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**HEARD BEFORE JUDGE D SHEPPARD (CHAIR), MR K PRIME,
DR J HARDING AND MRS J VERNON, MEMBERS OF THE BOARD**

WEDNESDAY 5 AUGUST 2009

HELD AT THE LEISURE LODGE, 40 WAIMEA ROAD, NELSON

HEARING OPENED [9.32 am]

APPEARANCES

Mr S Markham, Mr J Baker and Ms M Baker, Tasman District Council

Mr N Deans and Mr B Johnson, NZ Fish & Game

Mr N Deans, Prof R Young and Prof D Olsen, NZ Freshwater Sciences Society

Mr S Moran, West Coast Regional Council

Audio file: dpm0114

RESUMED [9.32 am]

CHAIR: Good morning and welcome. It is good of you to come in and give us your presentation in support of the submission. Mr Markham, are you going to be leading the delegation?

MR MARKHAM: I am, Judge. Yes.

CHAIR: Thank you. And would you like to introduce your colleagues?

MR MARKHAM: I would like to, indeed. Thank you Judge. My name is Steve Markham, Board Members. I am the Tasman District Council's policy manager. And I have on my right Ms Mary-Anne Baker who is the council's policy planner with the portfolio focus on water management, relevant for today's discussion. And I have on my left Mr Joseph Thomas who is the council's water resources scientist. So you have three officers of the Tasman District Council before you board members, and just on a personal note, I think it's pertinent just to observe, that we three have been serving water management, and inquiries and decision making for the present Tasman District Council and former authorities for at least 20 years. And my two colleagues have actually served those inquiry aims for more than 20 years.

I might note that personally, as a way of introducing what I want to just say by way of introduction and I'm going to hand over to my two colleagues, that is we are here to gently challenge some of the propositions in the proposed National Policy Statement, that underlies some of the policy provisions that there is a need to upgrade the level of performance of water management by regional councils, through the provisions that the

proposed statement sets out in terms of plan making and the like. This council has had active effort in water management inquiries, investigations, and policy development, and administration for many years. We wish to just paint a picture for you of how one council in the country, one of the 16 regions, 17 of course if one includes Chatham Islands, has addressed the challenges both under pre-RMA legislation, and more relevantly for the last 17 or 18 years under the Resource Management Act. So after Mr Thomas and Ms Baker have finished I will come back very briefly, if I may, to touch on some of the key points in our submission, which I assume you have.

The first leading proposition in our submission, the submission of the council, is that the assumption that there are various degrees of failure in water management practice, behind some of the requirements set out in the proposed policy statement. We wish to, as I say, gently challenge. So I will hand over to Joseph who will give you a background on how in the Tasman region we've gone about the business of characterising the water resource. And then after Joseph is finished Mary-Anne will talk about the approach we've taken to the management issue, and the management instruments, and approaches we have pursued.

MR BAKER: Thank you Steve. Good morning members of the Tribunal. I have just put together, a pre - maps and a little memorandum with just some bullet points, and my role is to probably provide you an insight, a pullout from Steve's introduction that Tasman has got a very good understanding of water resources, and over the last 20 plus years working in this area, we have developed quite a lot of detail. And to show that, I have got three of the key maps that basically suffice the level of catchments, sub-catchment, aquifer details to the level to which Tasman has gone to in terms of allocating and managing water. And also to point out that as a region, that every region is unique. And in our case, from the east to the

west, from the foot hills here to Collingwood, you are looking at a rainfall variation from 900 millimetres to 4,000 millimetres. So the point I would like to make is the fact that you know, we very strongly believe in local solutions for local problems, and partnership with local communities. And that is what we have practiced. Also to point out, that because the nature of water resources is so complex driven by rainfall and geology, and in Tasman the other interesting factor is that a lot of our upper catchments are national parks. It's alluding to the fact that generally, a lot of our major rivers and aquifer generally are in a natural state.

We acknowledge that we have localised problems, and the council is dealing with it through its current and enhanced plans that my other colleague will expand a bit on.

The next thing is that - that the way the demand is normally stresses cost and dimension. The demand is mainly in our very highly productive alluvial plains, in the Waimea, Motueka, and to a smaller extent, Takaka. John Harding is very familiar with this part of the world. Again, what you see now is probably in the Tasman region, third generation water management plans, and some of these soils and sub soils are the latest we have got compared with the history where we started investigating and understanding water resource way back in the early '80s.

The Tasman works on actually having very good information to make very good decisions that engages community in partnership. I have pointed out that most of the rivers, the major rivers and aquifer systems are generally in good health, while acknowledging localised problems. Over allocation is an issue that we have been identified with. It is historic, and we are progressing and have succeeded in innovative methods to address this, and lastly the level of sophistication without going into detail, of how we manage water is basically driven by the stress of the resource, and the

competing interest. So we have very detailed policies in place for some catchments and very high level allocation plans for the others. Classical example is Waimea, it is extremely detailed. We go to this Collingwood, 4 metres of rainfall, two water permits you know. Is it worth the level of investment? So I will leave it there, and if you want to ask questions after we have collectively finished I am happy to answer.

CHAIR: Thank you.

MS BAKER: Good morning. My name is Mary-Anne Baker and I'm a policy planner with the council, and involved for quite some time in managing some of the issues that the council has identified. And as Steve and Joseph have both mentioned, we have been involved since it became apparent in the 1970s, particularly the Waimea catchment was a water shore catchment and water management plans back then were developed, to deal with some of those issues.

The council's current plan looks at three broad areas of issue identification. Firstly, the need to establish sustainable limits. Secondly, the need to make sure that we've got equitable water allocation between competing water users. And thirdly, the council has identified the role of water augmentation in dealing with some of those water demand, water shortage issues.

And just in a little more detail to expand on the comments both Steve and Joseph have made our innovative and sophisticated water management provisions we have got. One of the successes that the council does have is the use of water user committees, and involving stakeholder groups in developing water plans. And I think that is a key success for this council.

The council has identified also future needs for water, and has reservation provisions for identified end users for the future use in relation to community water supplies, in particular, and also irrigation needs in respect of Māori perpetual leased land. We are also currently considering the degree of protection with access to water for product end users such as for irrigable land.

The council is very keen to make sure our water allocation provisions are equitable, between the competing water users both by the present and future, and make quite a good use of sustainable allocation limits for the various catchments and water resources. And as Joseph said, we have a quite high level of knowledge about those resources and use quite sophisticated methods of modelling to predict different scenarios of water allocation.

When we don't have that information we have default provisions as well, so that we have levels already set in the plan as defaults to manage those resources, should demand increase in time. And we have tried to develop desirable standards of supply, security and supply for end users, and trying to balance the individual needs with the regional needs for efficient water use and allocation.

[9.42 am]

We have rationing triggers to reduce (inaudible) in low flow periods so that it helps manage the effect of those low flows on end users, a stepwise approach to rationing. We have also got provisions for rostering so that user groups can manage impacts on low flows themselves.

Where we have security of supply that's less than desirable, also as Joseph mentioned, in the Waimea plains we have higher demand than we

have water available. We have a process of bona fide reviews which is akin to a use it or lose it approach, which is balanced with an encouragement for transferring unusable water with where there might be demand elsewhere. And to encourage better allocated efficiency. Our efficient water user provisions link soil type and climate to our allocation rates, and it allows flexibility for landowners to change crops over time but still promote sufficient use.

We have been challenged by procedural allocation issues, and the council has developed a waiting list regime within the constraints of the RMA provisions for “first in, first served.” And it has worked reasonably well for the council over time, and that where we have identified full allocation according to the allocation limits. We have set up a waiting list to manage our future or ongoing demand for water. And as water becomes available, then people on the waiting list will get first choice.

The council has also been one of the first to manage the water yield effects of land cover, so that particularly in the vulnerable (inaudible) catchments, we have controls on the forestation, because as we know in those catchments the forestation reduces water yield. So the council imposes restriction on new forestry in those catchments.

And finally in relation to water quality, the council’s plan has end-use related classifications for a range of water resources. And a current project that the council is working on, the last part of the plan, is considering appropriate minimum water quality standards for the district in relation to stock and vehicle access, in particular. And the current proposal acknowledges the existence of degraded water quality in some areas, and new (inaudible) and policies are being introduced to address these. And you might note that the council hasn’t really faced the challenges that some other regions have faced in relation to intensive land

use. I guess we are lucky in that respect. But we are aware of the risks. And there is more intensive land use occurring, and certainly in relation to water takes we are being more particular about the effects of the use of that water, in relation to water quality.

In relation to water body values, like other councils, our key contains a schedule of uses and values that we have identified for our water bodies. And it's an ongoing project to improve our knowledge about the values that people have for their water bodies. One of the challenges we have got is determining significance of those values, and what the thresholds might be between local, regional or national significance, and Steve has noted in our submission that we are working at a national level to try and develop those thresholds to help manage water, and have some greater certainty for the communities, and for people wanting to use water for what those water bodies might be managed for ultimately.

So that's a summary of some of the more innovative and adaptive approaches we've got to water management in the district. Thank you.

CHAIR: You are going to make a concluding presentation are you?

MR MARKHAM: Yes I am. What I would like to do now Judge, and Board Members, is just to very briefly go through the key points of relief, that the council submission contains and they're conveniently boxed in the seven page submission document. The first point flows from I hope from what we have been able to say to you this morning, about the water management practice and performance of this council for this region, the Tasman region. And the point of relief that we have noted in our submission is that we don't believe that it's appropriate to specify finite timeframes for a raft of policy planning effort on an unvarying basis around the country. And we vastly prefer to see that the National Policy

Statement have expressions that enable different regions to, as it were, fill in the gaps, that the policy statement specifies, as is appropriate for the circumstances of each region. So we are seeking not to have a finite timeframe listed. And we are seeking language that would convey the discretion for individual regions to pursue policies, where there are gaps in their region's management framework on a basis of what was appropriate and necessary, rather than in some unvarying formula-based rollout, as it were. A note that the council has broadly endorsed much of the content of the submission by the national body representing the local government sector, and specifically for this instrument in process, regional council's role in water management. So we have adopted in the comments in our submission, much of the more detailed content of the Local Government New Zealand's submission.

