

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON**

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

IN THE MATTER of the Resource Management Act 1991

**AND
IN THE MATTER** of appeals under Clause 14 of Schedule 1 of the
Resource Management Act 1991 against the
decision of the Manawatū-Whanganui Regional
Council on Proposed Plan Change 2 to the One
Plan ("PC 2")

BETWEEN **TE RŪNANGA O RAUKAWA**
(ENV-2021-WLG-00020)

NGĀTI TURANGA
(ENV-2021-WLG-00021)

ANDREW DAY
(ENV-2021-WLG-00022)

WELLINGTON FISH AND GAME COUNCIL
(ENV-2021-WLG-00023)

Appellants

AND **MANAWATŪ-WHANGANUI REGIONAL
COUNCIL**

Respondent

**EVIDENCE IN CHIEF OF GREGORY JOHN CARLYON
FOR NGĀTI TURANGA AND THE WELLINGTON FISH AND GAME
COUNCIL
(Planning)**

Dated: 6 November 2023

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1. EXECUTIVE SUMMARY

- 1.1. I have been involved in the development of the One Plan since its inception. This second-generation regional policy statement, regional plan suite and coastal plan is the first consolidated plan of this type under the Resource Management Act 1991 (**RMA, the Act**).
- 1.2. The Manawatū-Whanganui Regional Council (**Horizons, the Regional Council**) has advanced a proposition to modify the decisions version of Plan Change 2 (**PC2**) to incorporate risk assessment tools and industry direction and to provide a consenting pathway Horizons considers is not available via Table 14.2 (underpinned by Overseer). However, the risk assessment tool is not ground-truthed, tested or peer-reviewed.
- 1.3. In addition, in my opinion PC2 does not provide for the directions contained with NPS-FM, particularly Te Mana o te Wai. Further, neither the approach taken, nor the narrow scope applied by the Regional Council (focused on a consenting pathway) address the policies of the New Zealand Coastal Policy Statement, particularly in relation of restoration of degraded values and the application of precautionary approach.
- 1.4. The evidence of Mr Turoa for Ngāti Turanga sets out concerns relating to the narrow scope of PC2, and insufficient engagement with mana whenua. In addition, Mr Turoa sets out concerns that PC2 has the potential to generate adverse legacy outcomes in the context of total nutrient load throughout the catchment.
- 1.5. It is my opinion that continuing to utilise Table 14.2 as the drafting gate would be the most appropriate way to achieve the objectives of the One Plan pending a NPS-FM-compliant plan change (currently scheduled for 2024). Any other changes would provide for the needs of the potentially effected community only on a short-term basis, but create potential inequities between consented farms and unconsented farms. If the proposition is accepted that the Decisions Version of PC2 (**DV-PC2**) *provides* equity between those categories, this will create a legacy for a NPS-FM-compliant plan change. That is, a legacy will exist not only for existing consents granted on an improper basis, but also for new consents to be granted (on a similar basis). The better approach in my opinion would be to await the NPS-FM-compliant plan change and review existing consents (found in 2017 Declaration proceedings to be granted improperly) under section 128 of the Act. In my opinion, any new approaches to the

drafting gate should only be considered in the development of the freshwater plan, once they have been appropriately assessed and benchmarked with the primacy of the One Plan objectives foremost.

2. INTRODUCTION

- 2.1. My full name is Gregory John Carlyon. I am the Director and Practice Leader Planning at The Catalyst Group Planning and Environment Ltd, a multi-disciplinary policy, planning, science, and catchment management practice.
- 2.2. I hold a Bachelor of Regional Planning and have been working as a practising planner since 1991. I act as an Independent Commissioner and Chair under the Ministry for the Environment (**MfE**) certification programme and have completed the AMINZ mediation programme. I have been appointed by MfE to the national Environmental Legal Aid panel.
- 2.3. I am a member of the Resource Management Law Association (**RMLA**). I have regularly appeared before the Environment Court over the past 10 years, including in relation to freshwater management.
- 2.4. Relevant to this matter:
 - a. Through the period of 2004 to 2011, I was Policy Manager and General Manager, Strategy, Regulation, Science, and Iwi Relations at Manawatū-Whanganui Regional Council (**Horizons, the Regional Council**). In that role, reporting to Councillors, I was the project head for the development of the concept and process of the One Plan framework through to Environment Court appeals.
 - b. In the above role, I was responsible for developing and implementing the Sustainable Land Use Initiative (**SLUI**) to address hill country erosion, developed and led the Manawatū River Leaders Accord (**the Accord**) and led the development of the framework for Land and Water Aotearoa (**LAWA**).
 - c. I was part of the Regional Council advisory group to MfE through the period over which the One Plan was being developed and the National Policy Statement for Freshwater (**NPS-FM**) was emerging.
 - d. I worked as part of the team providing advice to the Parliamentary Commissioner for the Environment (**PCE**) on the use of Overseer in

regional planning¹, and was contracted by the PCE to undertake a review of the PCE's submission on MfE's consultation document 'Next steps for freshwater' (2016).

- e. I have provided advice to local authorities and iwi and hapū throughout Aotearoa in relation to the application of freshwater policy through the period 2011–present. This has included evidence to Council-level and Environment Court hearings in relation to consenting and plan development matters as relevant to freshwater management.

3. INVOLVEMENT

- 3.1. I have been extensively involved in the implementation of the One Plan through applications for consents, with iwi, farming, and council clients since 2011. However, I was not involved in the Environment Court (2012 and 2017), or the High Court (2013) proceedings associated with this matter.²
- 3.2. I have assisted Ngāti Turanga in relation to PC2 since early 2020. I was instructed by counsel for Wellington Fish and Game Council (**Fish & Game**) in late 2022. I did not give evidence for either party at the Council-level hearing.
- 3.3. I attended mediation meetings through the latter part of 2022 and was a signatory to all joint witness statements (**JWS**) produced by planning experts through to the point at which the Regional Council determined that no further engagement was appropriate (in early May 2023).³

¹ Maseyk F, Brown M, Taylor P 2018. Regional council use of OVERSEER. A review of the use of the OVERSEER nutrient budget model for nutrient management in regional planning. The Catalyst Group contract report No. 2018/140 prepared for the Parliamentary Commissioner for the Environment.

² My involvement in the appeal process, was leading negotiations with appellant parties through to the 2011 Environment Court proceedings. This resulted in the resolution of some appeal points.

³ 28/6/22 –JWS Farm System & Planning Experts; 7/10/22 – JWS Farm Systems and Planning Experts; 24/2/23 – JWS of Planning Experts; 13/3/23 – JWS Pastoral Farm System and Planning Experts; 14/3/23 – JWS Commercial Vegetable Growing and Planning Experts; and 17/4/23 – JWS Planning Experts.

4. CODE OF CONDUCT

- 4.1. I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses as contained in the Environment Court's Practice Note 2023. I have complied with the Code when preparing this written statement and will do so when I give oral evidence before the Court. The data, information, facts, and assumptions I have considered in forming my opinions are set out in this statement to follow. The reasons for the opinions expressed are also set out in the statement to follow. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 4.2. I have noted above my role as Project-lead for the development of the One Plan through to 2011, at Horizons. I do not consider this affects my ability to provide an independent planning opinion on the matters raised by Horizons' Plan Change 2 (**PC2**).

5. SCOPE OF EVIDENCE

- 5.1. I have been asked by Ngāti Turanga and Fish & Game to give expert planning evidence in relation to their appeal on PC 2.
- 5.2. My evidence addresses:
 - a. The fundamental directions contained within the consolidated Regional Policy Statement (**RPS**) and Regional Plans (the **One Plan**), as confirmed through the Environment and High Court hearings).⁴
 - b. Statutory evaluation.
 - c. The appeals of Fish & Game and Ngāti Turanga.
 - d. Decisions version PC2.
 - e. The proposed Discretionary pathway.
 - f. Implementation of PC2.
 - g. Overseer.
 - h. Uncertainty in the outcomes associated with the Risk Assessment Tool (**the matrix, the assessment tool**).

