

In the matter of The Resource Management Act 1991

and The Proposed Plan Change 7 to the
Land and Water Regional Plan

In the matter of a submission and further submission
by Timaru District Council

to Environment Canterbury

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF KYLIE GALBRAITH
13 OCTOBER 2020**

INTRODUCTION

- 1 My name is Kylie Marie Galbraith.
- 2 I hold the degree of Bachelor of Science (Psychology) and Diploma for Graduates (Zoology) from Otago University, and Diploma in Environmental Studies from Open Polytechnic of NZ.
- 3 I am a Senior Planner with WSP New Zealand Limited and am an Associate Member of the New Zealand Planning Institute.
- 4 I confirm that I have read the 'Code of Conduct for Expert Witnesses' contained in the Environment Court Consolidated Practice Note 2014 and I agree to comply with it. I have complied with it in the preparation of this supplementary statement of evidence.

SCOPE OF SUPPLEMENTARY EVIDENCE

- 5 My evidence in chief dated 17 July 2020 was submitted prior to the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020) being released. The NPS-FM 2020 came into force on 3 September 2020 and needs to be considered in the decision-making process on the proposed Plan Change 7 to the Land and Water Regional Plan ('the proposed plan change').
- 6 The NPS-FM 2020's singular objective *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.*
- 7 The NPS-FM 2020 policies, clauses and definitions of relevance to my supplementary evidence are attached in Appendix A.
- 8 In my supplementary evidence, I discuss the following matters in the context of the NPS-FM 2020 and how it relates to my evidence in chief:
 - Flow Sensitive Catchments;
 - Critical Habitat of Threatened Indigenous Freshwater Species;
 - Passage of Fish at Pareora Dam; and
 - Conclusion.

Note not all topics discussed in my evidence in chief are discussed in this supplementary evidence.

FLOW SENSITIVE CATCHMENTS

- 9 My evidence in chief Paragraphs 25-29 discussed TDC concerns that Rules 5.189B and 5.190A provide for planting for carbon sink or new plantation forestry within any flow sensitive catchment as a controlled activity with only administrative conditions being matters of control.
- 10 My evidence in chief identified that new forestry blocks (whether for carbon sink or plantation forestry) in flow sensitive catchments can affect water availability in the catchment that in turn may affect the reliability of supply for community water supply takes.
- 11 Without an assessment of the effects of the planting of forestry (whether for carbon sink or plantation forestry) in flow sensitive catchments being completed, there is no way to ensure the activity meets the Objective and Policies 3, 5 & 15 of the NPS-FM 2020.
- 12 My recommendation in Paragraph 29 of my evidence in chief remains unchanged. I consider the recommendation to be consistent with the NPS-FM 2020.

CRITICAL HABITAT OF THREATENED INDIGENOUS FRESHWATER SPECIES

(A) POLICY 4.61A

- 13 My evidence in chief Paragraphs 30-34 discussed the Section 42A report has deleted the policy linkage in Policy 4.61A that provided for the consideration of offsetting any significant adverse effects if a community water supply take reduces or compromises the values of a Critical Habitat of Threatened Indigenous Freshwater Species.

- 14 My evidence in chief showed offsetting is a valid resource consent management consideration under Section 104(1)(ab) of the Resource Management Act 1991.
- 15 Offsetting considers the use and development on a whole-of-catchment basis, including the effects on the receiving environments. In this instance, being within a Critical Habitat of Threatened Indigenous Freshwater Species, it would consider if the Critical Habitat is of a size and quality to remain an effective and viable habitat going forward. If the Critical Habitat is not an effective and viable habitat offsetting could be beneficial as it could create another area that is effective and viable. If it is an effective and viable Critical Habitat the habitat can still accommodate up to a certain level of use and development before the overall Critical Habitat is not protected anymore or the values of a river is lost. If the values of a river are to be lost it is then up to the applicant to satisfy the Council that the community water supply take has a functional need to be located within the Critical Habitat and that the effects of the activity are managed by applying the effects management hierarchy. This approach allows for the assessment of offsetting on its merits and meets the Objective, Policies 3, 5, 7, 9 & 15 and Clause 3.24(1) of the NPS-FM 2020.
- 16 My recommendation in Paragraph 34 of my evidence in chief remains unchanged. I consider the recommendation to be consistent with the NPS-FM 2020.

(B) POLICY 4.101

- 17 My evidence in chief Paragraphs 35-44 discussed concerns with Policy 4.101 being amended to ‘avoid damage or loss of Critical Habitat of Threatened Indigenous Freshwater Species’, instead of avoid with exceptions.

