on freshwater; and
- (b) The use and development of land and freshwater on receiving environments.

[253] I am aware, from my involvement with the Oranga Wai process, that the Council is considering how to give effect to the whole-of-catchment integrated management approach in the NPS-FM freshwater planning instrument. In my opinion, it cannot reasonably be expected that PC2 would have given consideration to the Clause 3.5 NPS-FM requirements prior to notification. Having said that, it is also my opinion that DV-PC2 (as proposed to be amended) is not inconsistent with an integrated management

approach. That is because the provisions seek to continue the One Plan approach of managing the effects of diffuse nutrient discharges from intensive farming land use on freshwater.

NPS-FM Policy 4

- [254] Policy 4 is that freshwater is managed as part of New Zealand's integrated response to climate change. Climate change effects were not at issue at the Council hearing and are not particularly affected by the DV-PC2, given its interim nature.

NPS-FM Policy 5

- [255] Policy 5 is that freshwater is managed to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved. I reiterate my earlier comments that the recent water quality assessment by Dr Snelder confirms that the DV-PC2 (as proposed to be amended) will contribute to improvement in the health and well-being of the acknowledged degraded targeted water management sub-zones, by reducing SIN loads.
- [256] Ms Patterson's evidence highlights the degraded state of coastal dune lakes and notes that PC2 alone will not address the issues that have caused that degradation. Ms Patterson notes that other initiatives, in addition to PC2, are being considered to address the health of the coastal dune lakes, and that this will involve limit setting to protect sensitive receiving environments, as required under the NPSFM. I endorse Ms Patterson's view that DV-PC2 will activate regulation that will enable the consenting of CVG and pastoral land uses in the catchments of the coastal dune lakes and reduce N leaching from those activities there.

NPS-FM Policies 6 to 10

- [257] Policies 6 to 10 address matters that are, either, not at issue in DV-PC2 (or the appeals) or the NOF process that is under way but not yet concluded.

NPS-FM Policy 11

- [258] Policy 11 is that all existing over-allocation is phased out and future over-allocation is avoided. The degraded water quality in the targeted water management sub-zones is a form of 'over-allocation', given the definition of that term in the NPS-FM. DV-PC2 is an initiative, explicitly, to phase that out.

NPS-FM Policies 12 to 14

- [259] Policies 12 to 14 address matters that relate to tasks required by the NOF and which are not affected by PC2 in my opinion.

NPS-FM Policy 15

- [260] Policy 15 is that communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with the NPS-FM. As already noted in relation to the third obligation in the hierarchy described in the NPS-FM objective, the evidence of Dr Collins and Mr Moyes confirms that Policy 2 will enable community well-being. My opinion is that the DV-PC2 will do this in a way that first prioritises the health and well-being of freshwater, consistent with the NPS-FM objective.
- [261] Importantly, in my opinion, PC2 will not prevent the Council from giving full effect to the NPSFM in its 2024 freshwater plan. PC2 is interim and for a particular purpose. All aspects of the One Plan, including PC2 once operative, will be considered as part of Oranga Wai. PC2 only deals with one aspect of land use in the region. The Oranga Wai process is reviewing a much broader spectrum of effects of land use (rural and urban) on freshwater, across a wider area than just the targeted water management sub-zones.

Z. NEW ZEALAND COASTAL POLICY STATEMENT 2010

- [262] The planning experts agreed at conferencing prior to the Council level hearing⁹⁷ that the following objectives and policies of the NZCPS are relevant

⁹⁷ Planning JWS dated 29 July 2020.

to PC2 to the extent that they relate to the influence of PC2 on water in the coastal environment:

- (a) Objective 1 (water quality, biological processes and resilience)
- (b) Objective 3 (Treaty of Waitangi)
- (c) Objective 6 (coastal resources should not be compromised by activities on land)
- (d) Policy 2 (Treaty of Waitangi, tangata whenua and Māori heritage)
- (e) Policy 3 (precautionary approach)
- (f) Policy 4 (integration)
- (g) Policy 5 (land or waters managed or held under other Acts)
- (h) Policy 21 (enhancement of water quality)
- (i) Policy 22 reducing sources of contamination)

[263] These objectives and policies can be considered relevant insofar as they relate to the influence of PC2 over the degree of contamination of surface water, groundwater, coastal lakes and the coastal marine area and over land use in the coastal environment.

[264] I have taken into account the supporting water quality state and trend information, the evidence of Dr Snelder and Ms Patterson, and the likely modest SIN load reduction anticipated by implementation of the PC2 regulatory framework. Although there is some uncertainty as to the extent of water quality improvements that will arise from PC2 for groundwater, lake and estuary environments, the expectation is that regulating existing IFLU to reduce N leaching loads, sediment, bacteria and other nutrients within and upstream of the coastal environment as now proposed by the PC2 provisions will contribute to water quality improvement in the coastal environment.

[265] Based on this information, I am of the opinion that DV-PC2 (modified as now proposed) will facilitate a modest reduction in contaminant loads in water

bodies flowing to and through the coastal environment. In this way PC2 will be in accordance with Objective 2 of the NZCPS and will allow the Council to administer the Chapter 14 provisions in a way that is in accordance with Objective 3 of the NZCPS. PC2 will also enable use and development, including in the coastal environment, without compromising (rather, seeking to improve) the quality of resources in the coastal environment. The amendments I have recommended to DV-PC2 will also better ensure that relevant cultural values are considered in the decision-making framework for IFLU activities, including those within and affecting the coastal environment. PC2 will contribute positively to the outcomes listed in Policy 3.

AA. NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT 2020

[266] The National Policy Statement on Urban Development 2020 came into effect on 20 August 2020. All of the policies and implementation tasks that flow from its objectives relate to 'urban environments'. I have not identified anything in the NPS-UD that bears directly on PC2.

BB. NATIONAL ENVIRONMENTAL STANDARDS FOR FRESHWATER REGULATIONS 2020

[267] The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 were gazetted on 3 August 2020 and came into effect on 3 September 2020. Subpart 2 of the NES includes Regulations 15 to 25 which control the conversion of land for dairy farming purposes. Subpart 4 introduces a 'nitrogen cap' on synthetic nitrogen applied to pastoral land of 190 kg/ha/year. The One Plan has been amended to give effect to the NES. The NES limits apply irrespective of PC2 and PC2 does not introduce any rules or restrictions that overlap with or conflict with the NES. In particular, PC2 controls existing IFLU activities and does not authorise the types of pastoral intensification or N fertiliser application controlled by the NES or create any conflict with the NES.

CC. RELEVANT RPS AND REGIONAL PLAN OBJECTIVES AND POLICIES

[268] I highlight the relevant objectives and policies later in this statement of evidence. My assessment is that the changes proposed by DV-PC2 give effect

to the relevant higher order RPS objectives and are consistent with the RPS and the other regional plan policies that are not altered by DV-PC2.

- [269] In later chapters of this report, I recommend amendments to the DV-PC2 and am satisfied that these will allow PC2 to better give effect to the relevant higher order objectives.

DD. RELEVANT IWI MANAGEMENT PLANS

- [270] The s 32 Report lists six iwi management plans ('taiao' management plans) which must be taken into account when making decisions under the RMA. I identify them in **Attachment E** to this statement and provide commentary there on the relevance of them for PC2.

- [271] The PC2 provisions were not identified, at the Council hearing, as being in conflict with any of the identified iwi management plan provisions. I do not identify, any conflicts between the amendments the Council now proposes to the DV-PC2 and the relevant provisions of those management plans.

EE. RANGITIKEI RIVER WATER CONSERVATION ORDER

- [272] The Rangitikei River Water Conservation Order came into force in 1993. It identifies the outstanding (wild and scenic, recreational, fisheries and habitat) characteristics and features of the Rangitikei River. Section 4 of the Order identifies waters in the upper and middle river that are to be protected and specifies water quality standards to be met by applications for consent. The Order controls and manages resource consents, rather than plan development (although it clarifies the in-river standards required to be achieved). I do not identify anything within DV-PC2, including the amendments now proposes, that is inherently inconsistent with the Order.