We've noted that the work by the government on the National Environmental Standard on ecological flows and levels precedes the National Policy Statement on Freshwater Management. We are rather concerned at what is an out of sequence approach to dealing with the nationally relevant strategic issues of water management behind the process. We understand the Board's limitations in that regard, but we do advocate that the Board take whatever means it is able to - to see that a more rational sequencing of the content of that particular National Environmental Standard is able to be done in relation to the content of the National Policy Statement.

We have some specific comments to make about the approach in the National Policy Statement concerning decision making under uncertainty by reference to the concept of the precautionary approach. And we have some technical, conceptual and drafting suggestions to make, a reformulation of the issue rather than talking about (inaudible) approach, but to talk more generically about decision making under uncertainty, and

to look for a relationship between risk (which is a particular type of uncertainty) and information, and management action. There is a dialectic, there is a relationship, (inaudible) relationship between those three concepts, and we think that the formulation that has been provided in the National Policy Statement for Freshwater Management, and I note also in relation to the New Zealand Coastal Policy Statement, does not advance, it does not help decision makers, particularly because it is conceptually poorly focused with respect.

And then last but not least, we believe that the range of instruments that are covered in the particular policies in the National Policy Statement concerning water management, particularly in relation to water allocation management, consider the concept of security of abstractive supply alongside the more familiar concepts of allocations limits and environmental flow regimes. Because abstractive security of supply is the prime issue for abstractive interests, and sits alongside the formulation of allocation limits and environmental flow regimes. It is an additional concept to the toolbox of management instruments, which at the level of practice, we have seen the importance of in our work in this region, and we believe that it's a concept that deserves coding in the national policy and planning instruments, including the National Policy Statement, and obviously also to follow relevant professional environmental standards.

So thank you Judge and the Board Members for listening to each of us. We are more than happy to answer any question that you may have.

CHAIR: Well yes, thank you very much. I'm sure the Board will have some and we're very grateful to you for your submission and for your thoughtful presentation.

MRS VERNON: Thank you very much for your submission, and thank you for the extra information that you have given us and (inaudible) I noted when I first read your submission that it would be interesting to hear what you have actually been doing and why is it so innovative. But on your submission, I get to your paragraphs 21 and 22 and at that stage I have to confess that you lost me a little bit, and so perhaps if I go to 21, in the second sentence you talk about the policy if it is to be (inaudible) although it should include - references to the source scale and the significance of risk, and then you carry on in 22 about - and in your box you talk about reference to risk. And I'm sorry, but I just really didn't understand what we should be doing in the National Policy Statement with that.

[9.52 am]

MR MARKHAM: I guess what we are trying to communicate, is that there are some very important basic concepts associated with natural resources management; in this case water resources management. Water resources or water bodies have a range of values from the general community or from the particular perspective of any sector of the community. And because of the dynamics of water resources or water bodies, the way they are formed, the way they vary in space and time, in relation to any set of shall we say, public or community values, there will be through natural processes, and the patterns of use, there will be various threats to those value, and we can call those risks. So we have values and we have risks.

Now, when we look at water management effort, one of the key outputs of water management effort is information about water bodies. Now what we are saying in relation to the proposed concept of a precautionary approach is that it more clearly sets out the way in which management effort in decision making terms needs to respond to the presence of values, the

presence of risks of various kinds in relation to values generally, or particular values. For example, risks to in stream values - a healthy fishery, a healthy aquatic ecosystem from accumulative abstraction. That's the obvious key set of risks around many water bodies in the country.

But also it accounts for the decision making outlook in relation to what information discloses about the nature of risks and in turn, what should be the decision approach in the light of that further information or the latest information about the character of the risk. Now none of those concepts of value, risk, information, and decision outlook are very clearly encoded in what is described in international terms as a "precautionary approach". Some of them come to mind, but with formulations that are provided in international and certainly in New Zealand's jurisdiction practice in relation to environmental management, and I referred earlier to the formulation and the New Zealand Coastal Policy Statement. Those formulations don't give clear help to the water management decision maker, as to the approach to be taken across risks generally, or any particular type of risk, in the light of information about the character of the risk and further in the light of the values that are at risk, so for example, if we take the example, the risk I mentioned earlier of the risk to aquatic ecosystems, and the effects of such on healthy fisheries arising from accumulative abstraction, particularly at times of naturally light flow, the question is what is the decision approach where we have clear information about the level of resilience to vulnerability of those aquatic ecological features or values the fishery, for example? What is the decision approach to be taken? And the use of the term "precautionary approach" on its own doesn't give a clear steer or guidance. So that is what we are trying to explain in a few words. I acknowledge in paragraphs 21 through to and the suggestion in the box.

MRS VERNON: Thank you. Just a comment you made this morning about, and it was in your submission about having no finite time in the NPS. And I acknowledge that you are doing something, and are proactively managing your district. But doesn't that allow others to use the excuse for doing nothing, if we don't put a finite time in there?

MR MARKHAM: I think there are other ways of addressing the question of leaders and laggards in water management performance around the 16 or so regions around the country. So, for example, if there were a clearly set out series of policy actions or policy outcomes or outputs rather, in the statement, and then there was a provision that required councils to address those policy output areas, and an obligation or a duty, drafted to exhort or to require each council or region to determine to a satisfaction that it had achieved and had delivered in those output areas. And if not, to proceed to do it in a timely manner, rather than some arbitrary regards to time.

DR HARDING: Thank you very much for your submission. This morning you talked about a range of toolbox, if you like, approach you mentioned. So I would just like to hear a little bit about some of them. In particular, you made mention about a water users committee, would you like to tell us a little bit more about that?

MS BAKER: I think, just in general terms, Tasman district is quite lucky in that that it has quite a stable population. Some of the people, not just with the council but out in the community, have been around for quite some time we have developed really good relationships with our water users. And it really started on the Waimea plans when issues around water reliability were identified, and predecessor councils as well, worked with the stakeholders to work through some of the issues. And it was a successful way of establishing a dialogue. And it has always been quite an informal

process that we would have water user meetings, and we would have elections for Chairman in an informal kind of way. We have recently drafted up Terms of Reference to make it clear that the council does support and encourage water user committees as a key management tool, and it is giving water users a chance to be part of the decision making process, and the terms of reference aren't just in relation for water allocation, although it is a key function of those groups. But it is also in relation to water quality issues, if there are water quality issues, and we are trying to develop them as a forum for the communities to use as a liaison with the council as well, less formal than the submission processes for instance, and a good avenue for dialogue.

DR HARDING: It sounds like a good – it's obviously worked for you, but I mean one of the comments you did make was Tasman's been relatively lucky in that you haven't had these sort of large scale land-use developments that have happened in other regions. I mean, do you think these sort of systems that you've got in place, would work just as effectively if you had large scale dairy conversion happening and those sort of things?

MS BAKER: I think it could. There are certain bigger challenges, and a lot is at stake in some other regions. I fully acknowledge there is a lot and there's a lot of competition. I think what makes it work is that when issues are identified, that is the point at which you try and get people around to resolve those issues. And some regions perhaps are a little bit beyond that ability to make those relationships work. And certainly it would be a challenge. We're not the only council who have used water users committees successfully. But I think it is certainly a key management tool.

MR MARKHAM: Perhaps I can just follow on and note that the trick or the challenge is the timeliness of setting up a local network of water user committees in response to emerging or present issues. We have done

that historically at the cusp of general recognition we have an issue that we can't really comment about how other regions have approached, so that the relative timing of pursuing or exploring the use and value of water user committees.

[10.02am]

MR BAKER: If I may add, one of the key things for water user committees, is the fact that it gives the council a direct method to provide information on the resource, and my observation is that the water user committees in Tasman are very well educated on the water resource, so they could make sound calls and that decisive information, how they process is very important. And when we talk water user committee, we have always been that water user committee in the holistic sense. It's not just the guys who pump the water, but the committees also have involvement of iwi, of Fish and Game, Department of Conservation, and in some cases, special interests groups. And hence, we have a more holistic approach and engagement and everyone can see each other's views.

DR HARDING: And clearly you have, of the regions around the country, you're one region that has a very good grasp of what resources are. What's your view about things like climate change and that sort of thing? And how are you going to deal with those sorts of areas where you have already got heavier allocations of water?

MR MARKHAM: I guess the strategic approach is to be front-footed in the relevant research effort to understand the way in which risks that are present today will be variously aggravated by climate change and its consequences. And Joseph noted that at a strategic level when at-risk catchments or water short catchments, if you like, we are actively pursuing augmentation, and Joseph could talk at length potentially about a major

water augmentation concept that we are working on for the Waimea catchment.

MR BAKER: I would add, Steve, two things in the water short areas, augmentation has been one of the innovative methods where it is a win-win, we have got an operational system where we actually put more water into the river - originally the river used to be dry all the time. And it is a much bigger scale one looked at for the whole region. But in other areas, without going into specifics, our base allocations are very conservative without comparing or contrasting with other parts of New Zealand. Our base allocations are very conservative so if you then look at technical things like they say, shift rainfall pattern by 15%, the modelling allocation methods (inaudible) in Motueka and Motuera, more than account for that swings. So our line in the sand, if you call it, is conservative. And we see that we haven't let cost (inaudible). So it's always in the forefront when we look at sophisticated models, and when we go and engage the community, to explain why this should be the limit; ultimately it's a policy process when decisions are made. But the community generally have subscribed to and it has worked.

DR HARDING: You also made reference, I think, to developing appropriate minimum water quality standards. And in the draft NPS they talk about, there's mention of "swimmability" which some of our submitters have suggested that that might be minimum water quality standards. What's your view on that?

MS BAKER: The council's have an opportunity to think about (inaudible) water quality standards with the preparation of the last part of our plan looking at activities in the beds of rivers and lakes. And it is preceded by two communities working quite independently of council to improve water quality in their catchments, because there were issues around, in one

case, swimmability; in other, the impacts of bacteria on cockle harvesting in the bay. And both those communities have actually adopted a whole range of methods to deal with impacts of intensive stocking on water quality. And the council has followed that up with looking at our plan level, what should be the objectives. And at the moment there seems to be a general agreement that if rivers are swimmable, then we should have swimmable water quality. And where rivers aren't swimmable then stock water quality is the best minimum standard. And that is something that the council is debating with its communities at the moment. And there doesn't seem to be a great deal of opposition to those concepts at the local level.