⁴ Day v Manawatu-Wanganui Regional Council [2012] NZEnvC 182
Wellington Fish and Game Council v Manawatu-Wanganui Regional Council [2017] NZEnvC 37

- i. Recommended provisions.
 - j. Concluding statements.
- 5.3. In producing this statement of evidence, I have reviewed the evidence and material as listed in **Attachment A**.

6. ONE PLAN BACKGROUND AND APPROACH

- 6.1. The One Plan was the first consolidated RPS, regional plan and coastal plan undertaking within Aotearoa. The concept development was initiated following the catastrophic 2004 storm event that heavily impacted the Manawatū-Whanganui Region. In response to that event the Regional Council was forced to identify and focus on the key issues for the Region, in a policy and regulatory context. This led to the development of the One Plan, with a primary focus on the 'Big Four' resource management issues (in contrast to the approximately 230 significant resource management issues the Region had previously identified).
- 6.2. The Big Four issues were: water quality, water quantity, hill country erosion, and indigenous biodiversity. With respect to the latter three issues, the Regional Council had a contested but settled range of responses in place by 2012. In respect to water quality, this issue has been subject to further Environment Court, High Court and plan change proceedings since 2012.
- 6.3. Ms Foster has in part set out the fundamentals of the One Plan and the approach taken in its development.⁵ I agree with her analysis on the technical approach taken, in particular the clear relationship between the RPS and the Regional Plan. The objective 5-2 for water quality speaks to enhancing water quality (ground and surface) where it is degraded and maintaining it where it is meeting the values set for the sub-catchment.
- 6.4. At the time that the One Plan was evolving, the initial thinking behind the NPS-FM was also occurring. That is, the One Plan pre-dated the NPS-FM. It is possible to see the evolution in thinking from the first-generation plans, through the second generation (One Plan) into the national instruments. Subsequently, the hierarchical framework for plan decision-making has matured and I rely on that for the assessment that follows.

⁵ Foster EIC paragraphs [24]–[43].

- 6.5. Fundamental to the development of the One Plan was the concept that if something was important enough to talk about it was critical to do something about it. By way of example, for hill country erosion the Regional Council advanced an intergenerational community-funded programme to progress sustainable land use. For indigenous biodiversity Horizons advanced a strong regulatory framework and associated funding for a non-regulatory programme to address the biodiversity crisis. In relation to water quantity, the Regional Council introduced a detailed regulatory response with a water allocation framework, including quantified volumes for allocation, common catchment expiry dates and a highly focused monitoring and compliance framework.
- 6.6. The context for water quality in the Region was generally one of poor quality and heavily degraded systems. Fundamental to addressing water quality issues within the One Plan was a recognition that addressing water quality required two responses. The first was ensuring point source discharges were a) consented, and b) held accountable against the conditions of consent. The second response, which is most relevant to these proceedings, was addressing diffuse discharges to the environment, principally from farming land use.
- 6.7. The Regional Council initially identified that key intensive farming land uses in key catchments would be the focus of additional regulatory response within the One Plan. While the policy contained in the RPS (5-8) addressed nutrients, pathogens, and sediment losses, nitrogen was the only contaminant managed to environmental limits via rules. As Ms Foster has set out,⁶ there was a recognition that the change required to improve water quality to meet values set out in the One Plan would need a generation to make measurable progress. These limits (previously described as 'numeric thresholds') were applied in the context of identified intensive farming land use.
- 6.8. Ms Foster and Ms Patterson identify a suite of responses to address water quality issues, including non-regulatory intervention and economic instruments. The evidence of the past few decades indicates that, at best, the trajectory of declining water quality is less steep, resulting in 'less bad' outcomes, but there is little evidence of a wide-spread shifts from poor to good water quality.⁷

⁶ Ms Foster EIC [37]–[43].

⁷ As detailed in Patterson EIC, for example Section P.

- 6.9. In my opinion, a strong, clear, monitored and enforced regulatory framework is the key method to deliver outcomes against a background context of environmental decline. The One Plan was clearly intended to provide such a framework. However, the obvious conflicts between environmental limits to growth and maintaining perceived existing use rights of the farming industry remain. In my opinion, PC2 does not assist to resolve these issues, as I discuss further below.
- 6.10. A further fundamental component in the development of the One Plan was the use of a 'natural capital approach' underpinning Table 14.2, whereby the highest allowable nitrogen losses occur on the most productive LUC classes. That is, limits were applied against the performance potential of the natural capital stocks on-farm. This approach is described in the evidence of Dr Mackay. The 2012 Environment Court Decision upheld the natural capital⁸ approach stating:
- "We find the evidence strongly supports the use of the LUC approach as a tool for allocating N limits for all land uses contemplated by the council for N loss management".*
- 6.11. Ms Foster's evidence states that *"For present purposes, PC2 does not change this fundamental approach of the One Plan..."*.⁹
- 6.12. However, the matrix/risk assessment tool differs from the existing natural capital approach of Table 14.2 in the One Plan, which uses the soil's natural capital (as described in Dr Mackay's evidence). It is my understanding that the assessment tool is likely to result in relatively similar net risk of nitrogen loss across all biophysical profiles represented by the matrix cells. This is identified in Professor Horne's evidence where he states *"[i]n short, a large biophysical risk must be matched by a small management risk, whereas a small biophysical risk allows for greater management risk"*.¹⁰ It is my understanding this 'balancing act' is likely to lead to a relatively similar net risk of nitrogen loss across different LUCs.
- 6.13. I understand the year 20 cumulative nitrogen leaching maximums (**CNLM**) in Table 14.2 for over-allocated catchments were set after weighing up environmental, economic and social consequences, including consequences of on land with little natural capital.¹¹ That is, Table 14.2

⁸ Day v Manawatu-Whanganui Regional Council [2012] NZEnvC 182 paragraphs [5]–[113].

⁹ Foster EIC paragraph [49].

¹⁰ Horne EIC paragraph [85].

¹¹ Notes on the derivation of One Plan Table 14.2 prepared for Horizons by Barry Gilliland, Senior Policy Analyst, 1 November 2017.

was also informed by a 'balancing act'.¹² But, unlike Dr le Mierre's analysis, Table 14.2 was informed by evidence on what low/medium/high cost nitrogen loss mitigation practices could achieve on 18 test farms.¹³

- 6.14. In this case, Dr le Miere has adjusted values in the matrix to increase the target risk score in the high biophysical risk cells, using a synthetic farm analysis and a dataset of Nitrogen Risk Scorecard scores for Fonterra dairy farmers for the 2021/22 season (that has not been released due to confidentiality concerns). I understand that his adjustments were made due to potential socio-economic consequences that Dr le Miere was concerned about, from the application of Professor Horne's values.¹⁴ There is a risk that Dr le Miere's adjustments to the matrix will mean the net risk of nitrogen loss is higher for poor quality land compared to more productive land. Dr Dewes questions some of the assumptions made by Dr le Miere in this adjustment process.¹⁵ Dr Dewes also identifies concerns with the matrix/risk assessment tool from a wider perspective.

7. STATUTORY EVALUATION

- 7.1. Ms Foster has set out the relevant elements to the statutory assessment with respect to PC2. I agree with Ms Foster's assessment and do not repeat it here, except to address issues and alternate views where they occur.

Part 2 RMA

- 7.2. Part 2 RMA identifies that Horizons as one of its duties shall recognise and provide for the following matters of national importance:

Section 6(a) RMA – the preservation of the natural of the coastal environment, wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.

¹² MacKay EIC paragraph [5.7] "Two factors were considered in deriving the N loss allocation based on the natural capital. If the goal of the policy was to encourage the most efficient land resource use with the least environmental impact, the N leaching loss limit should be weighted towards those soils with the greatest natural capital. If an imperative of policy was to retain land use options on soil with little natural capital, the weighting of the N leaching limit would need to be increased on those soils. This was in recognition that as the natural capital of the soil declines, the land use options also decline, as does the range and cost competitiveness of mitigation options."