FF. TREATY SETTLEMENT ACTS

- [273] At the time of the Council level hearing, there were eight Claims Settlement Acts:

- (a) Ngaa Rauru Kaitahi Claims Settlement Act 2005;

- (b) Ngāti Apa (North Island) Claims Settlement Act 2010;
- (c) Ngati Toa Rangatira Claims Settlement Act 2014;
- (d) Rangitāne o Manawatū Claims Settlement Act 2016;
- (e) Te Awa Tupua (Whanganui River Claims Settlement) Act 2017;
- (f) Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Act 2017;
- (g) Ngāti Tūwharetoa Claims Settlement Act 2018; and
- (h) Ngāti Rangi Claims Settlement Act 2019.

[274] There are targeted water management sub-zones that intersect with the rohe and Statutory Area of Ngāti Rangi. The evidence to the Council-level hearing did not identify any conflicts between PC2 (or the DV-PC2 as then proposed) and the above listed settlement legislation.

[275] Since the PC2 decision was publicly notified, the Ngāti Kahungunu ki Wairarapa Tāmaki Nui-a-Rua Claims Settlement Act 2022 has also been enacted. To the best of my knowledge, none of Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua's Statutory Areas interact with the PC2 targeted water management sub-zones.

GG. OTHER POLICY DIRECTION

Lake Horowhenua Accord - Te Kawenata o te Roto o Horowhenua

[276] The Lake Horowhenua Accord was set up in 2013 as a collaborative partnership between the Lake Horowhenua Trust, Horowhenua Lake Domain Board, Horowhenua District Council, Horizons Regional Council, and Department of Conservation (the **Lake Accord**). It is a non-statutory, voluntary, statement of intention between the parties.

[277] The aim of the Lake Accord is to provide leadership in remediating decades of poor environmental management in and around Punahau/Lake Horowhenua, and prevent any further degradation. The overarching

purpose of the Lake Accord is “*coming together to resolve, once and for all, the condition of Lake Horowhenua*”.

[278] The Lake Accord developed a management plan based on fifteen key management actions to be implemented to progress the restoration of Punahau / Lake Horowhenua. The key management actions include: land use management throughout the Horowhenua Catchment, lake level management initiatives such as weed harvesting, riparian enhancement, establishment of fish passes, and development of cultural monitoring programs based on Muaūpoko values.

[279] The Lake Accord is not identified in the appeals as being affected by PC2.

Manawatū River Leaders’ Accord

[280] The Manawatū River Leaders’ Accord (2010) is a collaborative agreement between 34 signatories who make up the Manawatū River Leaders’ Forum. The signatories include local government, iwi/hapū, and Massey University, as well as a range of farming, industry, recreation, and environmental organisations who have interests in or impacts upon the Manawatū River and its tributaries.

[281] The main goal of the Manawatū River Leaders’ Accord is to improve “*the mauri (life-force) of the Manawatū River Catchment, such that it sustains fish species, and is suitable for contact recreation, in balance with the social, cultural, and economic activities of the catchment community*”. The Manawatū River Leaders’ Accord is a non-statutory, statement that sets out a vision for improving the health of the Awa.

[282] The Manawatū River Leaders Accord is not identified in the appeals as being affected by PC2.

HH. SECTION 32AA EVALUATION REQUIREMENTS

[283] Section 66(1)(e) of the Act requires the Council to change any regional plan in accordance with its obligations to have particular regard to an evaluation report prepared in accordance with s 32. Section 32AA requires a further

evaluation or any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed.

[284] I addressed s 32 and 32AA requirements at the Council level hearing. I also included a summary of my reasons for concluding that the (then) proposed amendments to PC2 were the most appropriate way to achieve the relevant objectives and give effect to the Act's purpose. The Hearing Panel's report clarified⁹⁸ that the content of the Panel's report was intended to satisfy the Council's s 32AA reporting obligation.

[285] Section 32AA(1) requires a further evaluation where changes are proposed to the proposal under consideration (i.e. DV-PC2). This evaluation must be undertaken in accordance with s 32(1)–(4) of the Act and must be undertaken at a level of detail that corresponds to the scale and significance of the proposed changes.

[286] The relevant considerations in s 32(1)–(4) are:

- (a) Section 32(1)(a): the evaluation report must examine the extent to which the objectives of the proposed changes are the most appropriate way to achieve the purpose of the RMA;
- (b) Section 32(1)(b): the evaluation report must examine whether the proposed provisions are the most appropriate way to achieve the objectives, by reference to other reasonably practicable options and assessing the efficiency and effectiveness of the proposed changes in achieving the objectives (I identify the relevant objectives below);
- (c) Section 32(1)(c): the evaluation report must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from implementation of the proposed changes;
- (d) Section 32(2)(a)–(c): the assessment under (1)(b)(ii) must:

⁹⁸ Paragraph 1.7 of the Report and Recommendation of the Hearing Panel.

- (i) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from implementation of the proposed changes (to DV-PC2), including opportunities for economic growth and employment that are anticipated; and
 - (ii) if practicable, must quantify the benefits and costs identified; and
 - (iii) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the proposed changes.
- (e) Section 32(3)(b): DV-PC2 is an ‘amending proposal’, therefore the s 32(1)(b) examination must relate to both:
- (i) the provisions and objectives of DV-PC2 (recalling that the PC2 purpose stated in the s 32 report is the ‘objective’ of PC2 for this purpose); and
 - (ii) the existing One Plan objectives to the extent that they are relevant to the objective of PC2 and are unchanged by DV-PC2.

[287] Section 32(4) applies where the proposed changes will impose a greater or lesser restriction on an activity than a national environmental standard. The NES includes limits on the application of synthetic nitrogen fertilizer to pastoral land (which commenced on 3 September 2020), as well as restrictions on the intensification of some pastoral agriculture. The One Plan has already been amended to give effect to the NES.⁹⁹

[288] The NES limits apply irrespective of PC2 and DV-PC2 does not introduce any rules or restrictions that overlap with or conflict with the NES. In particular, PC2 controls existing intensive farming land use activities, and does not authorise the types of pastoral intensification that are controlled by the NES.

⁹⁹ By Plan Amendment 2 to the One Plan (2023).

Relevant Objectives

[289] In my opinion, the relevant One Plan objectives are:

- (a) **RPS Objective 2-1** (have regard to mauri, recognise and provide for kaitiakitanga);
- (b) **RPS Objective 4-2** (avoid as far as reasonably practicable or otherwise remedy or mitigate increased sedimentation in water bodies, and to the extent required to be consistent with the water management objectives and policies set out in Chapter 5);
- (c) **RPS Objective 5-1** (safeguard the life supporting capacity of surface waterbodies and recognise and provide for the Schedule B values);
- (d) **RPS Objective 5-2** (surface water quality is managed to maintain water quality where it supports the Schedule B values and enhanced in rivers and lakes where water quality does not support the Schedule B values); and
- (e) **Regional Plan Objective 14-1** (management of discharges to land and water and land uses affecting water quality: safeguard life supporting capacity, provide for the Chapter 5 objectives and policies, and avoid/remedy/mitigate adverse effects of land discharges on surface water).

[290] For the Council level hearing, I looked at the relationship between the proposed PC2 provisions (policies, rules and method) and the One Plan objectives. I concluded that there was as clear 'line of sight' from the intensive farming land use rules up to the Chapter 14 policies and, in turn, to the objectives they are intended to achieve. The same is true for the amended DV-PC2 provisions now proposed (with the risk assessment tools). The relationships between RPS objectives, regional plan objectives and regional plan policies and rules is not vertically siloed. There are cross-connections. This is inevitable, in my view, in a combined RPS and regional plan and indicative also of the integrated management of resources.

[291] The DV-PC2 provisions, including the amendments now proposed will, as a package, contribute to achieving the relevant regional plan objective (14-1) and the relevant RPS objectives for the reasons explained throughout my statement of evidence.