But it does actually mean the council needs to work out which rivers are swimmable. Because we are talking not just at a swimming hole for the local communities, it's the kids locally using it as a paddling area, there's a whole range of contact recreation issues and activities that we need to identify. But as a concept it was well agreed to.

DR HARDING: How might ground water be (inaudible)?

MS BAKER: We don't have particular groundwater quality issues in the district.

We haven't been challenged greatly, apart from some nitrate issues in the plains. Perhaps they're a result of historic land uses rather than current land uses. But we haven't been challenged to think about that in any detail.

MR BAKER: Of all the groundwater systems we monitor, apart from the Waimea, which we think is a result of land use (inaudible), also the groundwater is a good quality, we tend to use the drinking water guidelines as a tool, but coming back to base water quality, one of the concerns we have with National Environmental Standards for water quality

is that it has to be cognisant of what the natural catchments outputs are. Classical example is if you use clarity, you've got the West Coast, naturally the (inaudible) so, it's just a point and you've got to be cognisant of what the ambient in the background quality is. And take the classical Waipara Springs, I've monitored the water quality in Waipara Springs for 20 years - it is remarkably consistent. So people said all this dairying in Golden Bay, but you see there is 4 cubic kilometres of storage, and the water sumps sons are between three and twelve years old, and we would have seen anything that was going to happen in the 20 years of consistent testing of water we have done. So I just pointing out the whole state – horses for courses and it's got to be specific to catchments, and risks as Steve mentioned.

So we are in a different space compared with some of the other regions with intensification of land use. So one shoe doesn't fit all.

DR HARDING: Okay, thanks very much.

CHAIR: Mr Prime?

MR PRIME: I was interested in Ms Baker's comment about restrictions on new forestry. Does that pertain only to exotic pine trees, or is it all -

MS BAKER: Tall, tall vegetation as planted as a plantation forest. So it can be any species of tree.

MR BAKER: If I may add too, what are the areas are protected from the water yield in the district?

CHAIR: Thank you. Are there other water intensive activities that are also controlled in the same way as forestation?

MS BAKER: In terms of the effect they might have on water yield? No, not at the moment. There is something, it's a peripheral impact and that's in relation to bed levels of our rivers. We have a degrading bed regime in three of our main river systems and it's been an issue in Waimea plans. And in fact we've had moratoriums on (inaudible) extraction from the river beds because of these (inaudible) lowering the bed which has been associated with the lowering of groundwater levels (inaudible) extraction to protect water availability.

CHAIR: Yes, thank you very much. Yes, that is interesting. If we come back for a moment to the question of a precautionary approach; I understand, I'm pretty sure, the criticisms that you are making about the inadequate way and that's referred (inaudible) sometimes. One of the things that we hope for from our submitters is that they will tell us what they propose should be the content of the policy statement, where they find the quality of the statement as it is unsatisfactory. So I'm asking, have you got -

MR MARKHAM: Yes.

CHAIR: You have? Well done.

MR MARKHAM: We have formulated an approach in the Tasman regional policy statement some while back. It is I think an improvement on the formulations that rely on the expression "precautionary approach", which is a circular type of provision. And I'm happy to provide those provisions with any suitable explanatory material for the benefit of the Board if you so wish.

[10.12am]

CHAIR: Well I specifically thank you and ask for that. That would be helpful. I would add to the fact, that because you have thought about it so clearly it probably doesn't need a lot of explanatory material, it's just the wording that will be – that should speak for itself and it probably does.

MR MARKHAM: I'll see to that.

CHAIR: Thank you very much. Now if we could come back to your box after paragraph 9 of the submission, when you are addressing the quite contested question of timing when people undertake action and so forth. And I have got a similar question there. You used the concept as a kind of a metaphor where there are gaps. And if we use words such as “as necessary” or “appropriate”, or “as soon as practicable” that doesn't bring in the question of gaps.

MR MARKHAM: No it doesn't.

CHAIR: And it is also leaving to the possibly best enthusiastic councils rather than, by comparison with the Tasman council, to be judges in their own cause about what is “reasonable” and what is “as soon as practicable” and it might turn out to be in some cases to be 20 or 30 years. Again, have you got some wording that expresses the necessity for there to be gaps?

MR MARKHAM: Judge, in relation to my answer to Mrs Vernon earlier where I postulated a set of policy provisions to be delivered and a provision that encoded some form of duty or obligation to enquire on a region-by-region basis or a council-by-council basis whether that council, that region's particular management or planning instruments had delivered across any or all of those policy outputs contained in the statement; and if not, to then possibly impose that obligation on the council to proceed to deliver.

Now, a formulation or a drafting of that kind of provision for the statement to encode that obligation and to bound it, or qualify it in a way that doesn't specify a timeframe, but at the same time obligates the council to deliver outputs where there are gaps. In point of fact, no I do not have the drafting of such a formulation, I have the concept in mind, it's there contained in the council's submission. And again, I am happy to explore if the Board so wishes, some attempt to drafting and to provide that to the Board, if it so wishes.

CHAIR: Because the Board's position is no different from the council's in terms of deciding on submissions on proposed instruments, there's a limit to the extent which we can go and do our own drafting contained in the submission. You understand that very well?

MR MARKHAM: I do.

CHAIR: Because, we share the same obligations. So if you don't have something already I think it is probably unfair of us to ask you to take on the drafting now, but I thought I would ask.

MR MARKHAM: Yeah, yeah. Unfortunately, Judge I don't have - I have the concept, but no draft on that matter.

CHAIR: Thank you. Now my next question relates to the concept that you have been using – or user committees or user groups of one kind or another; and you were explaining how in the circumstances of a particular group, different interests might be represented.

Is it possible that you end up, or that you could end up with a kind of an in-group of the people or the interests that are invited, with other groups or interests excluded?

MS BAKER: I think it depends a little bit on what the job of the committee is.

Some of the committees are very much focused on managing the instructive effects of the members of the committee. And they work within quite strict constraints without (inaudible) flows. And it's fair to say that that group really is representing extractors rather than the whole range. But the other stakeholders are interested, particularly in terms of the plan provisions which set the allocation on some of the low flows. In other catchments, the water quality issues are not so significant for this district. So in terms of water quality interest groups, perhaps they don't have as high a role. And again, the council's plan provisions set the basic limits under which the group operates. But if there was a water quality issue, then I think the water user group mechanism is a really good one for getting people involved in first acknowledging there is an issue and then developing mechanisms to deal with it.

CHAIR: Well I certainly understand that value quite clearly. Just coming back to your first example, of those who are looking at abstractions, who represents the natural animal life of the river, or stream or water body?

MS BAKER: That is represented in the bottom lines that are placed in the plan, the minimum flows, the limits, the allocation limits. They are all built up on the premise that we are protecting those in-stream values and other uses and values as well.

CHAIR: Okay. When the abstractors meet, I'm sure that they don't agree upon things that suit their interests at the cost of the bottom line.

MS BAKER: Fish and Game are involved, but they themselves need to, and in this one particular instance in the Riwaka River the user group, they have the ability to roster takes and move around the demand as they see fit.

But they still have to meet minimum flows and we still monitor the minimum flows and there is still that overview of the council to make sure they don't exceed the limits that are being set.

MR MARKHAM: And there is a link between the user committee and the roster regime and the conditions on the permits to take water.

MR BAKER: And the environmental interests are generally represented by Fish and Game, and DoC and iwi, and coming back to the point about (inaudible), the water users are actually elected by their peers. So when we are managing a drought, Fish and Game are part of managing the drought, and the council's role in the Riwaka, we help them with the roster but there is an audit system of performance that it actually achieve the maintenance of the environmental flows in the lower end of the river, due to the (inaudible); so it is more a systems and process thing of how you make it work. I can see your concern about the risk, but I think it is the people and how you got the system set up and uniquely, it works here. I can't guarantee it will work elsewhere.

CHAIR: You don't have competition for the water from hydroelectricity generation interests, for instance?

MR MARKHAM: We do in certain locations. The Matakaitaki and the Waitiri are both in (inaudible), concepts that are in the various stages of being explored through due process. I was going to say Judge, that in relation to the constitutional formulation of water user committees, we have some pertinent plan provisions that we can provide you to give you a better picture of how we set them up.

CHAIR: Yes, well thank you. I think that would be of interest for us, just as an example rather than as something that should be prescribed generally of course, but thank you for that.

Then when you were thinking of “equitable” I think was the term you were using, allocations, or other management activities really, the equity side is always important, and you also speak of balance and demands; you obviously had in mind some basis for that concept of what’s equitable and what’s balanced that is acceptable to the community that you are serving. How do you establish that?

[10.22am]

MS BAKER: The issue of security of supply is a really interesting one and it’s developed slowly over time. It’s quite a challenging concept for people to understand and I’m not sure if we have got it right as a council. But certainly, the approach that has always been adopted by the council is equal pay for everybody; although that has been moderated somewhat by allowing for a greater security or less rationing for community water supplies, namely because we have not as much opportunity to turn taps off as we do to regulate an irrigator’s point of intake.

CHAIR: So you give precedence to the community water supply?

MS BAKER: Yes.

CHAIR: Does that include water from community water supplies that is used for industrial processing?

MS BAKER: It does. Yes. It is managed on the point of take and a community’s point of take generally is reticulated for a wide range of end uses.

CHAIR: Yes, so the people whose business is processing food, end up with preference over the people whose business is producing food?

MS BAKER: Potentially.

CHAIR: And is that equitable?

MS BAKER: Through the council's, being unitary, we manage the reticulation side of things as well and the conversations with the council and its user groups should address those issues of security and during a drought the council is expected to reduce takes and does as a first point, deal with those big water users at those critical times.

