

**BEFORE INDEPENDANT HEARING COMMISSIONERS
APPOINTED BY THE CANTERBURY REGIONAL COUNCIL**

UNDER: the Resource Management Act 1991

IN THE MATTER OF: Proposed Plan Change 7 to the
Canterbury Land and Water Regional
Plan – Section 14: Orari-Temuka-
Opihi-Pareora

**UPDATE OF EVIDENCE OF TIMOTHY ALASTAIR DEANS ENSOR ON BEHALF
OF
THE ADAPTIVE MANAGEMENT WORKING GROUP (SUBMITTER NO. PC7-385)
AND
THE OPIHI FLOW AND ALLOCATION WORKING PARTY (SUBMITTER NO.
PC7-382)
AND
OPUHA WATER LIMITED (SUBMITTER NO. PC7-381)**

Dated: 27 October 2020

GRESSON DORMAN & CO
Solicitors
PO Box 244, Timaru 7940
Telephone 03 687 8004
Facsimile 03 684 4584
Solicitor acting: G C Hamilton / N A Hornsey
georgina@gressons.co.nz / nicola@gressons.co.nz

1 INTRODUCTION

1.1 My full name is Timothy Alastair Deans Ensor. My experience and qualifications are set out in my primary statement dated 17 July 2020.

1.2 This document provides comment on matters that have come to light between 17 July 2020 (the time my primary evidence was filed) and this hearing. Particularly I comment on:

- (a) The National Policy Statement for Freshwater Management (NPSFW) 2020 in the context of PC7;
- (b) Discretion in any alternative management regime;
- (c) A plan based or consenting approach to an alternative management regime;
- (d) Amalgamation of Policies 14.4.35, 14.4.36 and 14.4.37; and
- (e) Additional matters arising from expert conferencing or of particular relevance to the matters raised in my primary evidence on behalf of the Adaptive Management Working Group (AMWG), Opihi Flow and Allocation Working Party (FAWP) and Opuha Water Limited (OWL).

2 National Policy Statement for Freshwater Management 2020

2.1 The NPSFW 2020 came into effect 3 September 2020, and replaces the NPSFW 2014 (amended 2017). My evidence in chief provided commentary on PC7, and the AMWG proposed flow and allocation regime in the context of the NPSFW 2014. This summary provides commentary on the same in the context of the NPSFW 2020.

Te Mana o te Wai

2.2 Underpinning the NPSFM 2020 is the concept of Te Mana o te Wai, which is reflected in the Objective of the NPSFW 2020, as follows:

The objective of this National Policy Statement 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)*

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

2.3 Policy 1 of the NPSFW 2020 requires that:

Freshwater is managed in a way that gives effect to Te Mana o te Wai.

2.4 Part 3: Implementation, of the NPSFW 2020 “sets out a non-exhaustive list of things that local authorities must do to give effect to the objective and policies”¹. Part 3 of the NPSFW 2020 contains a sub-part² addressing approaches to implementation in the context of Te Mana o te Wai. Recognising that the approaches set out are not exhaustive, these approaches require regional councils to undertake a number of actions largely centred around engaging with tangata whenua and communities, actively involving tangata whenua in decision making, adopting an integrated management approach that draws on a diversity of values and knowledge, and the application of the hierarchy of obligations (prescribed by the objective of the NPSFW 2020).

2.5 At paragraph 5.9 of my primary evidence for the AMWG, I express the view that:

“In practical terms, the implementation of Te Mana o te Wai needs to begin very early in the water resource management process. Realistically, Regional Councils need to take the initiative in focusing on freshwater body health first and foremost engaging with the community on freshwater values, setting water quantity and quality limits, and developing policies and rules for water take and use.”