II. REASONABLY PRACTICABLE OPTIONS

[292] The s 32 evaluation considered two alternatives: ‘status quo’ or ‘do nothing’ (being the operative One Plan provisions¹⁰⁰), and the publicly notified PC2.

[293] I evaluated these two options and the package of further amendments at the Council level hearing. Although I included the operative One Plan as the baseline for comparison, I considered (and still consider) that it suffers from the impairments that gave rise to PC2 in the first place, so it is difficult to view it as a genuinely practicable option. However, I include it again in my s32AA evaluation that follows, for completeness.

[294] I refer to the relevant options below as:

Option 1: Operative One Plan

Option 2: Publicly notified PC2

Option 3: DV-PC2

Option 4: Amended DV-PC2 (the further amendments the Council now proposes)

[295] I acknowledge that appellants have requested that everything except the Table 14.2 update should be deleted from PC2. I do not consider this is a reasonably practicable option because it fails to address the acknowledged policy issues I have discussed earlier in this statement of evidence.

[296] Summarising the s 32AA requirements listed earlier and the relevant obligations above, my evaluation of the proposed amendments considers:

¹⁰⁰ The planning experts confirmed in expert conferencing before the Council-level hearing that the operative One Plan provisions are the appropriate baseline for comparison of options.

- (a) The extent to which the objectives of PC2 are the most appropriate way to achieve the purpose of the RMA;
- (b) The extent to which the provisions are the most appropriate to achieve the objectives of PC2;
- (c) Extent to which the provisions give effect to the RPS and are the most appropriate way to achieve the relevant objectives;¹⁰¹
- (d) Efficiency of the provisions in achieving the relevant objectives;
- (e) Effectiveness of the provisions in achieving the relevant objectives, including whether they are able to be practically implemented?
- (f) Environmental, economic, social, cultural benefits anticipated from implementation of the proposal;
- (g) Opportunities for economic growth and employment arising from the proposal;
- (h) Environmental, economic, social, cultural costs anticipated from implementation of the proposal, including whether costs can be quantified; and
- (i) Risk of acting or not acting where information is uncertain or insufficient.

[297] Additional matters arising from the Council's statutory obligations include:

- (a) The extent to which the proposal will assist the Council to give effect to its s 30 functions;
- (b) The extent to which the proposal will give effect to the NPS-FM, including whether it will align with, or create potential conflicts with, the NPS-FM; and

¹⁰¹ Noting the obligation in s 67 (3) (c) that a regional plan must give effect to the RPS.

- (c) The extent to which the proposal will give effect to the NZCPS in the coastal marine area downstream of water bodies in the targeted water management sub-zones;
- (d) Are the costs and benefits of implementation able to be quantified?

JJ. EVALUATION OF THE OPTIONS

[298] I provide a comparative evaluation of the four options identified above, in terms of each of the matters identified above:

(a) The extent to which the objectives of PC2 are the most appropriate way to achieve the purpose of the RMA:

Option 1: The operative One Plan provisions are currently unable to be implemented and are not achieving the One Plan objectives that are intended to achieve the purpose of the Act.

Operative One Plan

Option 2: I remain of the view that the publicly notified PC2 provisions did not provide sufficient certainty or guidance about the limits that should be imposed on existing intensive farming land use activities unable to comply with the Table 14.2 CNLMs.

Publicly notified PC2

Option 3: The evidence is that the DV-PC2 provisions would achieve modest water quality improvement, with greater certainty of outcome and greater administrative plan implementation efficiency. On this basis it was, at the time, the most appropriate way to achieve the sustainable management purpose of the Act. The successful implementation of the DV-PC2 provisions rely on Overseer®. The Science Advisory Panel's report and the Government response mean there is considerable uncertainty currently (and likely for the foreseeable future) over whether Overseer® can be relied on in the way proposed by DV-PC2 (by requiring specific quantified and fixed N leaching reduction amounts).

DV-PC2

Option 4: The expanded policy framework better articulates the outcomes sought by the community for the management of existing IFLU activities and the constraints that should apply to the activities to achieve the Act's purpose. The alternative rule pathways, based on the PC2-specific risk assessment tools, provide a superior framework for managing existing intensive farming land use activities and for driving on-farm management practices that will reduce N leaching loss, consistent with the Act's sustainable management purpose.

Amended DV-PC2

(b) The extent to which the provisions are the most appropriate to achieve the objectives of PC2:

Option 1: The purpose of PC2 is to fix shortcomings in the operative provisions. It follows that the operative provisions cannot achieve the PC2 purpose.

Operative One Plan

Option 2: I remain of the view that the publicly notified PC2 provisions did not provide sufficient certainty or guidance about the limits that should be imposed on existing intensive farming land use activities unable to give full effect to the stated purpose of PC2.

Publicly notified PC2

Option 3: The DV-PC2 provisions were found to be the most appropriate to achieve the PC2 purpose at the time of the Council's decision. The Hearing Panel accepted that modest water quality improvement would result while enabling most existing IFLU activities to obtain consent through a robust but efficient plan framework. However, the issues arising for Overseer® since that time have meant the DV-PC2 is no longer fit for purpose in terms of the PC2 purpose, in my view.

DV-PC2

Option 4: The proposed amendments that frame the management of existing IFLU activities in terms of risk of N leaching and address the range of concerns of the appellants through an expanded

Amended DV-PC2

and clearer policy framework are the most appropriate provisions in achieving the PC2 purpose, in my view.

(c) The extent to which the provisions give effect to the RPS and are the most appropriate way to achieve the relevant objectives:

Option 1: The inability to practically implement the operative One Plan provisions means the RPS objectives cannot be met.
Operative One Plan

Option 2: I remain of the view that the publicly notified PC2 provisions did not give sufficient effect to the intention stated in the Chapter 5 RPS objectives. The recommendations I made at the Council-level hearing, as adopted by the Hearing Panel, addressed this.
Publicly notified PC2

Option 3: The DV-PC2 provisions did, in my view, give effect to the RPS objectives and were the most appropriate way of doing so – at the time. The Issues raised with reliance on Overseer® since then have, though, undermined the ability to implement the DV-PC2 framework.
DV-PC2

Option 4: The amended policies, rules and methods respond better to the RPS objectives in clarifying the outcomes sought by the community for the management of existing IFLU activities and the constraints and time frames that should apply to them. The amended provisions overcome the implementation issues associated with reliance on Overseer® and, in doing so, inject greater clarity about what is required on-farm in terms of practical mitigation measures to achieve N leaching loss reductions in the targeted water management sub-zones.
Amended DV-PC2

(d) Efficiency and Effectiveness:

Option 1: The inability to implement the operative One Plan provisions due to the issues with Table 14.2 CNLM and the policy framework, is plainly not efficient or effective.

Operative One Plan

Option 2: I remain of the view that the consent pathways proposed in the publicly notified PC2 provisions would be inefficient to implement and not fully effective in achieving the One Plan objectives. I concluded at the time (and remain of the view) that amendments were necessary to improve the efficiency of that package of provisions.

Publicly notified PC2

Option 3: The inability to rely on Overseer® currently means the DV-PC2 provisions do not provide a workable rule framework and cannot be considered to be efficient or effective.

DV-PC2

Option 4: The alternative rule pathways, based on the PC2 (pastoral and CVG) specific risk assessment tools, provide a workable framework for considering applications for consent for existing intensive farming land use activities. The framework is supported by representatives of the pastoral and horticulture sectors. Dr Jolly's evidence is that the CVG risk assessment tool has performed well in case studies with growers representing 90% of the land area in Horowhenua WMSZ. I conclude that the proposed provisions are able to be implemented and are currently the most effective and efficient option available.

Amended DV-PC2

(e) Environmental, economic, social, cultural benefits:

Option 1: The inability to implement the operative One Plan provisions means they are not able to realise the benefits that were originally intended by the One Plan.