MR BAKER: And to add to that there's two practical sides of community water supplies. Because Tasman has got so many catchments; in the Waimea we have got reticulated supplies that serve the community of Richmond, Brightwater, Wakefield, and also the industries. Now that is council owned by the utilities department, and the council in that end has got a relationship with the large industrial users of production. They have got an agreement in terms of how the industries would produce their water supplies in those points. But you go to Motueka where we don't have a fully reticulated water supply; a lot of the industries have their own permits to extract water. So it's a two-fold thing. When restrictions come on, in the case of its managed as source, as Mary-Anne says, the restriction's is at extraction point; so in Motueka the industries get restricted the same as the irrigator. Whereas in the Waimea, because they get water from an urban supply, we can only manage at the point of extraction from RMA point, and the utilities department has an agreement with the industries on how they can reduce the supply compared for bare minimum use of drinking and bathing and showering in homes. So because we're not fully

reticulated like Auckland, it works differently in terms of the degree of how the restrictions affects you.

MR MARKHAM: So because equity – the equity principle is delivered across abstractive uses at the point of take, depending upon the extent of existence and extent of reticulated supplies for water services, that equity principle may be delivered differently in different situations, as Joseph has just described. But we think it's important that the principle of equity in terms of equal loss or equal pain if you like, is relevant at the point of take, because that is the point at which there is a risk or stress to the water body, to the water use itself.

In relation to some of the wider aspects of equity and water allocation, we've provided a priority in time form of recognition that Mary-Anne indicated earlier through waiting lists, where in the event of additional water being made available and we're in that situation in the Deep Moutere aquifers at present where there is a limited water resource available, we are relying on a formulation or a formalisation of historical waiting lists through our planned provisions to deliver that additional water on the basis of the historical priority in time under the previous waiting lists. We see that as a form of equity. That is within or under that principle of priority in time.

Ways of delivering equitable water allocation under the current bore are limited, the priority in time presumption prevails. Ability to pay is possible through transferrable permit regimes, of which we have one in the Waihi. And we are contemplating others in other locations, but for present purposes we have only one regime in one such catchment of Waimea, the Waihi. And on a wider level, equity in relation to those water body values that are under stress, because water is abstracted, that equity principle is driven essentially by Part 2 of the Act itself in providing for environmental

system integrity or environmental bottom lines. And that's, as Mary-Anne referred, to in the formulation of environmental flows or minimum flow regimes together with the specification of allocation limits. So the delivery of the principle of equity in water allocation can be shown, or we deliver it in different ways, in different circumstances. And it is, I guess, capable therefore of a degree of elasticity of meaning.

CHAIR: Thank you very much. We are very grateful to you all for your various contributions and also for answering questions. Is there anything you wish to say finally before we call on the next submitters?

MS BAKER: Just one little thing. That we have developed a lot of our water management provisions in the absence of a national context. And a lot of the issues might have been easier to resolve had there been a national context.

CHAIR: Yes, you understand that our role is only to look at submissions of the content of an instrument prepared by others. And indeed, although we understand your recommendation about what we might do in terms of relationships between this instrument and others, in fact the council is more likely to be more effective in that regard itself than in anything that the Board might do.

MR MARKHAM: So Judge, just in closing, we thank the Board for hearing what we have to say on behalf of our council. And I will provide the plan provisions in relation to the precautionary principle matter, and also for any assistance that may provide our planned provisions that relate to water users committees. I'll make those available to the Board as soon as practicable.

CHAIR: Many thanks to you.

CHAIR: Good morning gentlemen, thank you very much for coming. You are I take it you are going to speak to us about the Fish and Game New Zealand submission, thank you very much. We are very grateful to your organisation for its form of constructive submission, and in particular without making ambiguous comparisons with other submitters, we find it helpful that where you have some improvement to the proposed Instrument to suggest you have taken on seriously the Board's request that you state exactly what changes you want and we find that very helpful indeed. So would you now like to continue?

MR DEANS: Yes sir. If I can introduce us my name is Neil Deans I am the Regional Manager of Fish and Game in this region but I have as a part time role, a national responsibility for the coordination of resource management activity for Fish and Game New Zealand, as a whole across the whole country. And with me is the Chief Executive of Fish and Game New Zealand, or of the National Council, Bryce Johnson. We will be jointly presenting today. Bryce will cover mainly introductory matters, and overview topics, and I'll try and confine myself to the specifics, but I probably won't be able to help myself to some extent in referring (inaudible). And obviously we're then at your disposal to answer questions such as those you've heard. And I'll try not to repeat too much of what Tasman District Council colleagues were saying, in fact I agree with most of what they were saying.

CHAIR: So our plan is that we might invite you to speak as you choose until about 11 o'clock, and if we then take a morning break, and then continue after that, if we haven't exhausted all the matters of common interest.

MR DEANS: That's perfect sir. Perhaps Bryce, if you'd like to kick it off in that case.

MR JOHNSON: Thank you very much, and thank you very much for all of you having us here to present this. Fish and Game New Zealand is a statutory body, as most of you know, and you certainly do Judge Sheppard, members of us having appeared before you I think, on many occasions in the past. We're pretty passionate about the Resource Management Act, and we're very active participants in it. Probably more active in across the country, than probably any other organisation in terms of the breadth of work we get involved in. We are also pretty passionate about New Zealand's brand, our clean and green 100% pure brand, we've certainly been champions of that we want to protect it, and grow it, and strengthen it. We very much take the view that it is New Zealand's unique point of difference in the global economy, and as such we think that a lot of the things we're pushing for do very much reflect New Zealand's strategic long term interests.

We've had the view for some time in Game and Fisheries management concepts that if you look after the habitat, the animals that live there will largely look after themselves. So that's why we're very active in habitat protection issues. If you look after the habitat, they'll pretty well look after themselves. In recent years we've been pretty active in issues around agriculture and the environment, we've certainly upped-the-anti with agriculture in the dairy industry in particular, and a number of you and I'm sure you will be generally well aware of some of our comments about dairy farming issues in Waikato and elsewhere. And while our infamous dirty dairying campaign acquired a fair bit of attraction and attention at the time we certainly took a few hits externally and the odd one internally. (Inaudible) I think you guys are still on our side probably. But the feedback we get now from dairy industry leaders that in fact, "Yes, we didn't like your campaign at the time, but you asked a fair question and yes we did need to clean up our act," and I think now we've managed to get some traction there. Interestingly of course, we have the two State of

the Environment Reports from 1997, and 2007, which have essentially vindicated the points we were making throughout. So we're pretty happy that we certainly raise that question. We very much want agriculture to take responsibility for its adverse effects, and we argue that the statute really requires that it hasn't really been put upon agriculture, and other sectors but especially agriculture enough, to require them to do that. And so in that sense we see the National Policy Statement as a pretty significant tool to do that. We are having some successes now though as I just mentioned and of course certainly with the last government, and I must say to my surprise with the present government we're having some very strong speeches made by the Prime Minister, by David Carter Minister of Agriculture, and by Tim Groser about the importance of the brand, the importance of New Zealand's environmental status and standing, and the fact that it is very important to New Zealand's unique point of difference. So we are very encouraged by that.

I think we therefore welcome those changes in attitudes historically Neil and I have worked for the organisation for a long time. Successive governments have really let the Resource Management Act flounder by not really dealing to the upper layers of the planning process. And it was certainly a submission we put to the OECD when they were here a few years ago and they picked it up in their submissions, and I can remember lobbying Simon Upton at the time, saying, "Well come on Simon, you've got your new Act now, you're the Minister, let's get on with some of these National Policy Statements, and Environmental Standards." And I just loved - well, I love to speculate, how different we would perhaps be today if those things had happened because with a statute like as it is at the time, I gathered he was obviously a bit timid in wanting to push it too hard onto regional entities straight away perhaps their (inaudible) is understandable, but probably not excusable in hindsight. And so we're

pleased that you guys are now here to hopefully pick it up and get it going again.

I think we could also say that agriculture has probably been lifted out of the bunker that it's been in. As I say with some reticence initially, but now I find when I talk to farming leadership that they're acknowledging that they won't be going back to the bad old days things have got to change and with likes of a National Policy Statement is critically important is critically important to achieve that. It's long overdue, and in our view, New Zealand urgently needs it. So we're totally supportive of the need for a National Policy Statement.

We've got five broad areas that we were really seeking in the structure of a National Policy Statement. The first one was that there be clear recognition that water is in fact a finite resource. We hear so much rhetoric from politicians and others, but especially politicians about water being renewable. Yes it is, in terms of the water cycle, but where it exists is a finite, there are only so many places where water exists and that's why we're pretty staunch about wanting to protect rivers, and wetlands, and lakes and things like that.

We hear a lot about peak oil, New Zealand's facing peak water as well, let's be pretty blunt about that, we are running out of water that's available for allocation. We're going to have some form of balance and I'll talk about that in a minute between resource use, and resource conservation.

The second thing we're hoping to see be reflected in a National Policy Statement is aspirational goals, not goals that are easy for local authorities and government to meet. In our view, we have to have goals that forever keep pulling the debate forward, rather than one that can be easily be achieved and ticked off. And we think there's a real strength in having

aspirational goals to maintain a sort of forward pressure at all times. To not do so is to really set up a recipe for the status quo and to effectively perhaps let some waters go and we would be very strongly opposed to that, and I'll cover that in fact now.

So the third point we're hoping to see, is a pretty solid commitment to restoration the notion of restoration. What we don't want is some water bodies of New Zealand for example being simply left to say, "Well, they've gone, they're polluted, we're not going to try and bring them back we'll just try and peg them at their current levels." We think that would be a strategic mistake for New Zealand, especially because we dine out so much on our brand. And we do need a unique point of difference. We're a long way away from markets, environment is the big thing we have going for us. Let's wrap some real integrity around it and say, "Restoring where we've allowed water quality to decline, ought to be a goal that's there." And everyone being pushed to actually try and achieve it.