¹³ Mackay EIC paragraph [5.10] – [5.11].

¹⁴ Parlato EIC paragraph [6.11].

¹⁵ Dewes EIC paragraphs [22.8] – [22.11].

Section 6(e) – the relationship of Māori their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

- 7.3. For the reasons set out in my evidence, PC2 as it currently stands does not recognise and provide for the above issues as matters of national importance. The detailed response to them is contained in the assessment of the NPS-FM, Te Mana o te Wai, and the One Plan itself.

NPS-FM 2020

- 7.4. The evidence of the Regional Council is that PC2 address two primary outcomes. The first is an update of Table 14.2 to address changes to Overseer outputs. The second is to advance a Plan Change that provides a consenting pathway for existing, unconsented, intensive farming.
- 7.5. The Regional Council has acknowledged a significant challenge in respect of water quality, with the state of a vast majority of water quality parameters sitting below the One Plan standards.
- 7.6. The water quality objective (5-2) of the One Plan, at the RPS level broadly requires enhancement of degraded water quality, maintenance of water quality where it is at or above standards and the prevention of eutrophication and sedimentation of lakes. This objective is supported by a series of policies which specify water quality targets and the directions required to achieve them.
- 7.7. The evidence of the Regional Council articulates a view that water quality outcomes achieved via PC2 will be similar to those achieved through the One Plan as adopted following appeals in 2012. In respect of the Section 32 assessment prepared by the Regional Council, it is my opinion that the benefits set out by Horizons for the approach recommended for PC2 are overstated.
- 7.8. Dr Parlato has reviewed Dr Snelder's analysis of PC2's impact on water quality outcomes, and while she considers it feasible that implementation of the risk assessment tool may start to bring about water quality improvements, states *"the magnitude of nitrogen loss reductions and water quality outcomes associated with implementation of the risk assessment tool remain very uncertain"*.¹⁶

¹⁶ Parlato EIC at [5.7].

- 7.9. Dr Dewes sets out a concern with moving away from an Overseer-based approach, without further analysis, due to a) the approach being limited to Intensive Farming Land Uses (IFLU), in circumstances where farm diversification may be desirable for reducing nitrogen leaching (and other contaminants/emissions); and b) failing to reward farmers by not recognising lower footprint land uses (such as retirement of land).
- 7.10. While there is an intention to notify a NPS-FM-compliant plan change by December 2024, the PC2 planning provisions do not have a 'sunset clause' and so are not stated to be limited in application (timewise). I consider there is the potential for the new risk assessment tools to set an expectation amongst intensive land users that the methodology being promulgated is fit for purpose through time. Yet Dr Dewes evidence raises significant questions around such assumption.
- 7.11. Matters relating to the rights and interests of Māori have been best expressed in the evidence and broader contribution of Ngāti Turanga throughout the PC2 process. It is not evident to me, on examination of the documentation, that Horizons received direction from any other iwi or hapū party that has significantly influenced the direction of PC2. I acknowledge the efforts undertaken by the Regional Council in this process and its upcoming Oranga Wai process to engage with mana whenua.
- 7.12. Mr Turoa identifies¹⁷ concerns about the process undertaken to engage with mana whenua in the lead up to a decision by Horizons to notify PC2. This included allowing only one week for responses from mana whenua to the PC2 proposal and the passing of a Resolution of Council to notify PC2 prior to receiving feedback from mana whenua.
- 7.13. Mr Turoa's evidence to the Council-level hearing also raised concerns including Horizons' approach to PC2, that PC2 had limited scope (enabling Council to reject submission points) and the concern that PC2 would exacerbate historical and unresolved grievances.¹⁸ Further, Mr Turoa expressed the view that:
- a. PC2 utilised a baseline for comparing the PC2 process that was not appropriate (being unlawful and unconsented intensive farming activity once the One Plan was made operative).

¹⁷ Turoa EIC paragraph [3.4]–[3.8].

¹⁸ Turoa Statement of Evidence to Council-level Hearing, dated 15 October 2020, paragraph [71].

- b. Horizons consistently failed to enforce its own plan in the context of the NPS-FM and purpose of the Act.
- c. PC2 undermined the directions contained within the NPS-FM in respect of Te Mana o te Wai.
- d. Mr Turoa also highlighted the concerns in respect of the Manawatū River Estuary, with the estuary and adjacent coastal environment providing for 'food gathering, ritual, waahi tapu, and taonga'.¹⁹ I understand Mr Turoa's concern is that there is an intimate connection between the Manawatū River Management Zones upstream and within his whānau's rohe. The submission from Ngāti Turanga and associated evidence to the Council-level hearing strongly stated the case for the inclusion of the lower Manawatū in PC2.²⁰

7.14. Dr Daly sets out the work undertaken to obtain and incorporate the views of mana whenua into Oranga Wai.²¹ As far as I understand it, the engagement with Raukawa hapū (of which Ngāti Turanga is one) is at a very embryonic stage. The Hearing Committee for the Council-level hearing made the following comment in relation to engagement with iwi:

*These future changes [referring to the directions contained within the NPS-FM] will also enable a more meaningful engagement with iwi than proved to be the case during the development of PC2.*²²

- 7.15. At the same time, the Hearing Panel identified that the decision to adopt PC2 would not have a negative legacy outcome in respect of future approaches to freshwater management in the context of the NPS-FM.
- 7.16. With this background, I set out below the key NPS-FM matters where I diverge from Ms Foster's summary.
- 7.17. The logic trail for PC2 as expressed by Ms Foster²³ is that no consenting pathway exists for existing intensive farming practices. Accordingly, an update of Table 14.2 and modified policy framework via PC2 was an appropriate response.

¹⁹ As above, paragraph [89].

²⁰ The Environment Court has also highlighted the urgent need to address inputs to the Manawatū River outside of priority catchments *Day v Manawatu-Whanganui Regional Council* [2012] NZEnvC 182

²¹ Daly EIC at section M.

²² PC2 Council-level Hearing Decision March 2021

²³ Foster EIC paragraph [53] & [59]–[67].

- 7.18. My opinion differs in that it appears that the Regional Council position adopted by way of Resolution of Council and plan implementation was at odds with the Decision of the Environment Court in 2012 and High Court in 2013 (with respect to water quality matters). Following these decisions, it seems that Horizons embarked on planning approach that was contrary to the direction in the One Plan. Horizons' approach was again tested via Declaratory actions in the Environment Court in 2017. The Court found that:
- a. In respect of consenting decision-making (Declaration 1) was *"unlawful, invalid, and in contravention of the Act"*.²⁴
 - b. In respect of applications for resource consents (Declaration 2) *"where there is scientific uncertainty and potentially significant adverse effects for overallocated catchments that a precautionary approach might be justified"*.²⁵
- 7.19. Ms Foster identifies the work undertaken by Horizons to obtain independent assessment of the potential for consenting pathways within the Operative One Plan. In addition, further work was commissioned by MfE to provide advice on consenting pathways. Both these assessments are at odds with witnesses (e.g., Ms Helen Marr for the Wellington Fish & Game Council) addressing consenting pathway matters before the 2017 Environment Court proceedings and with the Court decisions.
- 7.20. It is my opinion that even if the argument that there is no consenting pathway for existing intensive farming is upheld, the approach taken by Horizons to address that challenge has been inappropriate. While I agree that implementation matters are relevant under section 32, the objective of Te Mana o te Wai and its associated principles cannot be rendered secondary to operational pragmatism. In my opinion, the NPS-FM does not provide for a direction of travel of this type. My view in this regard is supported by clear evidence Dr Snelder and Dr Parlato who identify changes in water quality are uncertain and negligible as a consequence of PC2.
- 7.21. The priorities in respect of the NPS-FM objective of Te Mana o Te Wai are clear. In my opinion, the Regional Council's approach appears to have prioritised the outcomes embedded Te Mana o te Wai contrary to the

²⁴ Paragraph [37].