Operative One Plan

Option 2: The publicly notified PC2 framework of policies and rules was well meaning, in my view, but not effective in clarifying exactly what environmental, social and cultural outcomes were sought. There was still uncertainty around how the discretionary pathway would apply – how, when, and under what parameters, meant there was still uncertainty for farmers and the community around the ability to farm where Table 14.2 CNLM were not met.

Publicly notified PC2

Option 3: The DV-PC2 provisions provided a clearer statement of expected environmental, social, cultural and economic outcomes, in my view, but it cannot be effectively implemented currently.

DV-PC2

Option 4: The expanded policy framework better articulates the environmental, social and cultural outcomes sought, in my view. Applications to exceed the specified risk thresholds will need to be robust to make a case in terms of what is, now, a quite stringent set of policy expectations. The workable controlled activity pathways, based on the pastoral and CVG risk assessment tools mean the uncertainties described by Dr Collins will be overcome and the adverse social and economic effects Dr Collins describes will be addressed. The consent pathways are, though, only available to farmers if they implement effective on-farm mitigations that reduce N leaching risk. This will better ensure that the environmental outcomes intended by the One Plan policy framework are achieved. The SIN modelling described by Dr Snelder anticipates modest reductions and, therefore, modest water quality improvement.

Amended DV-PC2

(f) Opportunities for economic growth and employment:

Option 1: The economic modelling undertaken to support PC2 concluded that, at a regional scale, the impacts of PC2 would be largely neutral. That is, that investment diverted from agricultural land use (by reason of the PC2 restrictions) would be invested in other sectors. At a farm scale, the modelling found that the cost of implementing the PC2 provisions was variable across the dairy

Operative One Plan

Option 2:

Publicly notified PC2	farms and CVG enterprises studied, but all showed a net reduction in profitability. Despite this, the partial gross margin remained positive in all cases. Overall, the economic modelling confirmed that PC2 was a positive influence in that it shifted farmers away from being unconsented or 'un-consentable' and closer to the point of positive profitability within the regulatory scheme. Mr Mayes' evidence confirms that while there are costs associated the risk assessment tool (and adopting fam practices to meet the necessary threshold) it remains profitable. In all cases the economic outcomes are better than if farmers had to comply with Table 14.2 CNLM with no workable consenting pathway beyond that, to continue farming. In this respect, the differences between the three versions of PC2 (publicly notified, DV-PC2, amended DV-PC2) are largely neutral, except that only the amended DV-PC2 is genuinely able to be implemented and realise the economic outcomes.
Option 3: DV-PC2	
Option 4: Amended DV-PC2	

(g) Environmental, economic, social, cultural costs and can costs be quantified

Option 1: Operative One Plan	The inability to implement the operative One Plan provisions means that the adverse environmental, social and cultural effects (costs) associated with existing IFLU activities will continue unregulated and unmoderated.
Option 2: Publicly notified PC2	It was (and remains) my opinion that the notified PC2 provisions did not provide sufficient certainty or guidance about the limits that should be imposed on existing intensive farming land use activities. Therefore, it was in my opinion unknown the extent to which the current environmental, social and cultural effects (costs) would continue or be moderated.
Option 3: DV-PC2	The inability to implement the DC-PC2 provisions currently (due to the Overseer® uncertainties) means that the lack of confidence in securing resource consents will continue. In that

case, the current environmental, social and cultural costs continue unmoderated.

Option 4: The amended provisions will not address all of the adverse environmental, social and cultural effects associated with existing IFLU activities (or farming generally). That was never the intention of PC2. However, the modelling and water quality assessments of Dr Snelder confirms that the proposed provisions will reduce the adverse environmental effects on surface water in the targeted water management sub-zones, achieving modest water quality improvement. In my opinion, this will translate as modest improvement in the associated social, economic, and cultural values. In this respect the proposed provisions are the most appropriate available option.

Amended DV-PC2

(h) Risk:

Option 1: The operative One Plan provisions are currently unable to be implemented and are not achieving the One Plan objectives that are intended to achieve the purpose of the Act.

Operative One Plan

Option 2: I remain of the view that the publicly notified PC2 provisions did not provide sufficient certainty or guidance about the limits that should be imposed on existing intensive farming land use activities unable to comply with the Table 14.2 CNLMs.

Publicly notified PC2

Option 3: The successful implementation of the DV-PC2 provisions rely on Overseer®. The Science Advisory Panel's report and Government response results in considerable uncertainty around whether Overseer® can be relied on in the way proposed by DV-PC2 (that is, in requiring specific quantified and fixed N leaching reduction amounts). For this reason DV-PC2 is unlikely to be able to meet the Act's purpose. This is relevant also when considering the

DV-PC2

purpose of the plan change, and the need for a workable consenting pathway, for the reasons described above.

Option 4: The expanded policy framework better articulates the outcomes sought by the community for the management of existing IFLU activities and the constraints that should apply to those activities to achieve the Act's purpose. The alternative rule pathways, based on the PC2-specific risk assessment tools, in my view, provide a superior (and workable) framework for managing existing IFLU activities and for driving on-farm management practices that will reduce N leaching loss, consistent with the Act's sustainable management purpose.

Amended DV-PC2

(i) Will the provisions assist in giving effect to Council's s. 30 functions:

Option 1: In my opinion, the inability to implement the Chapter 14 provisions regulating existing IFLU activities impairs the Council's ability to fulfil its s 30 functions. This has been the case for some time, given the well documented plan issues.

Operative One Plan

Option 2: The publicly notified provisions would have enabled the Council to regulate existing IFLU. However, since the identification of the Overseer® issues and the identified limitations in use of the model, the Council cannot, practically, implement the provisions or fulfil this aspect of its s 30 functions. The absence of other pathways under the notified provisions compounds this issue.

Publicly notified PC2

Option 3: The DV-PC2 provisions enabled the Council to regulate existing IFLU activities more efficiently and achieve modest water quality improvement, but (for the same reasons as above) are also not able to be practically implemented since the Overseer® issues emerged. Therefore, while DV-PC2 is designed to accord with

DV-PC2

the Council's obligations, it is restricted from assisting the Council in carrying out its section 30 functions.

Option 4: The pastoral and CVG risk assessment tools, as an alternative to Overseer®, will enable the Council to implement the PC2 provisions and achieve modest water quality improvement. The package of amendments to objectives, policies and rules provides a robust and workable framework for achieving substantive reductions in N leaching, by the adoption of on-farm farm practice mitigations and will enable the Council to be effective in exercising its s. 30 functions.

Amended DV-PC2

(j) Will the provisions give effect to the NPS-FM and NZCPS:

Option 1: The inability to implement the Chapter 14 provisions means that the One Plan has been unable to contribute to achieving the objectives of the NPS-FM and NZCPS in relation to the management of existing IFLU.

Operative One Plan

Option 2: It is unclear the extent to which the publicly notified PC2 provisions would have given effect to the NPS-FM or the NZCPS. The framework contemplated granting discretionary activity consents for non-compliance with the Table 14.2 CNLMs but provided limited guidance in its policy framework as to which consents could be granted or how consents should be moderated or constrained. Some assumptions were made for the purposes of SIN modelling which assumed a reasonably hard line would be taken and this would result in modest SIN reduction. However, the lack of confidence in the Overseer® modelling tool means the provisions are unable to be implemented at this time (they therefore cannot give effect to the higher order policy instruments).

Publicly notified PC2

Option 3: The policy and rule framework is more robust than the publicly notified PC2 provisions and I agree with the Hearing Panel's conclusion that the DV-PC2 provisions gave effect to the NPS-FM and NZCPS. However, the DV-PC2 provisions suffer the same impairment as the publicly notified PC2 provisions in not being able to be implemented currently given its reliance on Overseer-derived CNLM limits and fixed specified N leaching reductions.