2.6 I retain this view in light of the direction provided by Part 3 of the NPSFW 2020. The tasks described in Subpart 1, Clause 3.2 are best undertaken by regional councils, and in many cases the NPSFW 2020 specifically identifies regional councils as the owner of these tasks. Given the greater clarity around Te Mana o te Wai in the NPSFW 2020, it may eventuate that tangata whenua are also actively involved in the delivery of these tasks.³

2.7 In addition, I remain of the view that both the existing physical and planning policy environment remains a challenge for the implementation of Te Mana o

¹ NPSFW 2020 Part 3, paragraph 3.1(1)

² Subpart 1, Clause 3.2

³ For example NPSFW 2020 Part 3, clause 3.4 (1), (2) and (3)

te Wai⁴ in the Opuha FMU in the context of PC7. The physical environment example I provide at paragraph 5.10 of my primary AMWG evidence is the presence of the Opuha Dam within the Opihi FMU. While the existence of the dam in the catchment in perpetuity is not a given, it is a significant factor influencing the management of the FMU in the context of PC7 and the 'life' of this plan change. PC7 does not anticipate a flow and allocation regime without the dam and there are no submissions suggesting an alternative.

- 2.8 Te Mana o te Wai anticipates that the health and well-being of water bodies and freshwater ecosystems is the first priority (of three) in the hierarchy of obligations for the management of freshwater. The steps required under the NPSFW 2020 to practically implement Te Mana o te Wai and this hierarchy have not necessarily occurred as part of the PC7 development process. For example: *“Every regional council must engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and fresh water ecosystems in the region”*.⁵
- 2.9 Therefore, in terms of the policy environment, a key factor in relation to the application of Te Mana o te Wai relates to the LWRP development process itself. As discussed at paragraph 6.8 of my primary evidence for the AMWG, PC7 does not contain any new objectives and relies on the objectives of the LWRP. This has an influence on the direction PC7 can take as the policies and methods are required to achieve objectives that have already been set without the benefit of the NPSFW 2020.
- 2.10 Of particular relevance to the application of the NPSFW 2020 and the Opihi FMU is the fact that the LWRP contains objectives recognising that water is essential to all life,⁶ requiring the management of freshwater to safeguard the life supporting capacity of ecosystems and ecosystem processes,⁷ that water is available for sustainable use to support social and economic activities and that social and economic benefits are maximised by efficient storage,⁸ and that water is recognised as an enabler of economic and social wellbeing.⁹ The preamble to the LWRP objectives recognises that some objectives may be more relevant than others *“but in general no single objective has more*

⁴ Both in terms of the understanding of the concept under the NPSFW 2014 and in light of the greater guidance provided by the NPSFW 2020

⁵ NPSFW 2020, Subpart 1, Clause 3.2

⁶ Objective 3.6

⁷ Objective 3.8

⁸ Objective 3.10

⁹ Objective 3.11

*importance than any other.*¹⁰ My view is this direction cannot be ignored in the context of PC7 as there was no proposal through PC7 to change it.

- 2.11 The NPSFW 2020 requires regional councils to set environmental outcomes for every value that applies to an FMU,¹¹ and include them as objectives in regional plans¹². These objectives will need to fulfil the long-term visions set under Clause 3.3 of the NPSFW 2020. Clause 4.1(1) of the NPSFW 2020 directs regional councils to give effect to the NPSFW 2020 as soon as reasonably practicable. Given that the PC7 process is proceeding (as opposed to Environment Canterbury withdrawing the plan change in order to address the NPSFW 2020 for example), it is assumed that the substantive efforts to give effect to the NPSFW 2020 including Te Mana o te Wai (i.e. the long-term vision setting and objective setting process), may occur via a future plan development process if PC7 does not, or is unable to. While there is opportunity to align PC7 with the NPSFW 2020 through the PC7 plan development process, this will need to occur in the context of the existing LWRP objectives, and submissions made on PC7 as notified.
- 2.12 As discussed above, the NPSFW anticipates a region-specific application of Te Mana o te Wai through engagement with communities and tangata whenua. While PC7 has not had the benefit of the NPSFW 2020 framework guiding its development, the Zone Implementation Plan and Zone Implementation Plan Addendum development process has included community engagement and the development of community values for the OTOP sub-region.
- 2.13 In addition, Ms Treena Davidson has indicated in her rebuttal evidence that while not necessarily expressed in the terms of Te Mana o te Wai, the regional council (and others) has had the benefit of Ngā Rūnanga's desires for the Opihi catchment throughout the PC7 development process. This may indicate that the discrepancy between the approach taken in preparing PC7, and the NPSFW 2020 is not as big as it may appear at first glance.