²⁵ Paragrpah [66] & [67].

directions contained in the NPS-FM. In particular, placing importance on Part 1 5(c) NPS-FM in preference to Part 1 5(a). That is, providing for economic and social outcomes in preference to the wellbeing of water bodies and freshwater ecosystems, where the hierarchical obligations are clearly set out.

- 7.22. Ms Foster concludes PC2 will also contribute to providing for the health needs of people by reducing diffuse nutrient contamination of water, making it safer for people to drink.²⁶ I do not agree. It is my view that it is premature to contemplate that PC2 will deliver water quality improvements in priority catchments that will lead to a situation that provide for safe drinking water for communities.

Policy 2 NPS-FM

- 7.23. I agree with Ms Foster's assessment²⁷ of the requirements of Policy 2 NPS-FM. I have previously addressed Policy 2 and the requirements for engagement with tangata whenua. Mr Turoa's evidence sets out the engagement process undertaken by Council to date through the engagement period. In my opinion, the approach taken by Horizons did not constitute engagement or consultation that is consistent with good practice. I also understand that Ngāti Turanga has dealt with three policy managers and two²⁸ general managers through the engagement process.
- 7.24. Ms Foster identifies²⁹ Policy 14-6(e)(i) which addresses the interests of mana whenua in consenting processes. This clause was brought forward on behalf of Ngāti Turanga through the process following filing of its appeal. It goes some way to addressing the interests of mana whenua on a consent-by-consent basis. While it provides for limited protection of mana whenua interests at that level, in my opinion it does not address the fundamental issues raised by Ngāti Turanga in respect of Te Mana o te Wai and Part 2 of the Act.
- 7.25. In my experience, there is the potential for conflict to be generated where mana whenua have direct engagement or influence on discretionary consents sought by landowners. It is my strong preference that the interests of mana whenua be addressed at the level of policies and

²⁶ Foster EIC paragraph [239].

²⁷ Foster EIC paragraph [243].

²⁸ As I understand it, Dr Daly, while one of the general managers, was not directly involved in the pre-Hearing engagement process.

²⁹ Foster EIC paragraph [246].

objectives within the RPS and Regional Plan. In addition, considerable scientific analysis is required alongside mātauranga Māori to inform positions that may be taking by mana whenua in the future.

Policy 3 NPS-FM

- 7.26. Policy 3 addresses the way freshwater is managed on an integrated basis. The evidence of Mr Turoa discusses the shortfalls of PC2 on this matter. Ms Foster also identifies PC2 has not attempted to address integration.³⁰

Policy 5 NPS-FM

- 7.27. Policy 5 of the NPS-FM is not dissimilar to the current objectives and policies of the One Plan. In my view, Policy 5 is therefore critical in respect of the issues before the Court.
- 7.28. It is not at all clear that PC2 will contribute to the improvement in the health and wellbeing of degraded water bodies. As outlined in Dr Parlato's evidence, at best the improvement is marginal. On the other hand, the focus of the Regional Council on providing a wide consenting pathway has the potential to entrench degradation of water quality.
- 7.29. Ms Foster relies on the evidence Dr Daly and Ms Patterson describing alternative methods to deliver outcomes consistent with the policies of the NPS-FM. However, as future initiatives, these cannot be relied on at this time.

Policy 11 NPS-FM

- 7.30. Since the filing of appeals, Fish & Game and Ngāti Turanga have raised concerns with respect to intensive farming activities that contribute to the cumulative load of contaminants entering catchments. This includes:
- a. Unlawful new activity that has developed in priority catchments since the One Plan became operative.
 - b. The substantial number of consents granted by Horizons through the three-year period it operated under a Council Resolution to grant all consents for intensive farming that were applied for (between 2014 and 2017).
- 7.31. The scale of the above activity appears to be significant and may be a substantial contributor to total load, thus affecting decision-making in

³⁰ Foster EIC paragraph [253].

relation to characterising total losses, and limited 'head room' for other applicants. The Regional Council's response to this matter appears to have been to declare that consenting activity to be out of consideration for PC2. In my view, considering this consenting activity is relevant when making a determination in respect of the alignment of PC2 with statutory directions in Policy 11 in particular.

Policy 15 NPS-FM

- 7.32. Ms Foster and Dr Collins largely predicate their conclusions in respect of cultural values on the basis that where biophysical values are addressed, cultural values will follow. Mr Turoa provides the only expert evidence that speaks to issues of cultural wellbeing.
- 7.33. With respect to providing for communities, Dr Collins and Mr Moyes focus their commentary on wellbeing issues to a particular sector of the community, albeit acknowledging the potential co-benefits accruing to the broader community. In addition, Dr Collins and other witnesses for Federated Farmers emphasise the need to remove uncertainty to improve the wellbeing of the farming community.
- 7.34. However, I note the evidence of Mr Passey for Federated Farmers identified that his family purchased a farm that was non-compliant under the One Plan (knowing this was the case), knowing the state of play with respect to the regulatory framework within which they would be operating, and having someone within the farming business with significant expertise and knowledge to planning matters. In addition, Mr Passey acknowledges the very clear natural capital challenges associated with the family farm.³¹ In my opinion, it is inappropriate to identify these matters as areas of uncertainty when the knowledge is held by the parties and decisions are made (sometimes in spite of the challenges present).
- 7.35. Mr Turoa highlights that his hapū (Ngāti Turanga) is faced with an inadequate regulatory framework for the lower Manawatū River, no clear direction for future management, increasing pressures in respect of contaminant load associated with point source and diffuse discharges, and the unavoidable situation that his hapū are located at the very downstream end of the Manawatū Catchment.³²

³¹ Passey EIC paragraphs [33] onwards.

³² Turoa EIC paragraphs [4.1]–[4.8].

- 7.36. PC2 does not attempt to address the fundamental requirements of Te Mana o Te Wai on the basis that these matters are to be addressed in a further NPS-FM-compliant plan change (and are outside scope of PC2). If this is the case and given the concerns expressed in the evidence of Dr Dewes regarding that tool and its utility for incentivising mitigations and land use diversification, it would seem that scope considerations equally apply to the introduction of the risk assessment tool into PC2.

The New Zealand Coastal Policy Statement

- 7.37. Ms Foster has set out the objectives and policies within the New Zealand Coastal Policy Statement (**NZCPS**) as relevant to PC2. I largely agree the Ms Foster has highlighted the key requirements under the NZCPS.
- 7.38. However, as set out above, my view differs from that of Ms Foster in terms of water quality outcomes. It is my view that the potential water quality outcomes generated by PC2 are highly uncertain. From the perspective of Ngāti Turanga there is clear evidence that the coastal marine environment is degraded from a biophysical and cultural perspective. Further, Mr Turoa has highlighted concerns in respect of the engagement process that might have provided for the hapū rights and interests and the deliberately narrow focus on a consenting pathway, to the detriment of the lower Manawatū River, Manawatū Estuary (an internationally significant RAMSAR site), and values held by mana whenua.
- 7.39. While the amendments to the rule framework of the PC2 that I advanced on behalf of Ngāti Turanga in the planning framework improve the potential for iwi engagement in consenting, the challenges I set at in this statement still apply. It is my view that Policies 2, 3, 4 and 5, and in particular Policies 21 and 23 of the NZCPS are not provided for within PC2.
- 7.40. On this, I differ in my opinion from that of Ms Foster. The basis for my opinion is the heavily degraded biophysical state of the Lower Manawatū River, Manawatū Estuary, and coastal marine environment and the consequent inability of mana whenua to exercise their rights and interests within their rohe. As stated, there is a high level of uncertainty in relation to outcomes predicted to be brought about by PC2. The NZCPS contains a clear imperative to act on a precautionary basis where activities have effects on the coastal environment which are not well known and may have a significant adverse effect.

The One Plan

- 7.41. Ms Foster has set out the relevant objectives and policies of the One Plan. I have addressed the amendments to the DV-PC2 at Section 10.

