

Before the Freshwater Hearing Panel convened by the Chief Freshwater  
Commissioner

In the matter of      Freshwater parts of the Proposed Otago Regional  
Policy Statement 2021

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**Supplementary Evidence of Ben Farrell on behalf of Otago and Central South  
Island Fish and Game Councils, Realnz Limited, and NZSki Limited regarding the  
implications of the National Policy Statement for Indigenous Biodiversity for  
freshwater issues**

22 August 2023

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**Submitters' solicitors:**  
Maree Baker-Galloway | Laura McLaughlan  
Anderson Lloyd  
Level 2, 13 Camp Street, Queenstown 9300  
PO Box 201, Queenstown 9348

p + 64 3 450 0700  
maree.baker-galloway@al.nz | laura.mclaughlan@al.nz

**anderson  
lloyd.**

## **Introduction**

- 1 My full name is Ben Farrell. I prepared a statement of evidence on the Freshwater Parts of the Proposed Otago Regional Policy Statement 2021 (**pORPS**) dated 28 June 2023 (**EiC**). My qualifications and experience are set out in my EiC.
- 2 This evidence is provided in relation to the implications of the National Policy Statement for Indigenous Biodiversity (**NPSIB**) for freshwater issues and in response to Minute 7 of the Freshwater Hearing Panel.

## **Scope of evidence**

- 3 My evidence responds to the evidence of Otago Regional Council's reporting officer Ms Felicity Boyd, dated 11 August 2023 in relation to the implications of the NPSIB. In preparing this evidence I have also viewed the supplementary evidence from Jayde Couper on the NPS-IB.

## **Code of Conduct**

- 4 I confirm that I have read the code of conduct for expert witnesses as contained in the Chief Freshwater Commissioner and Freshwater Hearings Panels Practice and Procedures Note 2020. I have complied with the Practice Note when preparing my written statement of evidence and will do so when I give oral evidence before the hearing. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed build on my EiC and rebuttal evidence, are also set out in the evidence 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.

## **Material Considered**

- 5 In addition to the material considered for the EiC, in preparing this supplementary evidence I have also considered:
  - (a) The National Policy Statement for Indigenous Biodiversity 2023;
  - (b) Supplementary statement of evidence of Felicity Boyd on FPI – Implications of the NPSIB dated 11 August 2023; and
  - (c) Supplementary statement of evidence of Mr Jayde Cooper dated 22 August 2023.

## **General Agreement with Ms Boyd's evidence**

- 6 I agree with and adopt the findings and recommendations set out in Ms Boyd's evidence (dated 11 August 2023), except that:
- (a) While I agree that LF-FW-P9 requires amendment to ensure appropriate protection of natural wetlands, I do not support amending LF-FW-P9 natural wetlands by adding "preventing activities that will, or are likely to, result in irreversible damage to a natural wetland".
  - (b) The national directives<sup>1</sup> to recognise and provide for certain activities, including dispensations provided to specified infrastructure to allow consideration of adverse effects on wetlands, needs to be implemented (carried down into) the RPS.
  - (c) I also continue to support additional amendments to LF-FW-09, LF-FW-P8 and LF-FW-P9 as discussed in my EiC and rebuttal evidence. I intend to circulate a revised set of recommended amendments in due course upon reflecting on the evidence of other experts.

## **Protection of 'natural wetlands' that are not 'natural inland wetlands'**

- 7 My EiC describes why natural wetlands should be protected in addition to natural inland wetlands and is generally consistent with Ms Boyd's findings.

## **Preventing activities that will or are likely to have irreversible damage to natural wetlands**

- 8 For reasons set out in my EiC, I support a new policy limb to LF-FW-P9 to help protect all natural wetlands. However, there are some critical issues with Ms Boyd's very strict recommended policy amendment to LF-FW-P9, making the policy amendment inappropriate:
- (a) Preventing activities is a very strong directive that will effectively direct lower order documents (regional plans) to prohibit activities without knowing what activities might be prohibited. If activities are to be prohibited, then a thorough s32 evaluation should be undertaken to demonstrate an understanding of the costs and benefits that may result from including such strict policy direction. As far as I'm aware such a robust cost and benefits analysis has not occurred, and it

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<sup>1</sup> For example as set out in various provisions in the NZCPS, NPSET, NPSREG, NPSFM, NPSIB, NPSUD

remains unclear what 'activities' might be captured by the general reference to 'irreversible damage'.

- (b) Ms Boyd's evidence does not explain what she means in ecological terms by the phrase 'irreversible damage'. Mr Cooper has highlighted further uncertainty issues with the term 'irreversible damage'.
  - (c) The uncertainty of what is meant to be captured, or what may be captured, is problematic. For example, the policy direction could result in significant costs by preventing activities that have significant socioeconomic and human wellbeing benefits (such as specified infrastructure and outdoor recreation), with little actual or potential environmental benefit to values associated with natural wetlands.
  - (d) Such a strict policy direction is not required to implement any of the NPSIB directives or the RPS objectives, including LF-FW-O9 (none of the provisions in these documents require prohibition or prevention of irreversible damage from activities to natural wetlands).
  - (e) It is unclear how the policy direction to prevent irreversible damage to natural wetlands, works alongside the clause 2 b of LF-FW-P9, that requires the implementation of the effects management hierarchy for natural inland wetlands. There is overlap, and inconsistency between the two clauses.
  - (f) Similarly, I see no need to retain or protect the existing 'extent' of individual natural wetlands. A more appropriate outcome is to focus on (and prioritise) the overall health and wellbeing of natural wetlands, at both an individual and wholistic/connected scale in a given area / particular natural system. Like any part of a healthy ecosystem, natural wetlands should be able to 'take a knock' (suffer some level of degradation) without compromising its healthy state and its contribution to ecosystem services.
- 9 I maintain LF-FW-P9 should be amended to implement the outcomes imposed by all national directions and to implement LF-FW-O9 in respect of natural wetlands. Reflecting on the relief sought in my EiC and the supplementary evidence of Ms Boyd, I recommend amending LF-FW-P9 so that it reads as follows:

*Protect natural wetlands by:*

- (1) *Managing activities to avoid or discourage the loss of natural wetland values such that the ecosystem health,*

*hydrological functioning, and water quality of natural wetlands is maintained or enhanced.*

- (2) *restoring and enhancing natural wetlands, in accordance with LF-FW-P10 – restoring natural wetlands.*
- (3) *for natural inland wetlands, implementing clause 3.22(1) to (3) of the NPSFM, except that:*
  - (a) *in the coastal environment, natural wetlands must also be managed in accordance with the NZCPS, and*
  - (b) *when managing the adverse effects of an activity on indigenous biodiversity, the effects management hierarchy (in relation to indigenous biodiversity) applies instead of the effects management hierarchy (in relation to natural wetlands and rivers).*

10 The amendment I recommend above will result in fewer costs compared to the option recommended by Ms Boyd (because it protects natural wetland values without preventing activities), while resulting in environmental benefits (by minimising irreversible damage to core natural wetland values).

### **Conclusion**

11 I tend to agree with Ms Boyd's evidence except I recommend an alternative amendment to LF-FW-P9 (1), as set out above.

22 August 2023

Ben Farrell