Option 4: The amended DV-PC2 provisions include more robust policies intended to consider impacts on and protect Māori cultural values in the relevant sub-catchment, surface water quality, coastal lakes, the current state of receiving environments and sensitivity of receiving environments (including wetlands and downstream receiving environments). In this respect, the amended DV-PC2 provisions are more effective in giving effect to the NPS-FM and NZCPS. The evidence suggests that there is little difference in the estimated (modest) water quality improvements between the three PC2 variants. The benefit of the proposed DV-PC2 provisions is that they can actually be implemented and the benefits actually realised – this is significant in light of the purpose of the plan change.

PC2 is not intended to, and does not, give full effect to the NPS-FM. As I conclude earlier the amended DV-PC2 provisions will give effect to the NPS-FM objective and achieve the policies. That is because the hierarchy of obligations prioritises the health and well-being of freshwater but should not be read, in my view, as requiring complete restoration of pristine water values immediately. The amended DV-PC2 provisions are expected to contribute (modestly) to water quality improvement and, in this way, to prioritise the health and well-being, the mana and mauri of water. The plan change starts the journey towards improvement, without preventing further steps at a later date.

KK. PROVISIONS

[299] The provisions proposed by the Council have previously been filed with the Court.¹⁰²

[300] I note that Dr Jolly has recommended, at paragraph 59 of her statement of evidence, amendments to Table 14.2B (the N leaching risk limits for CVG) based on further work undertaken recently with Mr Barber. I include in **Attachment F** to my statement of evidence the amended Table 14.2B. Dr Hanly has updated the Table 14.2 CNLM values to a more recent version of Overseer®. I have not amended Table 14.2 at this stage, but note that it is a change that can easily be made if that is the Court's wish.

[301] In all other respects, I record that I endorse the set of provisions provided to the Court, subject to whatever further or other amendments may be found to be necessary arising from the evidence of the parties.

LL. CONCLUSION

[302] Based on the foregoing s 32AA evaluation and for the reasons I further describe in my evidence, I conclude that the proposed amended DV-PC2 provisions are the most appropriate way to achieve the sustainable management purpose of the Act and to give effect to the higher order policy direction and the relevant One Plan objectives and to meet the PC2 purpose.

Christine Foster

7 October 2023

¹⁰² By memorandum of counsel for the Regional Council, dated 22 September 2023.

MM. ATTACHMENTS

Attachment A: Contents of One Plan

Attachment B: JWS Planning 29 July 2020 (Council level hearing)

Attachment C: Table of submissions on PC2

Attachment D: Expiry dates IFLU consents

Attachment E: Iwi Management Plans

Attachment F: Revised Table 14.2B

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BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of proposed Plan Change 2 for the One Plan

JOINT WITNESS STATEMENT OF EXPERTS

PLANNING

29 July 2020

INTRODUCTION

1. This joint witness statement relates to expert conferencing on the topic of Resource Management Act Planning.
2. This joint witness statement relates to proposed Plan Change 2 (**PC2**) of the One Plan by examining the policy framework proposed by PC2, considering potential refinements to the changes proposed by PC2 arising out of submissions, and considering the implications of the proposed amendments and any refinements in terms of section 32 of the Resource Management Act 1991 (the "**Act**").
3. The expert conferencing was held on 29 July 2020 at Palmerston North. The experts have agreed to resume conferencing on 20th August 2020.
4. Attendees at the conference were:
 - (a) Gerard Willis;
 - ~~(b) Natasha Hayward;~~
 - (c) Christine Foster;
 - (d) Vance Hodgson;
 - (e) Nic Conland;
 - (f) Chris Keenan;
 - (g) Carmen Taylor;
 - (h) Peter Wilson;
 - (i) Angus Gray;
 - (j) Cynthia Ward;
 - (k) Greg Carlyon;
 - (l) Paula Hunter;
 - (m) Melaina Voss;
 - (n) Siobhan Karaitiana; and
 - (o) Abbie Fowler.

CODE OF CONDUCT

5. We confirm that we have read the Environment Court Practice Note 2014, and in particular Appendix 3 – Protocol for Expert Witness Conferences, and agree to abide by it.

PURPOSE AND SCOPE OF CONFERENCING

6. The purpose of conferencing was to identify, discuss and highlight points of agreement and disagreement on planning issues arising from PC2 under the Act, and the submissions received on the proposed plan change.
7. In addition, questions arising from pre-hearing meetings between submitters and Horizons have been circulated for our consideration as part of conferencing. We have addressed those relevant to our areas of expertise.
8. The scope of the issues covered at this conference included:
 - (a) RMA Planning.

KEY FACTS AND ASSUMPTIONS

9. None

METHODOLOGIES AND STANDARDS

10. None

AGREED ISSUES

11. Refer to Annexure A.

DISAGREEMENT AND REASONS

12. Refer to Annexure A.

PRIMARY DATA

- Horizons Regional Council Operative One Plan
- Horizons Regional Council (2016), Policy Evaluation Report: Freshwater Quality (17p);
- Environment Court Declaration 2017
- s. 35 Evaluation Report 2018
- Ellis Gould Independent legal advice for MfE 2018
- Horizons Regional Council (2018), Horticulture Problem Definition (5p);
- Horizons Regional Council (12 Dec 2017), Environment Committee Annex A Science & Innovation Activity (32p);
- Horizons Regional Council (2013), 2013 State of Environment (100p);

- Dr J Roygard on behalf of Horizons Regional Council (undated), section 42A report (217p);
- Enfocust Ltd and Hill Young Cooper Ltd (12 October 2017), Draft report on Options to Change Nutrient Management Provisions of One Plan (6p);
- van Voorthuysen Environmental Ltd (29 June 2017), One Plan – intensive farming land use activities.
- Enfocust Ltd (July 2017), Planning Opinion on consenting pathways for intensive farming: Horizons One Plan (9p);
- Enfocust Ltd (June 2017), Options for Change: One Plan Post Declaration;
- Horizons Regional Council (14 November 2017), Strategy and Policy Committee meeting notes, report 17-220.
- Enfocust Ltd (May 2017), Implications of the Environment Court's declaration on One Plan implementation (14p);
- The AgriBusiness Group (October 2017), Farm Scale Economic Impact Analysis of One Plan Intensive Land Use Provisions (23p);
- Landcare Research (May 2016), Impact of the Horizons One Plan on farmers and the agricultural community (38p);
- KapAg Ltd (01/01/2018), An impact assessment of One Plan policies and rules on farming systems in the Tararua District and the Manawatu Wanganui Region (91p);
- KapAg Ltd (2015), Selecting farm practices and preparing farm plans for land-use consents in the Manawatu-Wanganui region (9p);
- KapAg Ltd (March 2018), Selecting representative dairy farms for the upper Manawatu River catchment (37p);
- KapAg Ltd (May 2018), A comparison of changes to nitrogen loss allowances on dairy in the upper Manawatu River catchment (50p);
- GSL Diagnostic (30 June 2016), The feasibility of nutrient leaching reductions (N leaching) within the constraints of minimum impact on the profitability and production of five dairy farms in the Horizons Region (45p);
- Massey University (February 2018) Sensitivity of values in Table 14.2 of the 'One Plan' to a change in the version of OVERSEER® (40p);
- Statutory Acknowledgements;
- Treaty Settlement Documents;
- All available JWSs and Appendices;
- Horizons Regional Council PC 2 S. 32 Report