Other matters

Iwi management plans and Treaty Settlements

- 7.42. I acknowledge Ms Foster's assessment of relevant iwi management plans. Ngāti Turanga do not have a relevant iwi management plan for their rohe. I understand this is being developed at present however it is not currently relevant to the proceedings.
- 7.43. Ngāti Raukawa or its hapū have not settled their Treaty claims. The Waitangi Tribunal Hearings process is underway at present and will conclude early 2024 (I am a witness for Coastal Ngāti Raukawa hapū (Te Tūmatakahuki) the purpose of those hearings). I have attended several hearings on behalf of Ngāti Raukawa claimants including Ngāti Turanga. The focus of evidence produced for claimants, and by many of the claimants themselves, is around freshwater management, Crown intervention in statutory processes and regulatory authority responses to implementation of plans.

Manawatū River Leaders Accord

- 7.44. I had responsibility for developing the Accord initiative and framing up the agreement adopted by the signatories who now make up the Manawatū River Leaders Forum. The underpinning driver for the Accord was an attempt to defuse and redirect energy that led to so many parties to conflict in respect of water quality matters associated with the Manawatū River. There are a diverse range of interests within the current Forum, with a shared focus on "*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 community.*"
- 7.45. While Ms Foster identifies that the Accord is not identified as being affected by PC2³³, it is my opinion that there is an intimate link between non-statutory accords of this nature and plan making that potentially effects the values for which a substantial cross-section of the community has committed to change.

³³ Foster EIC paragraph [282].

- 7.46. Two specific goals of the Accord are relevant to PC2:
- a. The Manawatū Catchment and waterways are returned to a healthy condition.
 - b. Sustainable use of the land and water resources continues to underpin the economic prosperity of the Region.
- 7.47. In my opinion, the Accord is a relevant document for the purposes of decision-making.

8. WELLINGTON FISH AND GAME COUNCIL APPEAL

- 8.1. As many parties to PC2 identified, Fish & Game supported the updating of Table 14.2 in respect of cumulative nitrogen leaching maximums (**CNLM**).
- 8.2. I understand that at the outset of the PC2 process, Horizons was advancing the above matter on a standalone basis.
- 8.3. The opposition to the DV-PC2 in Fish & Game's appeal included the following matters:
- a. Intensive farming landuse make a significant contribution to in-stream contaminant levels within catchments.
 - b. The approach being adopted by the Regional Council displaced the determination of the Environment Court and the High Court which placed natural capital at the heart of the water quality framework in the One Plan.
 - c. The provisions in PC2 (beyond Table 14.2) do not provide certainty that the Region's water quality will be maintained or improved.
 - d. The adoption of good management practices (**GMP**) and best management practices (**BMP**) may generate a tail beyond the short-term response sought by the Regional Council via PC2.
 - e. The approach in PC2 may add to the potential for significant nutrient loss reductions to be required in future freshwater planning processes (e.g., Oranga Wai).
 - f. PC2 conflates providing a consenting pathway with enabling all farms to obtain consent.

- g. The proposal advanced by PC2 is contrary to the objectives of the One Plan, NPS-FM, NZCPS, and Part 2 RMA.
- 8.4. The relief sought by Fish & Game does not oppose the adoption of a revised Table 14.2 and seeks the rejection of the remainder of **DV-PC2** (or other relief as the Court sees fit).

9. NGĀTI TURANGA APPEAL

- 9.1. The appeal from Ngāti Turanga highlighted several key elements. These included:
- a. Concerns with the baseline against which Council is undertaking its assessments.
 - b. The narrow scope of PC2.
 - c. Relying on PC2 while leaving other elements relevant to integrated planning at a catchment scale to be addressed in the future via Oranga Wai.
 - d. Significant concerns with the engagement process followed by Council in the lead up to notification of PC2.
 - e. A lack of consistency with the directions contained within the NPS-FM 2017 and 2020.
- 9.2. By way of relief, Ngāti Turanga sought a decline of the DV-PC2 but accepted that there were benefits in the recalibration of CNLM in Table 14.2 of the One Plan. In addition, Ngāti Turanga supported a consenting pathway for existing intensive farming activities that were transitioning to extensive farming activities.
- 9.3. Finally, Ngāti Turanga sought inclusion of the subzones in Coastal Manawatū Surface Water Management Zone (Mana_13) to be included in Horizons list of targeted Water Management Subzones, to be subject to the policy and rules framework associated with PC2.

10. DECISIONS VERSION PC2

- 10.1. The DV-PC2 emphasised a consenting pathway requirement.
- 10.2. As a result, DV-PC2 has created an easier consenting pathway for intensive farming operations and relies on GMP to give effect to the objectives and policies of the Part 2 RMA, Te Mana o te Wai, and the One Plan. In my opinion, it is inappropriate to rely on voluntary GMP where outcomes are uncertain and untrackable to deliver on water quality priorities. In the long term, such an approach cannot ensure environmental bottom lines are met.
- 10.3. Further, DV-PC2 introduced a further level of uncertainty and dilution of effort by promoting farm management options only where they are 'practicable'. Applying 'practicable' as a qualifier to GMP opens the door for decisions on which management options to implement be based on factors (such as ease, cost, willingness) other than performance based on water quality outcomes. Critically, relying on GMP (where practicable) alone will result in inequities in application of the One Plan, where some consent holders will be making all attempts (and associated investments) to reduce nitrogen losses whereas others will not be yet will still have a consenting pathway available to them.
- 10.4. PC2 does not provide any indication of thresholds, and therefore provides a consenting pathway for all intensive farming applications meaning discretionary consents can be granted regardless of the impact on the receiving environment.
- 10.5. The One Plan is a limits-based plan and therefore was well aligned with the directions within the NPS-FM. However, DV-PC2 would create a much more permissive regime, contrary to the (operative) One Plan Objectives and the NPS-FM. It is my view, that PC2 not only undermines the fundamental approach of the One Plan, but it would also entrench degradation of water quality and miss opportunities to work towards improvements.

11. THE PROPOSED DISCRETIONARY PATHWAY

- 11.1. Ms Foster's evidence contains a discussion on why, in her opinion, "*the intended restricted discretionary activity pathway is not actually available to applicants*".³⁴ Ms Foster refers to the implications of the decisions in *Environmental Defence Society Incorporated v the New Zealand King Salmon Company Limited* [2014] NZSC 38 *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 for the consenting pathway, stating:³⁵

"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."

- 11.2. While I accept Ms Foster's analysis that the implications of those decisions meant the overall judgement approach was no longer available, the question whether that meant the water quality provisions of the One Plan could not be implemented "*as intended*"³⁶ is another matter. However, for the purpose of expert conferencing, I was instructed by Fish & Game (and Ngāti Turanga) to take a reasonably pragmatic approach to provide for a more open discretionary consenting pathway, in light of Horizons interpretation. I understand this was in part because no consent applications had been processed since the declaration proceedings in 2017.³⁷ This is the basis on which I undertook analysis of the alternative consenting pathway, proposed for discretionary consent applications that could not meet Policy 14-6(b)(i) or (ii).³⁸

³⁴ Foster EIC at [64], referring to Policies 14.5, 14.6 and 5.8 of the One Plan.

³⁵ Foster EIC at [65].

³⁶ Foster EIC at [66].

³⁷ Decision [2017] NZEnvC 37 ENV-2016-WLG-000038.

³⁸ Policy 14-6(b) stating:

"(i) where the existing intensive farming land[^] use occurs on land that has 50% or higher of LUC Classes IV to VIII and has an average annual rainfall of 1500 mm or greater; or
(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."