Giving effect to the NPSFW 2020 - Priority two and three

- 2.14 In order give effect to the NPSFW 2020, consideration needs to be had to all the priorities within the NPSFW 2020 objective. On this basis, my view is that

¹⁰ LWRP, Section 3 Objectives, page 47

¹¹ This includes the compulsory values listed in Appendix 1A of the NPSFW 2020 and other values identified by a regional council (Subpart 2, Clause 3.7(2)).

¹² NPSFW 2020, Subpart 2, Clause 3.9

while the health and well-being of water bodies and freshwater ecosystems are the first priority, there may still need to be a level of balancing or trade off in order to ensure any approach to managing freshwater provides for the health needs of people, and the ability of communities to provide for their well-being, and therefore gives effect to Te Mana o te Wai.

- 2.15 My view is that the NPSFW 2020 objective is not to achieve the health and well-being of water bodies at all costs. Instead, the objective is a more subtle shift from the framework under the NPSFW 2014 in that it requires a weighting to be placed on the three value groupings when considering flow and allocation approaches, based on the hierarchy of obligations informed by the values placed on water bodies by the community and tangata whenua¹³.
- 2.16 The minimum flows proposed through PC7 in the Upper Opihi, Te Ana Wai and South Opuha Rivers, provide an example where achieving the first priority (through PC7 at least) may mean that the third priority is unable to be achieved due to the impact on the viability of the farming systems that rely on the abstracted water.¹⁴ In this case my view is that in order to give effect to the NPSFW 2020 objective, priority needs to be given to the health and well-being of the Upper Opihi, Te Ana Wai and South Opuha Rivers. However, the flow and allocation regime needs to deliver this priority in the least restrictive manner possible so the regime can also provide for the health needs of people, and the ability of communities to provide for their well-being; in the case of the latter, through taking and using water for irrigation.
- 2.17 In implementing the NPSFW 2020, it is highly probable that for any FMU in Canterbury there will be several reasonably practicable flow and allocation options available that align with the hierarchy of obligations set by the NPSFW 2020 objective. Crucially, this information then needs to be evaluated in the context of s32(1)(b) of the RMA so as to examine which option is the most appropriate way to achieve the objectives of the LWRP.
- 2.18 In addition, as discussed in Dr Greg Ryder's primary evidence for the FAWP, there are matters other than flow and allocation regimes influencing the health and well-being of water bodies, for example land use and its effect on water quality¹⁵. This integrated approach to freshwater management, ki uta ki tai,

¹³ NPSFW 2020 Part 3, Sub-part 1 Clause 3.2(1) and (2)

¹⁴ Primary evidence of Grant Porter for the Opihi Flow and Allocation Working Party, paragraph 6.2 and Table 12.

¹⁵ Primary evidence of Dr Greg Ryder for the Opihi Flow and Allocation Working Party, paragraph 4.71

must also be factored into the application of Te Mana o te Wai¹⁶ as directed by Policy 3 of the NPSFW 2020.

- 2.19 Within the bounds of PC7 and associated submissions, based on the evidence of Dr Tim Kerr my view is that the AMWG alternative management regime provides the balance between minimum flows and lake storage to best provide for the health and well-being of the Opuha and Opihi main stem; priorities drinking water supplies above other out of stream uses in times of low lake levels; and recognises the investment in Opuha Dam by providing a reasonable level of irrigation reliability, thereby providing for social and economic wellbeing. My view is therefore that the AMWG alternative management regime assists in giving effect to the objective and the hierarchy of obligations, and Policy 1 of the NPSFW 2020.
- 2.20 Based on the evidence of Dr Kerr and Dr Ryder, in terms of s32 of the RMA, my opinion remains that the AMWG approach is the most appropriate way to achieve the objectives of the LWRP.

3 Other NPSFW 2020 policies

- 3.1 There are several policies within the NPSFW 2020 that almost play the role of objectives in describing ambitions for various freshwater values. Of particular relevance to the Opihi FMU are Policy 7, Policy 9 and Policy 10.
- 3.2 While Policy 7, Policy 9 and Policy 10 have a slightly different focus than similar provisions in the NPSFW 2014¹⁷, and are more specific in the language used, my view is that the question they ask of PC7 in relation to the Opihi FMU remains the same; Which flow regime provides the best balance between minimum flows and lake storage in order to achieve the maintenance of aquatic ecological values?
- 3.3 This matter has been discussed in my evidence in chief and the overall conclusions reached are unchanged by the objective and policies of the NPSFW 2020.
- 3.4 The AMWG alternative regime also aligns with Policy 4 of the NPSFW that is:
- Freshwater is managed as part of New Zealand's integrated response to climate change.*

¹⁶ NPSFW 2020, Part 3, Subpart 1, Clause 3.5.