The fourth point we'd make is that we very much like water conservation orders, yes, they can be expensive things but they're the only active tool that's out there to actually put a stake in the ground over a long period of time, and say, "These are important outstanding values to be protected." So we think a water conservation water process is important. The concept that's described about them in the law is important, and in that regard, we get a bit nervous about this reference to the word 'balance' which you see so often. And I notice you were raising a (inaudible) before with the previous speakers and the notion of balance which is often used, never defined becomes a moving feast. And from our point of view it introduces what we've coined 'the salami syndrome', you slice of a little bit more of what becomes a little bit less. So we don't like this language 'balance', and we would urge you to try and avoid that sort of language in your writings as well, because really it is so open-ended, and it enables the

competing interests to not have to bang their heads together and try and come up with a solution. It's an easy way out, and we've really got to try and get past that. New Zealand needs to get past that.

The fifth point I'd make is that the linkage between the land and water is critically important, absolutely critically important. And while you people are doing a National Policy Statement on freshwater, I'm sure you're acutely aware of the linkage between land and water and we need to somehow bring that through. Now that could be done perhaps in the form of the NPS on water, plus an NPS on land. It might be that the time we move to an NPS on land and water and in that regard, you'll be aware of the Land and Water Forum, which was previously called the SLUF, The Sustainable Land Use Forum, the government changed the name recently for good reason I think. We're not too sure where that's going to end up and we're centrally involved in that process. It is a bit of an experiment with collaborative governments, which you will of perhaps heard of some talk about in the last few years. We're certainly supportive of the principle of what's being tried to be achieved there but in the meantime your documentation, your role, is a reality, which is happening right now and as such it makes it critically important.

[10.42am]

The last point I'd make is that, don't overlook the opportunity that an NPS can be actually part of New Zealand's formal accreditation in the market place. I think a lot of industries see regulation as something to be frightened of, when in fact it is actually an opportunity to show that in world markets, New Zealand's products are in fact produced by environmentally sustainable practises. And in that regard an NPS can serve much more, than just sort of regulating how we manage our resources internally it can also help us present ourselves in world markets about how we actually are

an environmentally sustainable producer of good product. There's nothing better, probably, as an accreditation system than the laws of the land and so it's an opportunity that I think I'm hoping won't be lost on you people.

That's it from me at the moment. Neil will take you through the details, and then I'll have to make comment later.

MR DEANS: Thank you Bryce. I'll make some general comments which I think you may wish to come back to me about later, because hearing the tenor of the questions you're asking of colleagues from Tasman District Council, I think that some of these things may be of interest to you.

Firstly of course, I'm not telling you anything that you don't know in saying that water is managed by the Crown. Who owns it, that's an open question. It's not a question that will be in front of you. It is a question that's in front of water managers generally in New Zealand. And it is a question that we've tried to duck, because it comes to Treaty obligations etc. Frankly as a personal view, I think that we're going to have to address ourselves to this issue. If we don't, then we're not going to move past some options that may become available. For example, water markets I don't think can be implemented, unless you can sort out the issue of who owns the water. Leaving that aside at the moment water is managed by the Crown or at least is devolved to Regional Councils. They, Regional Councils, are responsible for its management. In general if you want to do something with water, you need to seek permission from the Regional Council, or have been given a permission by the Regional Council either in form of a rule or a plan or consent. Now that's a very important issue in my view, in the sense that without that permission you can't use it and if you've been given it, then you have an entitlement, which is beyond that, which other people might have. That has a big influence on the structure of plans, and planning mechanisms and again

I'm not going to judge anything about this, but it's very important that we understand that land use, we have a right to use it unless a rule says you can't. It's completely opposite to water use, where you can't use it unless you've been told you can, a very fundamental difference. And coming back to the equity issue you were referring to earlier except for the minor issues of fire fighting, stock water, and domestic water supply you have no right to use it, therefore, if you've been given that entitlement, it should be subject to all of the requirements of the Act. And also in an equity sense given that we don't charge for your use of the water, then it follows to my mind that the public uses or benefits that might accrue to water in its natural state, or in its natural environment should come ahead of the use for other consumptive type purposes. So in other words, I haven't expressed that very well, but essentially if the public interests have been provided for and water is surplus to that requirement, then it's available for use for consumptive purposes. And I think that's a point that you may wish to consider and perhaps come back to me about.

We've talked a little bit about central direction. One thing I note is that while groups like Fish and Game were concerned about an absence of that in the early 1990's, groups such as Regional Councils have become relatively belatedly concerned about this issue. And that's an interesting point that perhaps you might want to reflect on. We all know that the main issues at the moment that councils are grappling with, and struggling with are to do with diffuse sources of pollution, and allocation mechanisms stop them. And we rely very heavily on there being adequate and robust regional plans in order to deal with these sorts of cumulative issues. And if there are not regional plans or those regional plans are not complete as robust mechanisms then it's very difficult to turn down applications to take or use water or permit its use. And that I think is part of the problem why we finished up where we have. And I don't think allocation is well dealt with in the ambit of the Act, allocation is something that is hacked on to

the Resource Management Act from the former Water and Silo Act and it doesn't - the effects basis of the Act doesn't really very well deal with allocation unless you have a strong planning mechanism. And I suggest that cumulative effects can only be dealt with by way of robust regional planning. And of course because they're having a compulsory we still don't necessarily have them in many areas.

Bryce has already mentioned what conservation orders. I just note for your information that only three of the something like 25 applications for water conservation orders have not been made by Fish and Game councils. And not one, to my knowledge, of those has actually been supported by the Regional Council. Some Regional Councils are not opposed to them but not one has support it perhaps it's worth reflecting on that. I note, and this is in paragraph 17 of our submission, the needs of future generation is something that we give passing reference to in the Resource Management Act and section 5 in particular. But I think the ideas that have emerged about reversibility and the National Policy Statement for renewable electricity generation are quite interesting in the sense that they look at the comparison between reversibility. And I think that's a useful concept that could be helpful to you in this case as well, the idea I think is an acknowledgement that future decisions may be affected by the reversibility of decisions being made today.

In general at a paragraph 21 Fish and Game supports a polluter pays type of approach, I think the offence basis of the Act lends itself to that and I've tried to turn my mind and reflect on my colleagues views about how that might be incorporated into the provisions of the Proposed NPS. So I can discuss that further if you wish later.

Perhaps if I turn now to the specific provisions of the Proposed NPS as noted earlier by Bryce I think it would be useful to incorporate further reference to the fact that freshwater resources are finite in the preamble,

that will be the only comment I make about that at this stage beyond what's in the submission. As to the purpose of the Proposed NPS I think to nearly state that integrated management of freshwater resources is desirable is really not taking us further from where we are now that is a general proposition I think the Act is trying to achieve. But I think it's important that the NPS actually states that it's trying to achieve this in respect of freshwater resources not merely state that freshwater management is a good idea.

In that sense I have had some experience of international water resource management and New Zealand is held up in high regard in terms of our legislation in respect of the integration of water on land use. We obviously haven't always achieved this but we have the mechanisms through the Act to do so and I think this is an opportunity to actually embrace that. And I guess one of the things, and perhaps this is where I take issue with my colleagues from Tasman District Council in the previous submission, is the timeframes within which these matters need to be addressed and I've made reference in there to section 55.2(a) of the Act, I'm sure you've read that carefully. The mechanism is there it's not an easy one, I understand, to give effect to and I'm sure that Regional Councils will have different views but for those Regional Councils which have good provisions in their plans I don't think they have anything to fear from this and I guess - for what it's worth, I have been involved in the road show in respect of the National Environmental Standard on Ecological Flows and putting that around the country and trying to formulate its provisions.

[10.52 am]

The one thing that became very apparent there is that there's the Regional Councils when presented with the detail and presented in the way they could implement if they had no provision but didn't have to if they had a better provision that actually was something that could be accepted by

them as not overruling what they were doing but supporting what they were doing and bolstering it. And I was quite surprised at the relative degree of acceptance of the NES by Regional Council staff, the people who actually have to do the job. If it bolsters and it doesn't overrule good provisions they already have so that's a challenge but I believe that it's possible to build something up from the centre that doesn't overrule everything that's in a regional level but provides something where nothing is currently there. Or I'm also conscious that many regional plans are very good in some areas and completely lacking in others and that provides the opportunity to bolster them in those cases.

So it's our recommendation that the Board should seek to include as many of these policies and objectives, in specific ways, directly into plans or policy statements as possibly otherwise the planning cascade will take us far too long, we have these problems now, we haven't addressed them yet, to wait another 10, 20 years to get them in is not acceptable.

Moving to the objectives. I haven't much to say about the first objective, I don't think it adds a great deal to it but the second one I have made fairly substantial changes to and I can make one observation here and this is on the strength of another submission and indeed it's also referred to later right at the end of the document on paragraph 59. I haven't referred to it in our submission but a note that adverse effects of land uses is not restricted to further development of land and I believe that whereas where there is reference throughout the policy statement to 'land use development' the word 'development' is really inappropriate, the issue is land uses not further development of land. So although it isn't stated here it's my submission on the day that where there is reference to 'land use' the word 'development' following it should be deleted and indeed deleted in the definition section of it as well.

CHAIR: Could you forgive me if I interrupt?

MR DEANS: Yes please.

CHAIR: Can I ask whether you mean deleted or do you mean 'land use and development' is what should be said?

MR DEANS: Yes perhaps that may be correct sir.

CHAIR: The sense of what you say really -

MR DEANS: Is absolutely correct, in other words it's not merely 'development' but includes 'development' so you are correct, sir, I would accept that. But moving back to Objective 2 and I took this objective to try and address itself to adverse effects of land use and discharges etc and I believe it's important to include reference to cumulative wherever relevant and that these should be avoided, remedied and mitigated, that's at the high level. I think it's relatively straight forward you can advise how fast and firm about that if you wish to. I would note, and it's referred to in the next paragraph, but differing water bodies will require consistent but differing standards and that's an opportunity that I think here I've seen a huge amount of wheel reinvention and I sympathise with Regional Councils in this respect. They've had to come up with the same thing and it's quite bizarre that even in respect for example of water quality standards for the purpose of human health protection, faecal (inaudible) type standards, we have differing application of those same standards throughout the country and that makes no sense and although it's difficult for water quality standards for example necessarily to have agreement about what they should be it seems strange that water quality standards should be different for human health in one part of the country to another.