12. IMPLEMENTATION OF PC2

- 12.1. The evidence of Ms Foster addresses implementation of PC2 in some detail.³⁹ Dr Daly also addresses implementation⁴⁰ and largely affirms the position set out by Ms Foster. In addition, Dr Daly makes a commitment on behalf of Horizons to seek further resourcing for regulatory outcomes.
- 12.2. It is my opinion that Ms Foster sets out a robust and appropriate framework for an implementation strategy. This includes engagement with mana whenua, a series of support packages for applicants and identification of the requirement to ensure compliance with the plan provisions. Ms Foster also sets out the methods by which data will be collected, maintained, and shared with key stakeholders.⁴¹ This includes commitments to the development of exemplar applications, public reporting, and the establishment of an independent advisory panel.
- 12.3. Following the lodgement of Fish & Game and Ngāti Turanga's appeals, I participated in discussions on the need for and content of an implementation plan. However, I retain several concerns on this matter which I set out below.
- 12.4. In my opinion the discretionary pathway represents a compromise solution to the implications of the decisions in *R J Davidson* and *King Salmon* (discussed above). Despite this, and as noted above, my understand was that both Fish & Game and Ngāti Turanga were concerned to see the re-commencement of consenting of IFLU's under the One Plan following a lengthy hiatus. On this basis, from a planning perspective, reliance on an untested matrix (the risk assessment tool) to determine consenting pathway would have needed to be accompanied by a firm commitment by industry bodies to deliver outcomes and Regional Council to undertake compliance monitoring, reporting and enforcement. That is reflected in the JWS (Planning) dated 17 April 2023 which records:

“At mediation held on 15 March 2023 the parties agreed in principle the amended PC2 provisions attached as Annexure ‘A’ to the 15 March 2023 mediation agreement. The amended PC2 provisions include an alternative controlled activity consent pathway based on a risk assessment approach recommended by the farm systems experts. The parties agreed in principle at the 15 March 2023

³⁹ Daly EIC paragraphs [163]–[177]

⁴⁰ Daly EIC paragraphs [94]–[98]

⁴¹ Foster EIC paragraphs [166] & [167].

mediation to pursue the risk assessment approach for pastoral and commercial vegetable growing intensive farming land uses. The agreement in principle is subject to Fish & Game, Forest & Bird and Andrew Day having an opportunity to further consider the proposed risk assessment frameworks.”

And:⁴²

GC considers that implementation of the PC2 plan provisions is a relevant matter for consideration by planners via conferencing. He has raised implementation matters on a number of occasions through conferencing. In his view completion of an implementation plan prior to settlement would provide the confidence and certainty required for appellant parties. In that vein, he particularly notes the benefits of independent expert review associated with decision making on consents once the proposed provisions are operative. This review would occur in relation to farm systems assessments and planning assessments. Addressing this matter would need to occur during development and completion of the implementation plan. This matter has not been agreed between the planners.”

- 12.5. It was my view that implementation of PC2 could prove to be highly problematic. Thus, the development of an implementation plan, proposed following mediation of 15 March 2023 and discussed at the planners conferencing in April 2023, plan was critical to my having sufficient comfort with the revised planning provisions. That view has not changed. In my opinion, there is still an absence of a secured implementation framework, publicly declared Council commitment and transparent implementation.
- 12.6. I note that Dr Daly has made a commitment on behalf of the Regional Council to the substantial resourcing required for implementation of PC2. I have reviewed Horizons Long Term Plan 2021–2031 and have found no acknowledgement of the PC2 process or funding to support outcomes required to implement it.

⁴² JWS (Planning) dated 17 April 2023 at [10].

13. OVERSEER

- 13.1. Ms Foster addresses the Overseer model and its application.⁴³ Dr Dewes⁴⁴ and Dr Parlato⁴⁵ provide further useful analysis. I have set out my experience with respect to Overseer and its use in a regulatory setting above (section 2) but note I am not an expert in the Overseer model and its application.
- 13.2. Dr Parlato highlights the PCE's earlier findings that Overseer did not have the levels of documentation and transparency that are desirable in a regulatory setting. My understanding is that Dr Parlato, along with Dr Dewes, Professor Horne, and Dr le Miere are correctly identifying that Overseer is not infallible.
- 13.3. The proposal advanced by Horizons is for a risk assessment tool to sit alongside Overseer-based Table 14.2 as an alternative tool for the purposes of determining a consenting pathway.
- 13.4. Dr Parlato and Dr Dewes have highlighted the challenges associated with the as yet untested and un-peer reviewed risk assessment tool. Together with this, I have concerns about providing a 'gateway' for consenting alongside Table 14.2 that differs from that Table. In my opinion that will create confusion, and inconsistent messaging to the farming sector.
- 13.5. Ms Foster and others raise concerns over the use of Overseer to provide an absolute number for use in a regulatory context. I do not agree with Ms Foster's conclusions that this is the case with Table 14.2. The key reasons for my position are:
 - a. There are a range of tools sitting alongside Table 14.2 which an applicant for a resource consent can choose between. This is the case even without the inclusion of the risk assessment tool.
 - b. The revised numbers generated for an updated Table 14.2 act as a drafting gate for consent status – being controlled or discretionary against compliance with Table 14.2.
 - c. The discretionary status for applicants who do not achieve the CNLM in Table 14.2 would provide for consideration of an application against a broad range of criteria.

⁴³ Foster EIC paragraph [132].

⁴⁴ Dewes EIC sections 8–16.

⁴⁵ Parlato EIC paragraphs [6.45]–[6.54].

- d. In relation to Table 14.2, the analysis undertaken for a discretionary application assesses the degree to which an applicant deviates from the CNLM in Table 14.2.

- 13.6. The risk assessment tool advanced by Horizons could be said to contain the same issues as set out by Ms Foster in relation to Overseer, albeit with the additional concerns raised by Drs Parlato and Dewes and discussed below.

14. UNCERTAINTY IN THE OUTCOMES ASSOCIATED WITH THE RISK ASSESSMENT TOOL

- 14.1. Elsewhere in my statement of evidence I have expressed concern about the adoption of risky methodologies in place or alongside the known quantity of Overseer. By way of example, I have reviewed the approach set out for commercial vegetable growing (**CVG**). In particular, the evidence of Dr Jolly and the consequential estimation of water quality outcomes and conclusions drawn.
- 14.2. Dr Jolly's evidence indicates that adoption of the risk assessment tool for CVG will lead to a 70% reduction in nitrogen loss on average, from a 2018 baseline for the Hokio_1a Water Management Subzone (Table 2 and clause 69 in Dr Jolly's evidence). The 2018 baseline Overseer estimate was 57 kg N/ha on average (range 14–125 kg N/ha). The estimated future nitrogen loss after adoption of practices within the risk assessment tool was 17 kg N/ha (range 5–86 kg N/ha). This is a substantial estimated reduction in nitrogen loss with adoption of GMP or BMP and appears to be much greater than the 35% reduction from a 2013 baseline that was proposed under DV-PC2.
- 14.3. It is likely that nitrogen losses estimated for a 2013 baseline would be even higher as practices are likely to have improved over the ensuing 10 years. Hence, the estimated average reduction would likely be greater than 70% if a 2013 baseline was used.
- 14.4. I have a concern with Dr Jolly's estimation of such low average rates of nitrogen loss following implementation of GMPs because:
 - a. Hokio_1a is a "specified vegetable growing area" in the NPS-FM which means a regional council may set a target attribute state that is below national bottom line for the attribute if a Freshwater Management Unit

(FMU) or part of an FMU is adversely affected by vegetable growing, and

- b. If such rates are achievable the horticulture industry would not have needed to work with the Crown to achieve this exemption in the NPS-FM.
- 14.5. It is important to confirm the accuracy of these estimated outcomes associated with implementation of the risk assessment tool (for example, validation with measured/observed nitrogen loss or published research papers). On the basis of the directions contained in the NPS-FM, I consider it sensible to take a highly precautionary approach to regulating outputs generated by CVG until the predictions given by Dr Jolly can be validated.
 - 14.6. Further, Dr Snelder uses Dr Jolly's estimated 70% reduction in nitrogen loss for CVG in Hoki_1a to predict water quality outcomes for the Subzone. This analysis estimates a 21% reduction (from the baseline) in total nitrogen loss for Hoki_1a. Dr Snelder's analysis in turn predicts that soluble inorganic nitrogen (SIN) concentrations will exceed the target by 90% on average with implementation of the risk assessment tool compared to an average exceedance of 92% for the baseline. This indicates that despite the predicted large 70% average reduction in nitrogen loss from CVG land with implementation of the risk assessment tool, there will be very little associated improvement in water quality. As noted above, I consider 70% is potentially an overestimate of average nitrogen loss reductions. Therefore, it may be that the water quality outcomes could be even more marginal than indicated by Dr Snelder's analysis.
 - 14.7. I respect that this is a matter better addressed by the experts. The deviation from target values shown in Table 6 of Dr Snelder's evidence highlight the strongly degraded state of freshwater in the Hoki_1a Subzone, reiterating the need for a highly precautionary approach to regulating outputs generated by CVG.
 - 14.8. It is unfortunate that through the period from 2004 to 2023 work to ground-truth nitrogen losses from CVG land in the Horizons region has not appeared to have been undertaken by the horticulture industry. It is my opinion that the situation is further exacerbated with the Regional Council not appearing to have built the detailed underpinning models which accurately assess and quantify catchment nutrient loads for the purposes

of providing for the values set down for the Water Management Subzones (as recommended by the Environment Court in 2012).