- 18 My evidence in chief showed remediation, mitigation and offsetting are valid resource consent management considerations under Section 104(1)(a) & (ab) of the Resource Management Act 1991.
- 19 Remediation, mitigation and offsetting considers the use and development on a whole-of-catchment basis, including the effects on the receiving environments. In this instance, being within a Critical Habitat of Threatened Indigenous Freshwater Species, it would consider if the Critical Habitat is of a size and quality to remain an effective and viable habitat going forward and if remediation or mitigation may assist in this process. If the Critical Habitat is not an effective and viable habitat offsetting could be beneficial as it could create another area that is effective and viable. If it is an effective and viable Critical Habitat the habitat can still accommodate up to a certain level of use and development before the overall Critical Habitat is not protected anymore or the extent and values of a river is lost. If the values of a river are to be lost it is then up to the applicant to satisfy the Council that the lifeline utility has a functional need to be located within the Critical Habitat and that the effects of the activity are managed by applying the effects management hierarchy. This approach allows for the assessment of remediation, mitigation and offsetting on its merits and meets the Objective, Policies 3, 5, 7, 9 & 15 and Clause 3.24(1) of the NPS-FM 2020.
- 20 My recommendation in Paragraph 44 of my evidence in chief remains unchanged. I consider the recommendation to be consistent with the NPS-FM 2020.

PASSAGE OF FISH AT PAREORA DAM

- 21 My evidence in chief Paragraphs 73-76 discussed concerns with Rule 14.5.34 that the damming of water in the bed of the Pareora River, and the associated take, use and diversion of water and the maintaining and operating of dam structures for a lawfully established community water

supply scheme is a restricted discretionary activity, provided the certain conditions are met, of which one is any passage of fish is not impeded.

- 22 My evidence in chief established that native fish are present above the Pareora dam, and that native fish could be predated on by trout located below the dam if fish passage was improved.
- 23 In this instance, giving trout access above Pareora dam will not meet the Objective, Policies 9, 10 & 15 and Clause 3.26(1) of the NPS-FM 2020.
- 24 My recommendation in Paragraph 76 of my evidence in chief remains unchanged. I consider the recommendation to be consistent with the NPS-FM 2020.

CONCLUSION

- 25 I consider the recommendations presented in my evidence in chief meet the Objective, Policies 3, 5, 7, 9, 10 & 15 and Clauses 3.24(1) & 3.26(1) of the NPS-FM 2020.
- 26 I consider that the Hearing Commissioners should have appropriate regard to the recommendations in my evidence in chief in making decisions on the submission and further submission of TDC.

Dated at Timaru this 13th day of October 2020



Kylie M Galbraith

WSP

Appendix A – NPS-FM 2020 policies, clauses and definitions of relevance to my supplementary evidence

- Policy 3* *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.*
- Policy 5* *Freshwater is managed through a National Objectives Framework 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.*
- Policy 7* *The loss of river extent and values is avoided to the extent practicable.*
- Policy 9* *The habitats of indigenous freshwater species are protected.*
- Policy 10* *The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.*
- Policy 15* *Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.*
- Clause 3.24(1)* *Every regional council must include the following policy (or words to the same effect) in its regional plan(s):*
- “The loss of river extent and values is avoided, unless the council is satisfied:*
- (a) that there is a functional need for the activity in that location; and*

- (b) *the effects of the activity are managed by applying the effects management hierarchy.”*

functional need means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment

effects management hierarchy means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that requires that:

- (a) *adverse effects are avoided where practicable; and*
- (b) *where adverse effects cannot be avoided, they are minimised where practicable; and*
- (c) *where adverse effects cannot be minimised, they are remedied where practicable; and*
- (d) *where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and*
- (e) *if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; and*
- (f) *if aquatic compensation is not appropriate, the activity itself is avoided.*

For the purpose of the definition of **effects management hierarchy**:

aquatic compensation means a conservation outcome resulting from actions that are intended to compensate for any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, remediation, and aquatic offset measures have been sequentially applied

aquatic offset means a measurable conservation outcome resulting from actions that are intended to:

- (a) *redress any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, and remediation, measures have been sequentially applied; and*
- (b) *achieve no net loss, and preferably a net gain, in the extent and values of the wetland or river, where:*

- (i) **no net loss** means that the measurable positive effects of actions match any loss of extent or values over space and time, taking into account the type and location of the wetland or river; and
- (ii) **net gain** means that the measurable positive effects of actions exceed the point of no net loss

Clause 3.26(1) *Every regional council must include the following fish passage objective (or words to the same effect) in its regional plan(s):*

“The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats.”