¹⁷ For example, NPSFW 2014 Objective B1.

3.5 Based on the evidence of Dr Kerr, my view is that the AMWG regime is best able to utilise the opportunity the Opuha Dam storage provides. The regime is designed to retain a level of storage so as to maintain connectivity, ecological health, and flow variability through dry years. In the face of changing climate, this storage may become even more critical.

4 Exercise of discretion

4.1 During the opening day of the PC7 hearing, Commissioner Shepherd asked counsel for Environment Canterbury whether Environment Canterbury had the legal authority to devolve its functions in relation to the management of freshwater resources to a private company. Counsel for Environment Canterbury Mr Phillip Maw replied that they did not.

4.2 In my evidence for the AMWG, I discuss the role of discretion in the implementation of the alternative management regime under PC7 and as proposed by the AMWG. I identify that both options have discretionary entry into the alternative flow regime levels and discuss several options regarding the application of this discretion.¹⁸ Based on the question of Commissioner Shepherd and Mr Maw's answer, it would seem that there is a potential legal issue associated with the level of discretion proposed through PC7. On this basis, my view is the third option for implementation of an alternative flow regime discussed at Paragraph 6.32(c) of my evidence provides the most appropriate pathway. Not only does it allow the knowledge of OEFRAG to inform decisions made regarding moving between flow regime levels thereby optimising the use of lake storage, but it requires Environment Canterbury to certify that the decision is appropriate thereby not devolving its functions under Section 30 of the RMA.

5 Alternative management regime delivered through the plan or resource consent?

5.1 The hearing panel put a series of questions to the Environment Canterbury s42A officers prior to the hearing commencing. One of these questions was:

“...why is it necessary to include notified Table 14(x) in the Plan as it would seem to deal with details that are best thoroughly examined in a consenting process?”

¹⁸ Evidence of Tim Ensor for the AMWG, para 6.27 to 6.44

5.2 This question was raised again at the opening day of the PC7 hearing by Commissioner van Voorthuysen. One of the reasons for the question seems to be the level of complexity surrounding the regime, at least partly informed by the lack of agreement between hydrological and ecological experts through caucusing. It is assumed that based on the reference to Table14(x), the question relates to whether it is necessary to include the finer details of the regime as opposed to whether it is necessary to include alternative minimum flows in the plan.

5.3 As discussed in my primary evidence, there are two pathways to implementing the alternative management regime. These are:

- (a) including the detail of the regime in the plan, or
- (b) developing the detail through a future resource consent process.

5.4 While in my primary evidence for the AMWG I express a preference for including the alternative management regime in the plan,¹⁹ my view is that either option is available. However, I wish to highlight some specific matters associated with both options below.

Including the alternative management regime in the plan

5.5 The S42A officer's response to the question above, noted that Table 14(x) (as part of the alternative management regime) arose out of substantial engagement with the Zone Committee and the local community. I would also add that significant effort has also been contributed by Environment Canterbury and submitters in developing and refining the regime. While the regime is complex, there are only two parties that are required to understand the intricacies of the regime from an implementation perspective; Environment Canterbury and the dam owner/operator. However, it is also important that the community can understand the consequences of the regime if not the finer mechanics, and my opinion is that the policy framework plays a key role in providing this clarity and transparency. On this basis my view is that the mechanics of the alternative regime should be clearly presented in the policies of PC7 as suggested by the AMWG.