15. RECOMMENDED PROVISIONS

- 15.1. Manawatū-Whanganui Regional Council filed a suite of provisions with the Court on 22 September 2023. I understand that these amended provisions were prepared by Ms Foster.
- 15.2. I have adopted the further amended provisions prepared by Mr Scott for appellant Mr Andrew Day.⁴⁶ I have adopted Mr Scott's provisions on the following basis:
 - a. The framework as advanced ensures resource consents are granted for a maximum period of 10-years.
 - b. In my opinion, it is inappropriate to utilise the risk assessment tools for intensive farming and commercial vegetable growing for the reasons I set out in my evidence.
 - c. The amended provisions secure the role Overseer (updated) as the drafting gate for consent activity status.
 - d. Decision-making with respect to discretionary activities provides for the granted or decline of consent. However, it is important to note that this framework is not fit for purpose in the context of a future freshwater plan. Key amongst those reasons are the negligible benefits that accrue to water quality in highly degraded catchments, and the lack of 'limits' as per the NPS-FM.
 - e. The amended wording avoids the use of highly uncertain language associated with 'practicable' or 'reasonably practicable' responses.
 - f. The evidence of Dr Drury⁴⁷ advances a further hybrid approach to address crop-rotation and the flexibility required by the horticultural industry to operate across a Water Management Zones. While there is merit in further consideration of those matters, to my knowledge they have not been the subject of detailed discussion or engagement since the filing of the appeals. This matter was previously addressed in some detail by the Environment Court (2012). While primarily a legal matter,

⁴⁶ Scott EIC Attachment A.

⁴⁷ Drury EIC paragraph [30]–[39].

it is my opinion that it would be inappropriate to advance a substantive matter through the PC2 process, under the Notices of Appeal filed. Further the level of sophistication required (e.g., catchment / sub-catchment scale nutrient allocation frameworks) to ensure the objectives of the One Plan are met does not appear to be present.

- g. In relation to amended Policy 14-6(e)(i), there is specific reference to values held by mana whenua in consent decision-making. I note the preference set out in Mr Turoa's evidence for the outcomes specified in this policy to be addressed at a level above individual resource consents.⁴⁸ This matter may be best addressed via specification in an implementation plan.
- h. As I have highlighted, a high degree of uncertainty remains in relation to the actual benefits that will accrue to water quality, the Regional Council's implementation and the risk assessment tool. The amended Plan provisions advanced by Mr Scott address these matters to a large extent. Given the timing of resolution of the appeals and the forthcoming NPS-FM-compliance plan change, I primarily support Fish & Game's relief that PC2 update Table 14.2 in respect of CNLM. That would leave substantive changes to the objective and policy framework to this future process. Although I understand the intention is to consent the farms that remain unconsented following the 2017 Declarations, in my view the preferable approach would be to put all IFLU applicants on an 'equal footing' by reviewing those existing consents (under section 128(1)(b)(i) of the Act) and considering consent applications for IFLU applicants under a NPS-FM framework, on an equitable basis.

16. SECTION 32AA

- 16.1. I have reviewed the section 32 evaluation undertaken for the publicly notified PC2. I have also assessed the evaluation undertaken Ms Foster⁴⁹ for the purposes of my analysis I accept the options set out by Ms Foster.
- 16.2. I differ from Ms Foster in terms of her discounting the Operative One Plan as genuine option. The One Plan has been the subject of considerable litigation with parties to that litigation advancing the proposition that the

⁴⁸ Turoa EIC paragraph [5.1].

⁴⁹ Foster EIC paragraph [292]–[298].

One Plan was implementable. As the Environment Court identified to Horizons, regardless of this conflict, it is entirely within the right of the Regional Council to advance a plan change at almost any time. On that basis I accept that we are analysing the broad frameworks set down Ms Foster.

- 16.3. I note Ms Foster has not assessed the potential for a plan change that simply updates Table 14.2 in the light of updated Overseer outputs.
- 16.4. I agree with Ms Foster in relation to the matters relevant for analysis and do not repeat them here. I have set out my 32AA evaluation below.
- 16.5. The relevant options for consideration are:
 - a. Option 1: Operative One Plan
 - b. Option 2: Publicly notified PC2
 - c. Option 3: DV-PC2
 - d. Option 4: Amended DV-PC2 to account for risk assessment tool.
- 16.6. For the sake of brevity and to assist the Court, I have focussed my analysis on Option3 and 4.
- 16.7. The relevant matters against which these matters are assessed are as follows.
- 16.8. *The extent to which the objectives of PC2 are the most appropriate way to achieve the purposes of the RMA.*

The objectives of the One Plan are not materially altered by PC2. It is the degree to which the policies and rules that follow provide for the objectives that is most relevant here.

- 16.9. *The extent to which the provisions are the most appropriate to achieve the objectives of the One Plan.*

The view of the Regional Council in relation of Options 3 and 4 is predicated on the possibility of modest water quality improvement and delivering on the primary driver of Council to provide consents to intensive farming land use. Horizons' preference for Option 4 is built on concerns in respect of Overseer and its deficiencies. In its place the Regional Council has proposed to apply a risk assessment tool and relies on GMP or BMP. As stated above, the objectives of the One Plan are predicated on outcomes not dissimilar to the NPS-FM or Te Mana o te Wai.

In my opinion, there cannot be confidence that either option will achieve the objectives of the One Plan. Therefore, and to provide for the Council's primary outcome specified for PC2 (being a consenting pathway), I consider Option 3 provides a precautionary approach for a short-term response should Option 1 not be accepted by the Court.

- 16.10. *The extent to which the provisions give effect to the RPS and are the most appropriate way to achieve the relevant objectives.*

See above.

- 16.11. *Efficiency of the provisions in achieving the relevant objectives.*

I am of the view that Option 3 provides a pathway for consent decision-making on a precautionary and conservative basis as fitting in the context of highly degraded water bodies. In addition, it is difficult to quantify the benefits set out by Ms Foster in her recommendations of Option 4 as she speaks to "the community" in a general way where the objectives and policies of the RPS have a much broader construct.

In addition, I repeat my earlier comments regarding the robustness of the risk assessment tool and note that Option 3 would provide a consenting pathway.

- 16.12. *Effectiveness of the provisions in achieving the relevant objectives.*

The assessment by Ms Foster that Overseer cannot be relied on has not been compared with the risk assessment tool for pastoral and CVG. These methods are not applied within the Region for the purposes of ground-truthing, are not peer-reviewed and are heavily reliant on industry inputs to generate scores against which consenting decisions will be made.

In my view, Option 3 provides a precautionary framework for consenting against a range of activities, should Option 1 not be accepted.

- 16.13. *Environmental, economic, social, cultural benefits anticipated from implementation from the proposal, including whether the costs can be quantified.*

The focus of the Regional Council's response to this output is a consenting pathway against the possibility identified by Dr Snelder of modest water quality improvement. This view is not held by all experts. In my opinion, there is a high degree of uncertainty which should be addressed in favour of a precautionary approach focused on the objectives of the One Plan.