RESERVATIONS

13. None

Date: 29 July 2020


 Gerard Willis

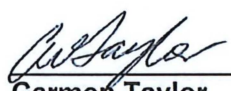
~~Natasha Hayward~~

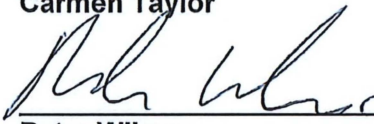

Christine Foster


Vance Hodgson


Nic Conland

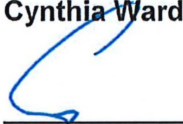

Chris Keenan


Carmen Taylor


Peter Wilson


Angus Gray

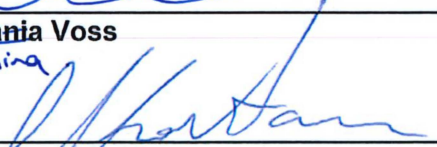

Cynthia Ward


Greg Carlyon


Paula Hunter


Melania Voss

Melania


Siobhan Karaitiana


Abbie Fowler

ANNEXURE A

In the matter of Proposed Plan Change 2

Expert conferencing – Resource Management Act Planning

Participants: Gerard Willis, Peter Wilson, Angus Gray, Cynthia Ward, Vance Hodgson, Greg Carlyon, Paula Hunter, , Chris Keenan, Siobhan, Karaitiana, Carmen Tayler, Christine Foster, Abbie Fowler Nic Conland (departed at 4.00 p.m. following Question 8 and before Question 9), Melaina Voss (departed at 5.00 p.m., during discussion around Question 12)

	Issue	Statements	Agreed Position	Disagreements, with reasons
1	What is the relevant RMA policy framework for evaluation of PC2 (including higher order planning documents and the One Plan)?	Give effect to: Part 2 Section 32: S.5, informed by 6,7,8 CF: The purpose of PC2 and the objectives of the One Plan, to the extent that they are unchanged by PC2 and relevant to PC2 Regional policy statement, are unchanged by the plan change 32 (3 & 6). Obj 5-1, 5-2 Regional Plan Objective 12-1, 12-2, 13-1, 14-1 RPS Obj 2-1, 3-1, 4-1, 4-2 2005 NES for human drinking water 2017 NPS-FM – objectives and policies, all those that are within the scope of PC2. NZCPS to the extent that they are relevant to PC2 and the coastal environment. Obj 1 (Water Quality, biological processes and resilience) Obj 3 (Treaty of Waitangi) Obj 6 (Coastal resources should not be compromised by activities on land)	Not all experts present have reviewed non RMA documents as highlighted or formed an opinion and agree that the weighting and requirements of them need to be considered further. All agreed that these One Plan objectives are relevant. Some experts consider that there are others that are relevant and will be presented in evidence.	SK: I have concerns about the way that HRC undertook their assessment of S 6, 7 & 8.

		Pol 2 (The Treaty of Waitangi Tangata and Maori heritage). Pol 3 (Precautionary approach) Pol 4 (Integration) Pol 5 (Land or Waters held under other acts) Pol 21 (Enhancement of water quality) Pol 22 (reducing sources of sedimentation) Must take into account: Relevant Iwi management plans Must not be inconsistent with: Water Conservation Order Rangitikei River 2003 Must consider: Te Awa Tupua Settlement Act 2017 Rangitane O Manawatu Settlement Act. Any other treaty settlement legislation. Statutory instruments separate from the RMA, that need to be considered: Manawatu Rivers Leaders Forum Accord Lake Horowhenua Accord Other relevant considerations: 2020 NPS Urban development (Due to timing in relation to notification of PC2). Noting that it has replaced 2016 NPS Urban Development The Reserves and Other Lands Disposal Act 1956 (relevant in regards to iwi and their relationship with Lake Horowhenua and land.		
	What is the impact of the proposed 2020 NPS-FM and NES-FM amendments?	Until the documents are enacted and gazetted, they have no effect.	All agreed. Experts have agreed to offer further caucusing on the implications of any	

		When they are available, regard will need to be given to them.	relevant NPS, NES and regulation changes, if or when they become available during the process.	
2	What is the correct approach for s.32 evaluation of PC2? What is the relevant baseline for comparative purposes? What are the relevant considerations?	Analysis for reasonably practicable options and comparative costs and benefits of those options, in terms of what is the most appropriate way of achieving objectives and purposes s32.(1) (a) and (b) examine whether the provisions are the most appropriate way to achieve the objectives (purpose of PC2 plus existing plan). The baseline is considered to be status quo One Plan unchanged with the assumption of enforcement. All agreed that there is a scenario from the baseline that needs to be considered. This involves a continuation of One Plan and recent implementation.	All agreed.	
3	Noting that some submissions raised concerns about the adequacy of pre-notification consultation, what are the relevant requirements under the RMA?	Schedule 1 Clause 3, 3A, 3B & 4A These require consultation with local authorities and iwi authorities.	All agreed. GC identified concern that the issues raised in this regard have been a matter of public record for some time and have not been responded to.	
4	How have statutory acknowledgements in Treaty Settlements been considered and addressed within PC2?	By reference, through a link in s32 report, but not discussed.		
5	On what basis is irrigation excluded from the list of intensive land uses in Policy 14-5 (a)?	This question has been removed.		

6	What is the relationship between Table 14.2 and the relevant values and attributes within Schedules B and E of the One Plan?	Table 14.2 was and is intended to provide a contribution towards achieving the values and outcomes of schedules B & E. It was not anticipated that compliance with Table 14.2 on an individual farm basis and even on a catchment wide basis on its own would achieve the relevant values and attributes within Schedules B and E of the One Plan. It is generally not possible at the enterprise scale, for a consent applicant to demonstrate the direct impact of their activity on the relevant values and attributes within Schedules B & E at a catchment scale. Iwi will have the opportunity to consider how their values may be affected, at the time of a consent application, as per the deed of settlement.	All agreed.	
7	Should discharges of treated municipal wastewater to land be subject to the intensive farming provisions of the One Plan?	They are not. They are captured by Rule 14-30.	All agreed.	

8	Should intensive farming land use associated with the irrigation of treated municipal wastewater to land be subject to the intensive farming provisions of the One Plan?	CF considers that they should. PH: It should be excluded because there are opportunities through the discharge application to consider the land use issues. PH: Also does not consider that the land use is extremely difficult to consent if it is an IFLU and if it is required to meet Table 14.2 and GMP. GW considers that they should be regulated, but not necessarily by requiring compliance through Table 14.2. Experts consider that this raised the question of scope and note that the question of scope is to be determined.	All except, PH, AF, CW & MV agree AF, and MV agree. All agreed All agreed except GC All agreed.	CF does not consider that exemption for new activities is within the scope of PC2. Everyone else disagrees and CW reserves her opinion. GC has not expressed a view on these matters NC to Farm Systems Experts: Is it possible to adjust your farm system to enable irrigation with municipal wastewater and be able to be consented? AF to Farm Systems Experts: Is it possible to adjust your farm system to enable irrigation with industrial waste water and to be consented?
9	Noting that specific alternative regulatory approaches were signalled in some submissions: what are the primary alternatives available and what are their relative merits, in terms of s.32, compared with PC2?	To be discussed on Day 2. CF will circulate her responses to submissions and written responses may be submitted before then.		

10	What refinements could be made to the PC2 policies and rules to address issues raised by submissions? (please identify the submission points that provide the scope for any proposed amendments)?	Deferred to Day 2		
11	Does PC2 provide sufficient guidance on the extent of exceedance of Table 14.2 that will be acceptable for those IFLU activities that seek resource consent to exceed Table 14.2? If not, how could PC2 be refined to better guide or limit exceedance of Table 14.2?	CF: No it doesn't provide guidance. Deferred to Day 2	All agreed	
12	What impact does the requirement that all regional councils must, by 2024, publicly notify plan changes to give effect to the revised NPS-FM have on the implementation of PC2? In particular, are there any implications in terms	This question is still being workshopped and is not complete.		