5.6 One of the key benefits of the plan driven approach is that a majority of the work to develop and socialise the alternative management regime has been

¹⁹ Evidence of Tim Ensor for the AMWG, para 6.65

done. Because of this there is a level of certainty regarding what any future resource consent process and subsequent management of the FMU might look like. This will hopefully avoid a protracted and expensive resource consent process where the issues being discussed at this hearing are re-litigated.²⁰

Implementing the regime via resource consent

- 5.7 My view is that it is even more important for PC7 to contain clear policy if the alternative management regime is to be implemented via a resource consent process.
- 5.8 The S42A officer has suggested removing a level of policy detail from PC7. If the panel is mindful to rely on a future resource consent process to develop and implement the detail of an alternative management regime, my view is that greater policy direction rather than less is necessary. My opinion is that a similar level of certainty to that provided by a plan driven approach is required in order to avoid revisiting the issues already traversed through the PC7 process. Ideally, this policy needs to provide guidance for the development and inclusion of the mechanics of the alternative management regime. My view is these policies should clearly guide decisions such as when the regime will be entered or exited, the minimum periods the river should be at specific flows, and details around artificial freshes in order to achieve desired ecological outcomes. The policies should also seek to optimise the available storage, and account for the operational constraints of the Opuha Dam and associated infrastructure.
- 5.9 To assist the commissioners, I have attached (**Attachment A**) a set of policies addressing the matters I see as relevant to the implementation of an alternative management regime through a consenting based approach. The approach taken to drafting these policies has been to minimise the level of specific detail contained within so as to allow some flexibility, while focusing the consent process on developing the detail of elements that the AMWG has determined to be key to optimising the regime and on achieving the potential the Opuha Dam storage provides (for example transition arrangements between flow and restriction levels and the frequency of assessment against environmental thresholds).

²⁰ The controlled activity status proposed by the AMWG for any resource consent application under Rule 14.5.29 will further assist with providing certainty.

- 5.10 Policy 14.4.35(e) in **Attachment A** addresses artificial freshes and associated compensatory flows. Policy 14.4.35(e)(i) has been amended to reflect the wording recommended in the primary evidence of Mr Richard Measures²¹. Policy 14.4.35(e)(ii) provides for a reduction in flows for the time required to re-coup the volume of water released in an artificial fresh. The minimum flow for this compensatory period has been chosen based on the comment by Mr Mark Webb in his primary evidence regarding the proposed Level 2 restriction flow being appropriate during drought conditions and adequate to maintain flow connectivity in the lower Opihi River.²²
- 5.11 Historically, fixed minimum flows have resulted in OWL (with guidance from OEFrag) requesting that Environment Canterbury issue water shortage directions under Section 329 of the RMA in order to maintain flow connectivity in the Opuha and Opihi main stems through dry years. It is anticipated that there may continue to be reliance on water shortage directions until an alternative management regime is consented. Based on commentary in the S32 Report, I understand this is a scenario Environment Canterbury was hoping to avoid through PC7.²³
- 5.12 Recent experience I have had with resource consent applications being decided by Environment Canterbury post the NPSFW 2020 coming into effect, has highlighted a potential challenge with relying on a resource consent process for the development of the detail for an alternative management regime.
- 5.13 Environment Canterbury has been requesting assessments against the NPSFW 2020 for all relevant resource consent applications in accordance with S104(1)(b)(iii) of the RMA, but has been unable to provide any significant level of guidance to consent applicants as to how the LWRP gives effect to the NPSFW 2020.
- 5.14 Given the potential for PC7 and the remainder of the LWRP to require future amendment in order to give effect to the NPSFW 2020, it is anticipated that any application for resource consent by OWL ahead of these amendments becoming operative will be required to undertake an assessment against the NPSFW 2020 in order to fill that gap. Without significant guidance from

²¹ Statement of evidence in chief of Richard John Measures on behalf of the Adaptive Management Working Group, Paragraph 7.6(a)

²² Statement of evidence in chief of Mark Whitby Webb on behalf of the Adaptive Management Working Group, Paragraph 5.28

²³ Section 32 Report, page 252

Environment Canterbury, this could result in OWL potentially being tasked with undertaking an analysis of the LWRP (incorporating PC7), making a judgement call as to how much of it is giving effect to the NPSFW 2020, and lodging a discretionary resource consent application on this basis. My opinion is that this level of uncertainty going into a resource consent process for an activity as significant as the discharge from Opuha Dam is undesirable.

- 5.15 If the consenting approach is preferred by the panel, consequential changes to the definitions of 'Level 1 Restriction' and 'Level 2 Restriction' would be required to remove reference to Table 14(x). Suggested wording is provided in **Attachment A**.