The next, Objective 3, the key issue there really is quantity also needs to be recognised and the two are not unrelated to one another in that freshwater quantity can influence quality and vice versa. And I also note and again this is where I disagree with Tasman District that a timeframe is

required and preferably some milestones along the way. We've seen plenty of these sorts of timeframes I could bring you documents in fact one by a colleague behind us Mr Sinner made comments in the 1993 document for MAF about the effects of land use on water which I think that has long since been exceeded. So I think it's important that this actually sets some targets that we're heading towards and then whoever implements this will have to set how they are going to achieve that and some milestones along the way.

Objective 4, I think there's a little bit of a certain amount of redundancy in this and even in the recommendations that we are making here I suggest later in the definitions section that notable values might be in all those Part 2 matters which are relevant in this case. And so I think it's a degree of redundancy to include ecological and immunity values as a subset of this so my view here is that should read to ensure the life supporting capacity in notable values of freshwater resources for identified, recognise and protect etc. And note at the end, discharges of contaminants should specifically include from diverse sources for the avoidance of doubt.

CHAIR: (Inaudible).

MR DEANS: I don't think so sir but you would be surprised what people could argue when it comes to a consent hearing.

CHAIR: There are some arguments that are not very persuasive.

MR DEANS: Perhaps sir, but with respect I deal with these things at a consent level with the local authorities and often such arguments are made before they ever get as far as the court and that is a decider, for 95% of matters are decided before they get to court.

CHAIR: That makes a convenient time for us to take a break.

To be read in conjunction with
the tabled evidence/statement

MR DEANS: Yes. I hope to get through this quickly so that you can respond to these.

CHAIR: Yes, but thank you very much.

ADJOURNED [10.59 am]

Audio file: dpm0115

RESUMED [11.24 am]

CHAIR: Thank you very much for providing us with your (inaudible).

MR DEANS: Yes. Thank you sir. I was at Objective 5 on the bottom of page 9.

As noted in the explanatory in paragraph 34 there is a great difficulty with a diffuse pollution issue in that many regional plans have come in and have permitted activities which I suspect in the cumulative effect are causing a problem that we are now (inaudible). For example, most councils that I'm aware of, and I can't give you a comprehensive overview for the whole country, have permitted the activity of application of fertiliser on land.

And in so doing at the stroke of a pen have rendered themselves incapable of addressing themselves to that issue. Now that's an issue that every regional plan has to be reviewed in respect of. It's a difficult issue I accept but by giving that one a way it's what I would describe as a get out of jail free card. And we're not then able to address ourselves to the issue where we need to. And somehow this Policy Statement needs to recognise and address that matter. Until we do we're not going to be able to deal with it.

That's why some changes to Objective 5 are recommended and to sharpen it up and to specify the issues that need to be addressed, to reduce adverse affects of land use where they've already occurred, the only modification I'd make to what we've written there is the suggestion made earlier, 'land use and development' needs to be included. And a similar reference elsewhere as you've - as you have suggested.

Moving on, in Objective 6 I note, and I don't think it's mere semantics that the Act refers to the use of water not demand for. And I think it's that to which the objective should refer. And it's our submission that the effects of water use should be as the first subsection there. And I believe perhaps an amendment to what we have recommended might need to be made, a correction in what I have put down as subsection A, "The effects may be reversible or have been avoided." So as to include either situation there.

MS VERNON: 'And/or' or just 'or'?

MR DEANS: No, no I don't believe you can have 'and/or'. But I believe it should be 'or' in order to reflect both circumstances. The Judge will know the detail of that.

There's a typographical error at the beginning of paragraph 36, "Efficiency in water use is an appropriate objective."

CHAIR: The same thing occurs somewhere else in your submission.

MR DEANS: Yes. I have another. I'm afraid spell check doesn't deal with such things.

CHAIR: Of course.

MR DEANS: I note here though that the - I would recommend reference to 'efficiency in the use of water' rather than 'efficient use'. Because the activity that's being permitted or given consent to is the use of water. And it should be efficient. But I don't think you're really promoting that water be used. Because otherwise efficient use is saying that we should be in

the business of using water and I would put it to you that non use of water is a perfectly valid thing to have in respective water bodies. So it may be a mild semantic thing but I think it shows an emphasis that perhaps is often overlooked. It's a matter I've taken up with colleagues (inaudible).

And the issue that's elaborated on in paragraph 27 is that it is an - I think that a National Policy Statement could anticipate that we will see more use of market mechanisms and one of the questions which arises from that is on whom do the benefits arise? Or to whom do the benefits go of that increase of efficiency. For example in Canterbury at the moment the old, I've forgotten the name of it, the discharged land - sorry, it's just gone out of my head. The means by which water is allocated to land generally across fields has been replaced by much more efficient schemes and what then happens to that water. It's an interesting question and it will be debated in respective market mechanisms. And the question is if there has been under-allocation whether some of that water should be returned to a resource. And that's I think the point of recommended paragraph D.

Moving on to Objective 8. A note that (inaudible) interests do need to be recognised and better provided for. There are other parties as well and I noted the earlier comment that you made in respect of Tasman District asking about whether all parties were able to be around tables of water user groups, I think it's a fair question and it doesn't always happen and groups like Fish and Game that often cover a wide variety of interests beyond our statutory brief because there is no one else around the table to represent those interests. And that's not a situation I particularly enjoy. But in the absence of anyone else we sometimes take that on and it's actually causing us considerable difficulty financially at the moment. It would certainly be desirable to have mechanisms to ensure that all of the relevant parties are all gauged appropriately in the process.

MR JOHNSON: Could I actually just note there too, another issue we're finding is that with Treaty settlements, Iwi interests, are obviously sometimes (inaudible) in a bit of conflict. We have a situation where we -

MR DEANS: Where they themselves -

MR JOHNSON: Yes very much so. I mean the Hurunui is a classic example where Ngai Tahu were effectively almost joint supporters that gave us a letter of support which we submitted with our application for Hurunui Water Conservation order. And of course they are now also co-applicants for the hydro proposal that will - and the irrigation proposal that sort of compromised the Conservation order. So it's just a point to keep in mind that often the argument that has come from Iwi interests has been very good from a conservation and industry and value point of view. But increasingly now in treaty settlements Iwi interests are becoming land developers along with everyone else, so it's just a point to keep in mind. It's not quite as clear cut as it used to be.

CHAIR: Thank you.

MR DEANS: Moving on to Objective 9. The only comment I make here is that I'm very pleased to see in the last six or nine months or so there's been a big improvement both from the Ministry for the Environment for that getting together, consistent approaches to its monitoring, etc. And also support from Regional Councils in particular. (Inaudible).

I say that because in the past it's been a bit of a cow herding exercise to get Regional Councils to agree to a particular way, for example, monitoring water quality, and there's now a recognition that it's not in our general interest that we have those things being measured differently in different parts of the country. And it would be very helpful to have this

NPS encourage that to the extent possible. It's very important. And Dr Harding will be aware I think of the sorts of things I'm referring to there.

Moving now to policies, and of course this is the more detailed and prescriptive and I suggest more visible part of the exercise from your point of view, and I might make the observation that in my experience one of the difficulties with the implementation of plans under the Act is that the policies and objectives are often meaning all things to all people. It's possible to quote one that suits whatever purpose you might have.

And so I think it's very important to make these as directive as possible so that there isn't much wiggle room. If we accept that these problems need addressing, and they need addressing across the whole country, then you have to be specific about ensuring that they are addressed. And there is a question in fact as to how directive they can become. And there is an argument that they can become as directive as to say, for example, "The regional plan shall have a rule that states the following." And obviously you're much more conversant with this than I am but I think there is a - it's a very important point that I can't emphasise enough that if there is room to manoeuvre it will be taken. And if action is required then we have to have tried to do that as best we can.

CHAIR: Is it possible that when the Richard McKinsey - this pattern of planning instruments with objectives and policies and rules about methods. Is it though really intended that policies would be at a higher level and not as prescriptive as you've suggested but that it's the courts that have - and maybe the courts at Regional Councils who have run with the idea of policies being as prescriptive as they are now, it seems, allowed to be.

[11.34 am]

MR DEANS: Or not as the case may be. Is that what you're saying? I mean most policies are drafted and released by Regional and Local Councils, and may be redrafted through the courts or whatever. Obviously one of the underlying questions here is the extent to which policies might fetter discretion. And it's difficult for Regional Councils when it comes to then making a decision ultimately on a consent application for example, not wishing to be too prescriptive because that then reduces flexibility. One understands that. The difficulty is that this can lead to the Salami Syndrome that Bryce referred to earlier. And we've certainly found that when it comes to cumulative effects, if you don't have rigorous policies and rules in the plans that you simply cannot address yourself to giving effect to a line in the sand of whatever it is, water quality, total allocation limit and I've seen this in many parts of the country, sometimes it's the policies that are at fault, sometimes it's the rules that are at fault. But the upshot is that, "Sorry we can't (inaudible) the water even despite the advice of council staff." Or whatever it is, or submitters. And that's why I think prescription unfortunately is pretty important. Especially when we know what the issues are and we know they're difficult but if we're not prescriptive as to what they are and the means by which they can be addressed, and the fact that we have to draw lines in the sand then we're not going to be able to interest ourselves in the issues.

CHAIR: So you're wanting a National Policy Statement that would actually make a difference.

MR DEANS: Yes. Surprisingly enough. On that note we turn ourselves to the first of the policies and I'll try to keep things (inaudible). And as I said earlier we would encourage you to try and recommend a directive be incorporated where possible.

The first policy obviously is the big and long one. And the first part relates to - and there is a mistake in Policy 1. The first line should read, "Every Regional Council shall include the following," and the next two words 'all but' should be deleted 'the following objectives and (inaudible)'.

Now I wish to just turn briefly to halfway down page 13, there is the deletion of the word 'outstanding' and replaced with my 'exceptional'. This is merely to avoid the difficulty that the 'outstanding' has statutory meaning in terms of Part 9 of the Act. And it's our recommendation given that we have some comfort as to what 'outstanding' means in terms of water conservation orders that it not be confused with 'outstanding' in the context of this NPS, which is the reason for changing wherever 'outstanding' turns up, to changing it to 'exceptional'.