	of consent durations or consent review requirements?			
13	How are cumulative effects of individual INFLUs assessed and managed under PC2?	This question is still being workshopped and is not complete.		
14	What should be the minimum and maximum information requirements for applications for consent under PC2?			
15	What should be the minimum and maximum information requirements for applications for consent under PC2?			
16	How should the impact of regulation under PC2 (and the implementation of GMPs and BMPs required under the PC2 consent framework) be monitored and measured? And over what time frame?			
17	Given that all IFLUs in targeted water management zones have been required to			

	secure consents since 2014, what time frame is reasonable for lodging applications for consent under PC2?			
18	How can future Overseer FM version updates be accommodated within the PC2 rule framework?			
19	What are the merits and disadvantages of including a list of agreed minimum management practices in the proposed definition of 'good management practices'?			
20	Noting the Government's intention to introduce regulation to require 'freshwater farm plans' for intensive farming activities, how would the nutrient management plans required under the One Plan (and required by PC2) be integrated with 'freshwater farm plans'? Will it be necessary to change the name or content of			

	nutrient management plans required by PC2? Pre-hearing meeting discussions identified six potential uses for the Overseer FM farm systems modelling tool: (a) As a tool for calculating (permitted activity) limits in a Plan; (b) As a tool to set threshold for activity status in a Plan; (c) As a monitoring tool for compliance monitoring and enforcement; (d) As an information tool to test the efficacy of on-farm system changes to inform adaptive management (i.e. a decision support tool);			
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	(e) As an allocation tool for allocating individual shares of N or P contributed to the catchment; (f) Related to (e) above: as a basis for establishing a trading mechanism for N contamination 'rights'. Do the experts agree that these are valid uses of Overseer FM?			
21	What should be included, as a minimum, in the nutrient management plan accompanying applications for consent for each of the listed intensive farming land use activities? Is there an appropriate nutrient management plan template available that could be adopted?			

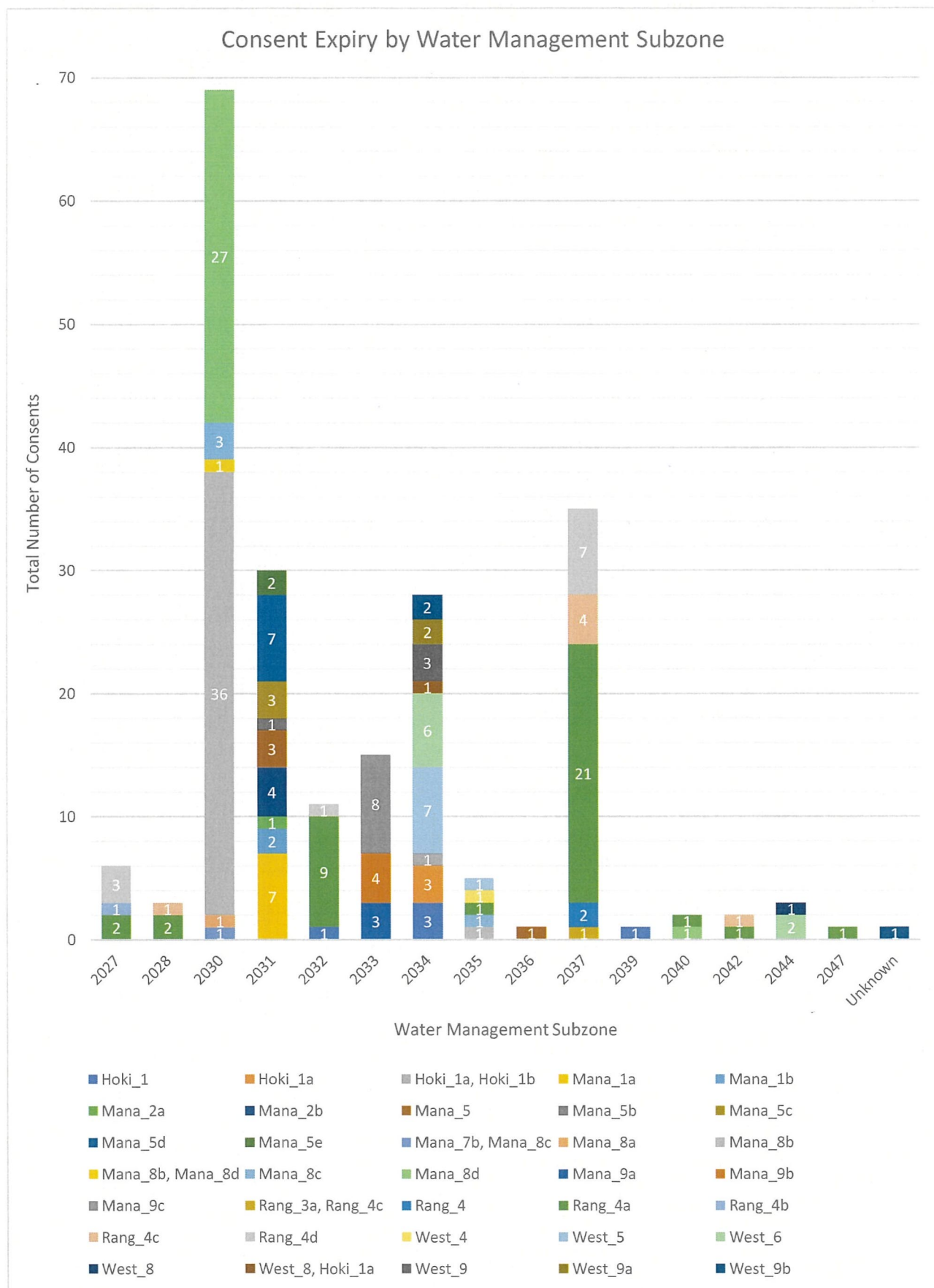
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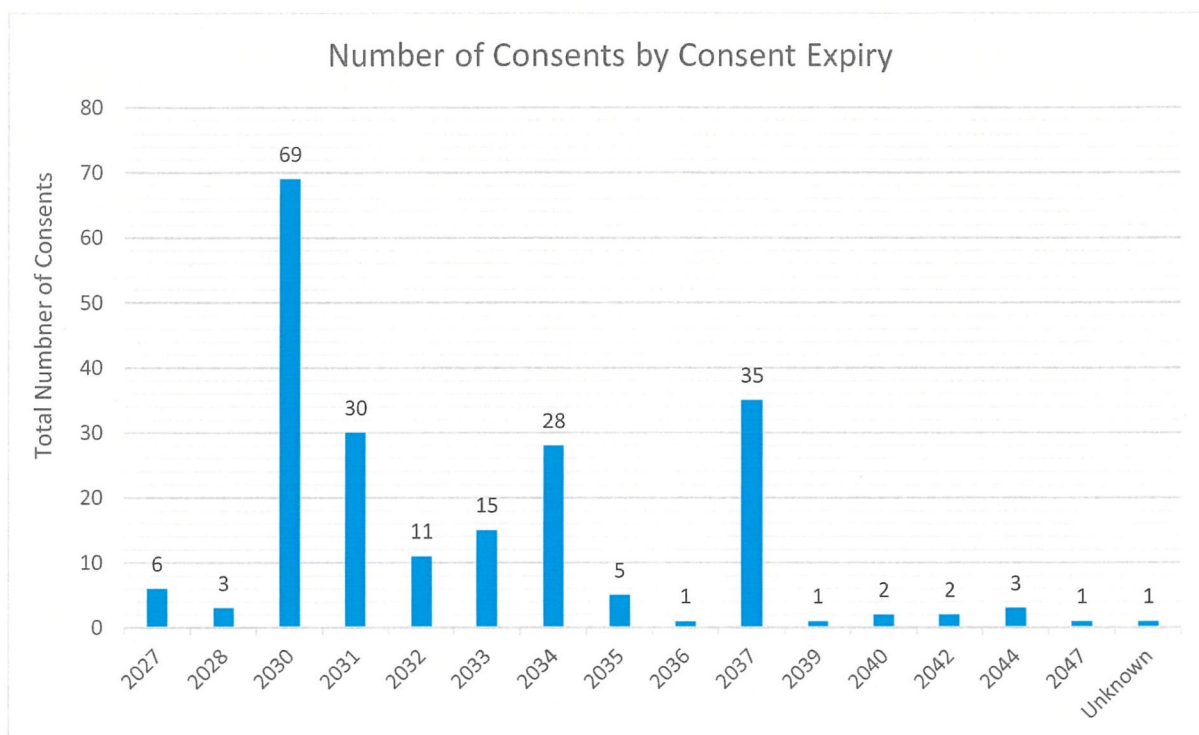
Table of Submissions and Further Submissions