Activity status of Rule 14.5.29

- 5.16 In my evidence for the AMWG, I suggested that a controlled activity status would be appropriate for a resource consent application to discharge water from the Opuha Dam for the purposes of augmenting flow in the mainstem of the Opuha and Opihi Rivers (Rule 14.5.29). In the context of a plan containing all the details of an alternative management regime, I remain of the view that a controlled activity status is appropriate. However, if the development of the detail of any alternative management regime is to be deferred to a future resource consent process, discretionary activity status would be more appropriate.

6 Amalgamated policy

- 6.1 At the opening day of the PC7 hearing, the panel requested that the S42A officers provide an example of wording for a policy that amalgamates Policies 14.4.35, 14.4.36 and 14.4.37. Matthew McCallum-Clark has provided an example as part of Environment Canterbury's written response to questions raised on day one of the hearing.
- 6.2 My opinion is that Mr McCallum-Clark's recommended wording of the amalgamated policy (referred to as Policy 14.4.35) significantly changes the direction to that of the notified Policies 14.4.35, 14.4.36 and 14.4.37 by requiring 'improvement' rather than 'maintenance'. Improvement is not a requirement of Policy 14.4.35 as notified, nor is it the requirement of Policy 14.4.35 'as recommended to be changed' by the s42A officer. This change would seem to be outside the current scope of submissions on PC7. However, if this change in approach has been introduced in order to address

a particular submission point that hasn't previously been addressed, then this is unclear from Mr McCallum-Clark's response.

- 6.3 The amalgamated policy also fails to address issues identified with the notified policies and omits other key detail. For example, the amalgamated 14.4.35(c) requires inflows to equal outflows when the level of Lake Opuha falls below RL370, which would prevent the lake from refilling. In addition, the detail in Policy 14.4.36(b)-(d) as notified describing how the different permit types operate has been omitted. This deletion aligns with the S42A officer's recommendations in Appendix E of the officer's report but contradicts commentary within the S42A report that suggests the detail is useful "*as this reflects the reality of the dam structure and operating regime of the river*".²⁴
- 6.4 My opinion remains that the detail in Policy 14.4.35, 14.4.36 and 14.4.37 is useful for plan users. The challenge with including it all in one amalgamated policy is that the resulting policy becomes cumbersome. On this basis, my opinion is that an amalgamated policy does not provide a notable advantage over a series of separate policies.

7 Additional matters

- 7.1 There are several other potential changes to PC7 that I discussed in my primary evidence or have resulted from expert conferencing. The first of these relates to Table 14(w). At paragraph 39, the ecology joint witness statement recorded that:

"The habitat modelling indicates flows for the Opihi River at Saleyards Bridge in the range of 3500-4000L/s provides adequate habitat retention for the ecological values. The experts agree that in addition to providing adequate habitat retention and flushing flows, there are also other components of the flow regime that are important for supporting ecological values, such as low-to mid-range flow variability."

- 7.2 This suggests that Table 14(w), which sets minimum flows above those in Table 14(v) that apply from January 1 2030, are not necessary. On this basis my view is Table 14(w) should be deleted.
- 7.3 The second relates to the definition of 'un-modified flow'. Attachment B of my primary evidence for the AMWG contained suggested amendments to the

²⁴ S42A Report, paragraph 9.35.

definition of 'un-modified flow'. While expert conferencing or the introduction of the NPSFW has not had an impact on this suggestion, my opinion is that the clarification that this suggested amendment provides remains an important point to consider given the reliance of the flow and allocation regime for the Opihi FMU on this term.