I think most of the rest of what's in there is self explanatory. It's merely trying to include as many of the matters of concern to us as possible (inaudible) policy.

Once again, relatively minor changes to Policy 2. Although, there is a question under C(iii) of a new provision relating to reviews and I should add, sir, that the reviews in respect of section 79 are required in respect of regional plans not section 128 which of course is to do with consents. So the inclusion of section 79 as the case may be should be included there.

But I believe the matter of review is pretty important. And similarly at the top of page 16, paragraph 47 notes that consents may be reviewed but not permitted activity rules. And as I mentioned earlier, permitted activity rules often are the problem and need to be addressed at the same time. Because effectively they have the same effect as the consents and that comes back to the fundamental point I made earlier that in respect of all

activities you can't do it unless you've been authorised one way or the other.

In that sense any provision in a regional plan relating to water is enabling in the sense that many things enable activities to occur that would otherwise be allowed without consent. And certainly favour that in principal, for reasons of efficiency.

I think Policy 3 is largely self explanatory. But Policy 4 I think is simply to note and give effect to the point I made earlier that there is some priority in our view that public non-consumptive users should take priority over extractive use and in the event there is then an extractive use sought then that's fine provided that they are first provided for the public uses. And that's the intent of the various changes made there plus also to try and make it as consistent as possible.

And I might add, the way in which paragraph C is provided I think it's our view that freshwater supplies probably should sit ahead of other consumptive uses but it was not our intention to delete entirely the needs of funding, the industry obviously needs to be provided for. But it would be our recommendation that A and B come first and then perhaps and this is more of a judgment call the community water supply will come next. And that's derived from the ability of people to use water for domestic water supply in the Act and then following that the needs of (inaudible) industry.

CHAIR: Well if you're relying on that provision for individuals needs, community water supply is broader than that exception.

MR DEANS: No I understand the point you made earlier with Tasman District Council and I fully accept that but I'm just saying that I rely on the needs of the community water supply for domestic purposes as being specifically provided for in the Act and that therefore provides a

degree of priority to that and that's the basis for that. That's what I was alluding to.

CHAIR: Well, what gives us an exception from control, is that right?

MR DEANS: No sir, that's not what I mean at all. What I mean is once you provided as it were for the environment and non-consumptive uses then I would suggest but I don't think I wish to labour the point that domestic supplies, fire fighting, those sorts of things, should come ahead of the needs of (inaudible) in the industry, that's all I'm saying sir.

CHAIR: I understand, thank you.

MR DEANS: Policy 5, really we're only just saying there that cumulative effects should be specifically referred to and that's noted. Policy 6 recommend that industry good practice is an undefined term at the moment and whilst best practicable option has some difficulties, it is a concept we've been struggling with, but have got some understanding of I believe that also needs to be included. Policy 7, 8 and 9, we don't make much further reference to that except to say, probably most fundamentally, that I think review may be needed in less than ten years after this unless of course you do such a good job that it won't apply. So I just suggest we all need to be constantly reviewing these sorts of things.

CHAIR: That's a question really for a Minister.

MR DEANS: I'm not going to disagree with you on that.

CHAIR: And the aim probably - like Tasman District Council probably have more access to Ministers and more influence with them than any Board.

MR DEANS: Just moving very briefly to definitions and I think that's most of - the comment about this is self explanatory. Believe that the definition should add to rather than confuse matters and I think to some extent the definitions we see in the Proposed NPS are somewhat confusing. But

there is a correction to the top of page 20 where the second bullet point says permitted activities and it says, "Where the collective or potential exercise of these has been shown to have no cumulative effects." I just need to understand this. Oh, no that's correct.

[11.44 am]

CHAIR: Is it possible, forgive me for interrupting again, but is it possible what you intended was that the underlying words should come before the words 'permitted activities'?

MR DEANS: Yes. I believe, sir, that would be much better. I'm trying to reread it again and understand it myself this morning.

CHAIR: I think that would certainly be consistent with your introduction.

MR DEANS: Yes sir. On a similar note the degraded freshwater resources which I think this concept is an interesting one and I guess it's about resource prioritisation and we have some sympathy in respect of this issue. But we do believe that the way it had been worded was unclear. Similarly freshwater resources in our view should not try to redefine what there is already in the Act. I don't think that helps very much. I don't think there's really anything else that I wish to say at this point but I think you may wish to make some summary points before you have any questions. Is there anything else?

MR JOHNSON: Well just very briefly. Really I suppose we'd urge you to please try and hold the big picture for New Zealand as you contemplate the detail of what you're doing. I think our own natural environment as I said before was the critical thing we've got going for us and there's probably always the risk that you become captured by the detail of the language and it'd be great to try and keep hold that big picture vision. I mean I think we'd say also that environmentally sustainable agriculture has to be the only real future for New Zealand when you compare that to environmentally

unsustainable agriculture it really becomes a no brainer. But once again you see that in front of us.

Neil's made the point of being prescriptive and directive we certainly have to try and minimise the wriggle room because as you know with high level policies they can be all things to all people. And they consume a huge amount of litigation time and cost at a later date. The value of milestones is something that's really helpful I think to help the political process because politicians be it national or regional tend to think in three year cycles by nature of how they're appointed and so a policy that includes milestones obviously gives checks and balances and gives some discipline to a progression.

And my last point would be that an NPS, we very much see an NPS being a very significant strategic opportunity for New Zealand rather than a regulation and we ask you to try and look upon this document and this process of setting this policy as an opportunity for the country rather than something that is going to confine and control. And I suppose what we are politely saying is that, in some senses we're saying that agriculture needs a little bit of protection from itself, because it's going pretty headlong to want to develop a lot of resources for generation and foreign exchange. But if we do it unwisely we will certainly be the goose that lays that golden egg so that's really my closing comment on that regard. See this as a strategic opportunity so that we can all want to own it and work for it. It's really got to anchor where we want to go, it's critically important that it anchors that. That's all thank you.

CHAIR: Well thank you very much I hope you'll be willing to take some questions (inaudible). May I ask Mrs Vernon to?

MRS VERNON: Thank you. Hopefully I want break out into a coughing fit with some of these questions but never mind. Let's go - I'll start at the back first and go to definitions and just in general terms I note that you support

the term 'notable' and that you want 'outstanding' replaced with 'exceptional'. Now we've had submitters saying that they really would rather, and you're saying because it's confusing, but we are getting the reverse argument from submitters saying that they actually would rather not have the term 'notable' and stick to what is already in the Act because those definitions are quite clear, people understand them, there's been a lot of case law on it. And that if we start - and there's quite a few new terms in this document, then the fact is it is going to end up more confusing. So I just wondered if you'd like to comment on that?

MR DEANS: I can certainly answer that I understand the difficulty submitters have with any new term and I guess what 'notable value' seem to me and of course it wasn't expressed this way in the proposal, we've made some recommendations otherwise that 'notable values' was that collection of, let's call them 'in-stream values', that are expressed largely in Part 2 of the Act. And that's what I thought was meant by that and we tried to be helpful and say that because there is no other - we call them 'in-stream values' but those are variously interpreted in regional plans and documents and consents and things all over the place. It's quite useful to have an exposition of what they might be and then to use that code throughout the rest of the document. So we can see some benefit in that acknowledging that any new terms is going to have some difficulties. The 'exceptional' verses 'outstanding' is, I think, a relatively minor issue by comparison.

MRS VERNON: So the most important one for you is the 'notable' that with - given the changes that you've given.

MR DEANS: Yes. Obviously the question is what I understand 'notable values' to be the same as what everyone else has been involved in this exercise does. And in the end if you are to use a term or something like it, it has to be very clear and for example 'notable values' may or may not include

Tangata Whenua values. It's my view that they probably should but there may be reason not to, that's again a call I think you'll have to make at the end, to try to understand what you are trying to achieve by it, but I was trying to get my head around this and I felt it was most helpful to contain it and to use it with the modifications we've made throughout the rest of the document. And I think it made sense to do that.

MRS VERNON: Thank you. Can I just come to your Policy 4, I'm going backwards because it's probably easier. Policy 4, now effectively you've drawn up a list there and in some areas that might be easy to follow and other areas it mightn't. And I perhaps challenge you on the - not the environment first but the public non-consumptive use coming before community use. And then I also looked at your list you haven't even got hydro or electricity or renewable energy and some of those issues are coming through from submitters. They want to be on the list and so I just wonder what value your comments really as to those sorts of issues that we face?

MR DEANS: Certainly I believe and I acknowledge the way in which it's worded particularly Policy 4(c) that is deleted primary and second in the industry and I don't believe that's appropriate. My point that I explained to you earlier was that it's our view that it needs to be recognised and provided for and I think that is code for a very wide range of extractive uses. But that they become as a third in the line now our issue really is that in our view the non-consumptive user's first need to be provided for.

And if I can elaborate just to why beyond what I've already said, and that is that it's not possible for us to apply for resource consent to retain water from the river. We can't go, it has been tried, it was tried in the Water and Soil days by the Otago Colonisation Society, we've tried to do that and we were told, "Sorry you can't do that for non-use." Now that may or may not be relevant to the RMA but it's the way in which RMA practices evolved so

we rely on the officers of the decision makers usually regional cases to ensure there is an adequate flow or an adequate water quality. Preferably by way of the regional planning if you like but certainly we can't apply for consent so we're always in the defensive mode and that's a fundamental difficulty we have with the way in which the plans have been evolved and I didn't allude to this earlier but it's a fundamental difficulty for Regional Councils because they have this balancing issue to address all the time and they have these two roles, one under Local Government Act which is a sustainable development role and if you like regional development. On the other they have the wider brief of sustainable management under the RMA. We've just recently seen West Coast Regional Council for example, has decided to promote itself as the hydro electric capital of New Zealand. How can they do that and at the same time be the resource protectors under the RMA that's an obvious function for their role as (inaudible) you'll be well familiar with this I'm sure. But I see this as inherently a conflict of interest and the upshot of that is that the difference between sustainable management as I understand it under the RMA, which includes protection, is inherently different from sustainable development under the LGA which is talking not about using everything now, but leaving it until such time as you want to use it. It doesn't really see protection in same way within its ambit. Now that's a weakness of many of our regional plans, that they've been crafted by Regional Councils with that kind of philosophy, where everything is potentially open for grabs which is why it's no surprise that Regional Councils have not supported for conservation orders I would suggest. Sorry, I'm giving a long answer to a relatively short question, but I think that explains why we've come to it from that perspective.