16.14. *Opportunities for economic growth and employment arising from the proposal.*

As Ms Foster identifies, the economic growth generated by PC2 is largely neutral. This is largely because PC2 is addressing existing intensive farming which will exist on a same or similar basis once it is lawfully consented. The Regional Council proposition is intensive farming operations are un-consentable.

If this proposition is to be accepted, I agree with Ms Foster that Options 3 or 4 are the most likely to address the opportunities above. I note that economic assessment undertaken by Horizons assumes that compliance with Table 14.2 with no consenting pathway generated will create adverse economic outcomes.

16.15. *Risk of acting or not acting where uncertain or insufficient.*

The focus of Ms Foster in this regard is particularly narrow with the context being confined to the restated concerns about Overseer and need for a policy framework to address the outcomes sought by “the community”.

Should the Court find that the matter should not await a NPS-FM-compliant plan change, Option 3 would provide a clear ‘pathway’ particularly in the light of the policy and rule framework for discretionary activities. Equally, the evidence of Dr Dewes, Dr Mackay, and Dr Parlato speak to the confidence that can be held in relation to Overseer where it is utilised in line with current direction.

My earlier comments in relation to the risk assessment tool apply throughout this analysis.

16.16. *The extent to which the proposal will assist the Council to give effect to its section 30 functions.*

See above.

16.17. *The extent to which the proposal will give effect to the NPS-FM and NZCPS.*

I have provided evidence in relation to NPS-FM and NZCPS. See comments above.

In addition, the view expressed by mana whenua (Mr Turoa for Ngāti Turanga) does not concur with the view of Ms Foster. Mr Turoa sets out in some detail the impacts of poor water quality and water quality degradation

on his hapū and iwi. I agree with Ms Foster that PC2 does not give full effect to the NPS-FM. It is not helpful to advance a proposition that anyone is contemplating restoration of pristine water values in the Lower Manawatū – at any time.

In addition, the objective for Te Mana o te Wai, hierarchy outcomes directed by that objective, and principles against which actions are taken are not provided for by PC2.

The focus is solely on a consent pathway or equipping intensive farm users with resource consents. In my opinion, this would be appropriate only for a short-term response. It would provide a clear consent pathway to be in play in advance of Horizons full response to freshwater management in 2024. Option 3 meets those needs, but as set out above, I suggest a full review of existing consents (granted on an improper basis) should be reviewed, and all IFLU's considered on an equal footing, as a preferred way forward.

17. CONCLUSIONS

- 17.1. On the basis that there is significant uncertainty associated with the design, use, and application of the risk assessment tool, it is my opinion that it is inappropriate to utilise the risk assessment tool within the consent pathway for determining consent status. Further, there is a high level of uncertainty associated with the potential, or otherwise, for water quality improvement, and the potential to generate a problematic legacy for future freshwater development frameworks. This is of particular concern given the poor state and trends associated with the Region's bodies.
- 17.2. It is my opinion that the amended provisions referred to in Mr Scott's evidence could provide a short-term solution to provide a decision-making framework that allows the grant or decline of a consent where it is not provided for via compliance with Table 14.2, however a preferable approach would be to update Table 14.2 and await an NPS-FM-compliant plan change where all IFLU consents could be considered under one set of unified planning provisions.

Gregory John Carlyon

ATTACHMENT A: Material reviewed

- a. The Horizons s32 evaluation of Proposed Plan Change 2
- b. The council officers' s42A reports to the council level hearing:
 - i. Christine Foster s42A – Planning Volume 1
 - ii. Christine Foster s42A – Planning Volume 2
 - iii. Christine Foster - Supplementary s42A - Planning
 - iv. Nic Peet s42A – General Overview and Introduction to Plan Change 2
 - v. Abby Matthews s42A – Water Quality
 - vi. Abby Matthews – Supplementary s42A – Water Quality
 - vii. Timothy Cox s42A – Water Quality Modelling and Scenario Analysis
 - viii. Timothy Cox – Supplementary s42A – Water Quality Modelling and Scenario Analysis
 - ix. Ton Snelder s42A – Water Quality and Scenario Analysis
 - x. Ton Snelder – Supplementary s42A – Water Quality and Scenario Analysis
 - xi. Dave Horne s42A – On Farm Management Practices
 - xii. Dave Horne – Supplementary s42A – On Farm Practices
 - xiii. James Hanly s42A – Soil Science Overseer Version changes and Table 14.2
 - xiv. Terry Parminter s42A – Costs of Changes in Nitrogen Leaching Maxima
 - xv. Anne-Maree Jolly s42A – GMP and Overseer Modelling for CVG
 - xvi. Anne-Maree Jolly – Supplementary s42A – GMP and Overseer Modelling for CVG
 - xvii. Stephen McNally s42A – Farm Scale Cost Impact Assessment
 - xviii. Stephen McNally – Supplementary s42A – Farm Scale Cost Impact Assessment
 - xix. Peter Clough s42A – Macro Economic Impacts
 - xx. Peter Clough – Supplementary s42A – Macro Economic Impacts
 - xxi. Heather Collins s42A – Social Impact
- c. Submitter expert evidence to the Council-level hearing
 - i. Hayden Tūroa – Ngāti Turanga

- ii. Peter Wilson – Fish & Game – Planning
- iii. Mr Andrew Day
- iv. Paul Le Miere – Federated Farmers NZ – Farm System LUC and Overseer
- v. Andrew Duker – Federated Farmers NZ – Farm Systems
- vi. Andrew Hoggard – Federated Farmers NZ – Organisation & Policy
- vii. Craig Depree – Federated Farmers – Water Quality
- viii. Gerard Willis – Federated Farmers - Planning
- ix. Vance Hodgson – Hort NZ – Planning
- x. Andrew Barber – Hort NZ
- xi. Claire Conwell – Hort NZ
- xii. Damien Farrelly – Hort NZ
- xiii. Michelle Sands – Hort NZ
- xiv. Stuart Ford – Hort NZ
- xv. Jack Feltham – PNCC
- xvi. Melaina Voss – PNCC
- xvii. Paula Hunter – PNCC - Planning
- xviii. Woodhaven Gardens
- xix. Abbie Fowler – Fonterra – Planning
- xx. Graham Thomson – Fonterra – Planning
- d. Joint Witness Statements
 - i. Topics 1 & 2 – Farming GMP and System Modelling
 - ii. Topic 3 – Farm Scale Economics
 - iii. Topic 4 – Water Quality – July
 - iv. Topic 5 – RMA Planning
 - v. Topic 5 – RMA Planning Amended
 - vi. Topic 6 – Farming and Growing Management Practices
 - vii. Topic 7 – Macro Economics
 - viii. Topic 8 – Water Quality – August
 - ix. Topic 9 – RMA Planning August
 - x. Topic 10 – Iwi Values August
 - xi. Joint Witness Statement – Willis and Foster – 30 October 2020

- e. Tabled Documents at the Council-level hearing
 - i. Ngā Waihua o Paerangi Trust One Plan Change 2 Written Statement
 - ii. Ngāti Whakātere – R Ketu
- f. Notices of Appeal
 - i. Wellington Fish & Game Council – Phil Teal
 - ii. Ngāti Turanga – Hayden Tūroa
- g. The Evidence for the current Environment Court proceedings for the following parties:
 - i. Horticulture New Zealand
 - ii. Federated Farmers
 - iii. Ngāti Turanga
 - iv. Wellington Fish and Game Council
 - v. Andrew Day
 - vi. Dr Alison Dewes
 - vii. Horizons Regional Council
- h. Related hearing decisions
 - i. Environment Court decision - Proposed One Plan 2012
 - ii. High Court decision – Hort NZ & Manawatu-Wanganui Regional Council 2013
 - iii. Environment Court declaration – Wellington Fish and Game Council and Manawatu-Wanganui Regional Council 2017
 - iv. Independent Hearing Panel decision – Plan Change 2 2021