- 7.4 The third point relates to the allocation regime for the tributaries of the Opuha River. In my primary evidence for the FAWP, I indicated support for an FMU allocation table. Ms Keri Johnstone provided evidence with suggested allocation limit updates to reflect the correct volume of water allocated through existing consents. I wish to draw attention to the need to update Table 14(ua)²⁵, and the relevant allocation tables as notified²⁶ to reflect the correct allocations as outlined by Ms Johnstone, and to remove the 2030 minimum flows to respond to the ecological expert conferencing discussed above.
- 7.5 A related point is how water BA allocations are accounted for if a consent holder relinquishes their shares or authorisations to abstract water as part of the OWL scheme. In this situation, these BA permits would default to BN permits. Water could then only be abstracted under the BN flow regime (i.e. water harvesting) provided there was allocation available in the BN block. If water is available, the allocation would need to be accounted for within the BN block, and associated water from the BA block would need to be relinquished as the priority to this water is only afforded to OWL affiliated abstractors. If no allocation is available in the BN block then no water can be abstracted. This does not require any further amendments to plan provisions other than to ensure the relevant allocation tables accurately reflect the full BN allocation block (existing consented volume plus any available 'headroom').
- 7.6 The final point relates to the definition of 'pro-rata partial restriction' as it applies to the tributaries of the Opuha River. As discussed from paragraph 5.1 of my primary evidence, amendment to the notified definition is required in order to recognise the relative reliability of the various permit types. I have included, as **Attachment B**, a tracked change version of the definition of 'pro-rata partial restriction'.

Timothy Alastair Deans Ensor

27 October 2020

²⁵ As recommended to be included in PC7 by the S42A officer.

²⁶ Tables 14(m), (n), (p) and (r).

Attachment A

AMWG Alternative management regime policy and rules to support consenting approach and definitions

14.4.35

Connectivity, ecological health, and flow variability in the augmented Opuha and Opihi mainstems is maintained by ensuring that:

- a. water released from the Opuha Dam for augmentation of the Opuha and Opihi mainstem complies with the environmental flow regime(s) for Saleyards Bridge as set out in Tables 14(v) and 14(w); and
- b. when considering Policy 14.4.35a and provided any instantaneous variance in flow at Saleyards Bridge is not greater than 500L/s below the minimum flow, determine compliance with the environmental flow and regime based on average flows over a 24 hour period; and
- c. any water released from the Opuha Dam for the purpose of improving water availability for holders of AA, BA and/or KIL permits, complies with the environmental flow regime(s) requirements for Saleyards Bridge as set out in Table 14(v) and 14(w) and includes sufficient water to provide for the sum of abstraction occurring under AA and BA permits downstream of Saleyards Bridge; and
- d. when the level of Lake Opuha falls is below RL370, water released from the Opuha Dam for augmentation of the Opuha and Opihi mainstems equals the lesser of the Level 2 environmental flows set out in Table 14(v) or the sum of the inflows in to the Lake plus community supplies restricted in accordance with a Water Supply Strategy; and
- e. ~~in the period 1 November to 31 March of every year, three releases of water for artificial freshes of at least 30 cumecs, or two releases of water where one release is at least 60 cumecs and the other release is at least 30 cumecs, are provided for a duration of not less than two hours, except that during any period when the Level 2 flow regime (as set out in Tables 14(v) and 14(w)) applies and immediately following an artificial fresh, the minimum flow may be reduced to the Level 2 minimum flow set out in Table 14(v) and 14(w) for a period of time sufficient to compensate for the volume of water released for the fresh.~~

- e. i) In the period 1 November to 31 March the following year, artificial freshes that are effective at reducing the duration and severity of nuisance periphyton blooms shall be released from the Opuha Dam.
- ii) Immediately following an artificial fresh, the minimum flow may be reduced to the Level 2 minimum flow set out in Table 14(v) for a period of time sufficient to compensate for the volume of water released for the fresh.

14.4.36

In addition to any river specific environmental flow and allocation regime set out in Tables 14(m) to 14(y), differentiate AA, BA, KIL, AN and BN permits by:

- a. AA, BA and KIL permits being subject to an environmental flow and allocation regime on the Opihi mainstem at Saleyards Bridge which reflects water released from the Opuha Dam for the purposes of maintaining environmental flows and provision for the amount of water being abstracted under AA, BA and KIL permits; and
- b. requiring, when the level of Lake Opuha ~~falls~~ is below RL370, AA and BA permits to be treated as AN and BN permits respectively and to be subject to an environmental flow and allocation regime on the Opihi mainstem at State Highway 1 as set out in Table 14(u) and Table 14(y), determined taking into account the unmodified flow of the Opihi mainstem; and
- c. AN permits being subject to an environmental flow and allocation regime on the Opihi mainstem at State Highway 1 as set out in Table 14(u), determined taking into account the unmodified flow of the Opihi mainstem; and
- d. BN permits being subject to an environmental flow and allocation regime on the Opihi mainstem at State Highway 1 as set out in Table 14(y) determined taking into account the recorded (actual) flow.