Group	Submitters	Number
Submissions:		
Government	Director General for Conservation	1
Iwi authorities, iwi and hapū	Kahungunu ki Tāmaki nui-a-Rua Trust, Muaūpoko Tribal Authority Inc., Ngā Waihua o Paerangi Trust, Ngāti Turanga, Te Roopu Taiao o Ngāti Whakatere Trust, Te Runanga o Raukawa, Rangitāne o Tamaki Nui a Rua, Hōkio A Maori Land Trust, Ngā Tangata Tiaki, Tamarangi Hapū, Te Mauri o Rangitāne o Manawatū/ Tanenuiarangi Manawatū Incorporated	11
Territorial authorities	Ruapehu District Council, Tararua DC, Horowhenua DC, Palmerston North CC, Manawatū DC, The Combined Councils,	6
NGOs and Environmental Groups	Environmental Defence Society, Wellington Fish & Game Council, Forest & Bird, Water Protection Society, Arawhata Wetland Alliance Group	5
Primary Production Sector Groups	DairyNZ, Federated Farmers of New Zealand Inc., Horticulture NZ, Beef + Lamb NZ, Griffins Foods Ltd, Ravensdown Limited, Ballance Agri-nutrients Limited, BakerAg, Potatoes NZ	9
Local Grower Associations	Ohakune Growers Association, Tararua Growers Association	2
Individual farmers	Lisa & Paul Charmley, Sarah von Dazelden, Ian & Shirley Cumming, Geoff and Cynthia Kane, John Lamason, Andrew Day, BEL Group, Neil Filer,	12

Group	Submitters	Number
	Vincent J Payne, Carla Marsden, Mark Woodruffe, Russell & Karen Phillips	
Individual growers	Mike Moleta (Freshpik Farms Ltd), Ian Corbetts, Woodhaven Gardens Ltd, Parlato Farming Ltd and 34 pro forma grower submissions	38
Further Submissions		
Territorial authorities	Manawatū District Council, Horowhenua District Council (note HDC lodged 18 individual further submissions)	19
Government	Director-General of Conservation, MidCentral District Health Board	2
Environmental NGOs	Forest & Bird New Zealand, Environmental Defence Society	2
Local interest groups	Water Protection Society	1
Primary Production Sector Groups	Horticulture NZ, Dairy NZ, Potatoes NZ, Beef + Lamb NZ, Fonterra	5
Growers	Chris Pescini, Woodhaven Gardens	2
Individual	Teresa Marie Schultz	1

Attachment D





Attachment E

RELEVANT IWI MANAGEMENT PLANS

Ngāti Rangi Taiao Management Plan (2014)

- (a) Page 25: erosion and sedimentation and land use that is inappropriate for the LUC class are identified as environmental issues;
- (b) Page 26: the objectives include *'Land is used and managed in a way that is appropriate to its Land Use Capability Class'*;
- (c) Page 29 (Ngā Ture – Rules): 2.6.1.1 (consent authorities will include conditions to appropriately manage erosion-prone areas); 2.5.1.1 (resource consent will not be granted where it allows land to be used beyond its LUC classification); and 2.5.1.2 (resource consent will not be granted by local authorities for intensification of land use unless that consent includes nutrient benchmarking and effective nutrient management mechanisms);
- (d) Page 33: water quality is identified as an issue (including contamination by leaching and run-off and non-point source);
- (e) Page 34: objectives include: *'There are no discharges (point source or non-point source) that impact on water quality'*;
- (f) Page 35: 4.2.3 (there should be no impact on mauri or ecology from point or non-point source discharges to water); and 4.2.4 (supports buffer zones around horticultural crops); and
- (g) Page 38: objectives include: *'Horticulture is conducted in a sustainable, zero impact manner'*, and rules include *'consenting authorities will not grant consent for horticultural activities where that consent allows discharges (diffuse or otherwise) of nutrients, agrichemicals or sediment.'*

Ngāa Rauru Kītahi Puutaiao Management Plan

- (a) Sets out expectations of relationships with central and local government agencies including Horizons; and

- (b) Page 16: objectives include 3.1 *'ensure that the realm of Maru is managed appropriately in accordance with Ngaa Raurutanga policies'*; Policy 3.1 *'TKOR will advocate for water users and decision makers to work collaboratively to develop sustainable solutions to water management, access, allocation, decision making and monitoring'*, Policy 3.3 *'All discharges of pollutants or contaminants to water should be avoided'*, and policies and methods relating to the fencing of riparian margins

Te Kāuru Eastern Manawatū River Hapū Collective Te Kāuru Taiao Strategy (2016)

- (a) Page 7: identifies that the purpose is to guide hapū and RMA officers in decision making in all matters that impact air, water, land and all life forms in Eastern Manawatū catchment;
- (b) Strand 2: sets out the values and includes a table summarising water state in terms of cultural health indicators (including for water health);
- (c) Table 4: strategies (including for water quality); and
- (d) Page 37: discussion of land use, land retirement, Table 14 actions for sustainable land use.

Ngāti Maniapoto Ko Tā Maniapoto Mahere Taiao (there are no targeted water management sub-zones in this rohe)

- (a) PC2 does not affect the rohe to which this document applies.

Ngāti Tuwharetoa Iwi Environmental Management Plan (there are no targeted water management sub-zones in this rohe)

- (a) PC2 does not affect the rohe to which this document applies.

Ki Uta, Ki Tai, Ngā Puna Rau o Rangitīkei, Catchment Strategy and Action Plan (2019)

- (a) Page 5: The Awa, its tributaries and ecosystems are revitalised and cared for by Hapū and Iwi alongside the rest of the community through focusing decision making on ensuring the mauri of the Awa is maintained and enhanced. A holistic approach focussed on a healthy and resilient Awa, flourishing flora and fauna, and taonga species at sustainable levels Hapū and Iwi can fully express their kaitiakitanga;

- (b) Page 9: why catchment planning is needed;
- (c) Page 24: Strategic Goals (The Awa, its tributaries and ecosystems are revitalised and cared for by Hapū and Iwi alongside the rest of the community, Hapū and Iwi can exercise their tikanga and values on, in and about the Awa and its tributaries A healthy river equals healthy people; and
- (d) Page 32: Hapū and Iwi management plans across the catchment by 2021 and implemented by 2028 (with specific actions and strategic alliances identified).

[2] Tuhua Hikurangi - Te Taiawhio (no digital copy available

[3] Central North Island Forests Iwi Collective [He Mahere Pūtahitanga](#)

Attachment F

Table 14.2B updated to specify the nitrogen leaching risk limits in numeric limits for the identified rainfall and pore-available-water combinations as recommended by Dr Jolly:

Table 14.2B: *Nitrogen Leaching Risk Limits - Commercial Vegetable Growing**

The following are the *nitrogen leaching risk limits** for commercial vegetable growing activities for the purposes of Rule 14-1 and Schedule [Z]. The limits prescribed in Table 14.2B apply to both the nitrogen fertiliser practices described in Topic 1 and the soil health practices described in Topic 2 of Schedule [Y]. For the purposes of Rule 14-1, the *nitrogen leaching risk** of the activity must not exceed the largest number of the range specified in Table 14.2B.

Rainfall	Profile Available Water		
	<u>151-350mm</u>	<u>61-150mm</u>	<u>0-60mm</u>
<u>Rainfall 1</u> <u><1000 mm/year</u>	<u>72</u>	<u>72</u>	<u>52</u>
<u>Rainfall 2</u> <u>1000-1300 mm/year</u>	<u>72</u>	<u>60</u>	<u>48</u>
<u>Rainfall 3</u> <u>1300-1600 mm/year</u>	<u>60</u>	<u>52</u>	<u>44</u>
<u>Rainfall 4</u> <u>>1600 mm/year</u>	<u>60</u>	<u>48</u>	<u>44</u>