14.4.37 (Replaces 14.4.37 and 14.4.38 as notified)

Provide for an alternative management regime for the Opihi River at Saleyards Bridge to be implemented through a resource consent, which:

- a. includes a multi-level minimum flow and abstraction restriction regime in Table 14(v) that may be applied depending on water availability in the Lake Opuha catchment assessed with reference to the level of water in Lake Opuha, snow pack in the Lake Opuha Catchment, and/or inflows into Lake Opuha; and
- b. specifies the thresholds for moving between flow and restriction levels and threshold periods, the transition arrangements between flow and restriction levels, and the period which any flow and restriction level will apply, so as to

allow the regime to effectively respond to climatic conditions, lake inflows and lake storage levels.

14.4.39

In complying with the environmental flow and allocation regime(s) set out in Tables 14(v), transitioning between flows in an alternative management regime to 14(w) and when transitioning between monthly minimum flow requirements at Saleyards Bridge, releases of water from the Opuha Dam may be progressively increased or decreased over a 48-hour period immediately after the commencement of the calendar month and the minimum flow under any alternative management regime.

Rules

14.5.29

The discharge of water ~~to water~~ from the Opuha Dam for the purpose of augmenting the Opuha and Opihi mainstems is a discretionary activity provided the following conditions are met:

1. The discharge complies with the environmental flow and allocation regime(s) set out in Tables 14(v) ~~to 14(w)~~; and
2. Any water discharged for the purpose of improving water availability for AA, BA and KIL permit holders is released in addition to water released for the purposes of meeting the environmental flow at Saleyards Bridge, and includes sufficient water to provide for the sum of abstraction occurring under AA and BA permits and downstream of Saleyards Bridge; and
3. If the discharge will occur under an alternative management regime provided for by Policy 14.4.37, an operational management plan is prepared and submitted with the application for resource consent, which shall include details of the matters for consideration and a consultation process to assist the consent holder decide:
 - a. If and when alternative management regime shall apply;
 - b. The timing and volume of the release from the Opuha Dam for artificial freshes;
 - c. The timing of releases from the Opuha Dam for flood buffering purposes;
and
 - d. The methodology for transitioning flows between months; and
 - e. Whether or not to lower the minimum flow, and by how much in order to compensate for artificial freshes; and

4. Any existing discharge permit that authorises the discharge of water from the Opuha Dam is surrendered as part of an application for resource consent lodged under this rule.

14.5.30

The discharge of water from the Opuha Dam for the purpose of augmenting the Opuha and Opihi mainstems that does not comply with one or more of the conditions of Rule 14.5.29 is a ~~prohibited~~ non-complying activity.

Definitions

Definition of Level 1 and Level 2 Restriction Regime

~~Level 1 Restriction Regime and Level 2 Regime~~ means the environmental flow restrictions regimes in Tables 14(v) and 14(w) that may apply under ~~two or more of the Level 1 'Snow Pack', 'Inflows' or 'Lake Level' thresholds in Tables 14(x) are met~~ an alternative management regime provided for under Policy 14.4.37.

~~Definition of Level 2 Restriction~~Level 2 Restriction means the environmental flow restrictions in Table 14(v) and 14(w) that may apply when two or more of any of the ~~Level 2 'Snow Pack', 'Inflows' or 'Lake Level' thresholds in Table 14(x) are met.~~

Attachment B

FAWP tracked change provisions

Definition Pro-rata partial restriction

(a) Subject to (b), in relation to Tables 14(m) to 14(s), means, with regard to abstraction restrictions, the proportional reduction of an abstraction that is required whenever the flow at the minimum flow site as estimated by the Canterbury Regional Council is less than the sum of the applicable minimum flow and the applicable allocation limit.

(b) In relation to Tables 14(m) (North Opuha), (p) (Upper Opihi) and (s) (Te Ana Wai), means, with regard to abstraction restrictions for AA and BA permits that are operated as part of a water user group, the proportional reduction of an abstraction that is required whenever the flow at the minimum flow site as estimated by the Canterbury Regional Council is less than the sum of the applicable minimum flow and the allocation limit of the applicable AA and/or BA permits.