[11.54 am]

MS VERNON: Well in your statement, can I just ask you, how you try - renewable energy. Would you classify that as non-consumptive, or consumptive?

MR DEANS: Oh it's definitely consumptive, because the effect it - I mean we start from an effects basis, and clearly the effects of consuming water or not - you're not consuming you are changing its presence in space and time and there are effects of that. And the effects are different inherently to removal of that resource from the system. But my comment about that is that I think the Act has done reasonably well at trying to address itself to the effects of say hydro electric power development, as opposed to a large scale water obstruction and the Act can do that quite well, consent applications can do that quite well. But it is definitely consumptive in the sense that it's altering the natural, or the even a modified state of the environment. And sometimes that modification is quite minor. In other cases it's extremely major.

CHAIR: They say (inaudible) it might even be some years.

MR JOHNSON: That's our point that we sort of made to the NPS on Renewable Energy as well, that the point we made earlier on here that the nature of water being renewable is fine, if you think about it in terms of the water cycle but where it exists, those lakes and streams are finite in number and so in that sense those sort of geographical features get consumed and turned into something else and it tends to be a one-off process.

MS VERNON: In your paragraph 37, you talk about and you have explained your concern about somewhere along the line an NPS should be signalling that if you're using water that maybe there's going to be a cost, you're paying maybe per litre, whatever may come about. In fact in

Auckland they do pay for water usage, or whatever. But I notice here you just you say, "An objective is required to recognise that the increasing cost -" are those sort of words that you're suggesting may be in an objective like that.

MR DEANS: Sorry which paragraph? It was something 7.

MS VERNON: 37. You talked about the cost of its management by (inaudible) should be borne by those who use it, and then you're actually talking - you spoke about this NPS kind of guiding that in the future people may have to pay more for what they're using and I'm just wondering that last sentence is that the sort of wording that you would see in an objective?

MR DEANS: I believe it's essential frankly. In my role with Fish and Game to coordinate our activities, the one thing that's changed in the 15 or so years I've been involved with Fish and Game, or actually 20 years, that's really increased a lot is our engagement in the resource management process. And frankly we don't get engaged in that process unless we are defending something. Occasionally we are proactive and say, "We'd like to see this provision in a plan," but usually it's in defence of something. And so that increase in our response has been entirely due to the demand, which we all know has increased dramatically in New Zealand over the last 15 years. We're having to spend more of our license holder's money in defending something, which we're getting no benefit from, except unless we win of course and that becomes the basis of the next discussion, or argument. And so my point is that if water has a value, and if fundamentally it is a publically managed resource, then the costs of its use should be borne by those who benefit from its use at a very fundamental equity level. And at the moment they're not and having said that I accept that there can be huge transaction costs for people seeking water and I'm not supporting that at all. I would like to minimise that as much as

possible. So what we're looking for is as much certainty as is possible and that's one of the reasons these transaction costs have become so high, that the uncertainties are growing and opportunities for litigation have grown. And that's the opportunity for regional plans as well. We would certainly like to see certainty about for example, protection of sufficient water, and enough quality to achieve the public's objectives for Iwi interests, for whatever. And we don't see that that's happening unfortunately.

MS VERNON: Thank you.

DR HARDING: Thank you very much for your submission which is quite extensive, and obviously I think the tenor of your ,or tenor of the submission is quite apparent. Yes, I've got a few questions, some of them are perhaps, I don't know, are pretty minor I'm just trying to put this in context.

In your submission on Page 8, you refer to Objective 2, which is about ensuring integrated management and it seems in the draft statement at the present moment, the authors of this have actually avoided using things like 'avoid, mitigate,' etc, and some submitters have suggested that perhaps the intention of the authors there was to try and raise the bar a little bit higher and I just wondered what your comments might be. You've added in for example in your revised Objective 2 there, 'avoid, or mediate, mitigate,' and I don't know whether you - if there's any particular reason why you added that in there whether you're thinking about, going back to the wording of the Act or bearing in mind that at the present moment Objective 2 doesn't really talk about that of any of those strategies.

MR DEANS: Well Objective 2 has got all sorts of other unquantified things in it as it was drafted. Such as 'effective integrated management', well good

luck to you on that one I would suggest. I take your point that is the length of a piece of string would we have difficulty with it. But I come back to reference to adverse effects that we've suggested there are already reference to effects there, and that there seems to be in resource management practise, and understanding of the notion of the Board, remedy, mitigate, and we are it affects basic legislation. But I understand what you're driving at I think which is that it is certainly debatable as to how much you can give effect to that. Of course remembering that an objective is a higher level of policy. I hope I've answered your question.

MR JOHNSON: I do think though Neil, that it adds a sense of duty here as well, once again it's reasonably directive, and I think it puts it on those that are affected by this to be mindful that is a test they have to meet. They need to avoid remedy mitigate. So it might even strengthen it.

DR HARDING: Also just going back to the issue of the definitions again. Some submitters have actually suggested that the use of freshwater resources might be changed to because at the moment the emphasis is on sort of, the water if you like and you added some reference to cultural, wildlife, and that sort of thing in your definition but some submitters have suggested things like, "Well, what about changing 'resources' to 'ecosystems'?" Do you have any view on that?

MR JOHNSON: Well I think you're coming back to your point. It may be more specific and the way in which it's then been used elsewhere in the document I think you are really referring to ecosystems. It's a tricky one because I guess what you've got to do is understand what it's trying to encapsulate, what's in and what's out of that definition, and then where it's been applied. But, the way that we've recommended that you change it is along the lines of freshwater ecosystems. And I think that's the way in which it's been intended to be used throughout the policies and objectives.

DR HARDING: And so I notice you've also deleted the (inaudible), would you like to comment on that?

[12.04 pm]

MR DEANS: Well I probably may defer to my latter submission in respect of that point, in that it's not actually an issue so much for Fish and Game, but it's difficult to know where one would draw the line but in respect of freshwater sciences, I will have a comment to make on that.

MR JOHNSON: Just a comment too on - the there's always an inherent nervousness with the word 'resources', and it, to my mind, it has an implication of use. Of something that's there for something other than its intrinsic value, and that's a risk, and I suppose by changing our definition here, we're trying to put some new language around the risk of the word 'resource' standing on its own.

CHAIR: The question of the open ended balance.

MR JOHNSON: Yes

CHAIR: We're looking at an instrument under the RMA in whatever might or might not be done, in improving its language we can't have an instrument that's inconsistent with the RMA its only existence is to serve the achievement of the purpose of the Act. And when you look at section 5.2 it's just like those planning instruments that we've been referred to, there's something for everybody isn't there? So although the instrument could in a subtle way put a bit of emphasis on some of those things, and take a little bit of emphasis off others can it really say, "We're not after a balance at all, we're after a bottom line."

MR JOHNSON: I suppose you can either try and define the term ‘balance’ which would be almost impossible, or you can try and set up a set of unambiguous tests that have to be worked through, that result in the balance and produce a result, which is then deemed to be balance.

CHAIR: Well that would be doing what Parliament in the end decided it wasn’t able to do.

MR JOHNSON: Yeah it would be.

CHAIR: All right, thank you. I think that covers - the other questions I thought of have already been covered by my friends. Just coming back to the business of the application of fertiliser, it’s not so much that it’s permitted, it’s just not mentioned at all and so it’s assumed that it’s part of the activity of farming. Isn’t that how it happens?

MR DEANS: I wish I could agree with you, sir, but that’s not so and I know that many councils have consciously included in their plans expressly -

CHAIR: Without any restrictions, or limitations?

MR DEANS: No they have limited - the permitted activity rules state things like, “It shall not be directly entering water ways.” Now generally speaking that is an admirable sentiment, but it’s not actually addressing itself to the issue, because we know for example that the increase in stocking intensity that one can have as a result of the application of fertiliser in some circumstances, leads to things like more dairy cows producing more urine patches, which then contaminate the groundwater, and therefore the surface water. So, as night follows day, you will get one leading to the other, if you don’t have some restriction.

And this is one of the difficulties that we're struggling with at the moment and I mean you are right that some of the permitted activity rules are adhered to in the breach rather than being anything else, so there are issues to do with monitoring and environmental quality. But if you're correct, and in some regions you are, there is no mention of this then clearly it is something which if the effect is happening it's not being authorised, and there could be some action taken but the difficulty is against whom should the action be taken. And this is the difficulty that Horizons, for example, are trying to address in their One Plan at the moment and come up with mechanisms and I applaud their efforts. I don't know if they've necessarily got it completely right, but they're certainly - I'm aware from activities we I've been involved with, and in fact (inaudible) has also been involved in the Waikato we've been trying to address ourselves to those issues, in some places there too. So these are difficult problems, but it's certainly not possible to address yourself unless there is a provision that requires some sort of standard to be adhered to. And that I think is the key it comes back to the point you were making that Bryce responded to before, unless you have a standard against which the effectiveness can be measured the balance is always working one way. And we've seen that in our larger rivers, particularly in New Zealand, in the last ten years and we've got documented evidence of that.

CHAIR: If I'm correctly understanding you the point is there needs to be an objective in the NPS on which an NES or other kind of standard in the plan can be -

MR DEANS: We specifically asked for that and the relationship between this NPS, which can only go so far, and an NES or a rule and a plan or whatever is very important and they need to be specific. But what it was - you're right, we need to aim as best we can and that will be part of the comment I make shortly in respect of freshwater science submission.

CHAIR: Well I think we're about to come to that but I first want to thank you both especially (inaudible) very thoughtful submission and we're grateful to you both.

MR DEANS: Thank you very much.

CHAIR: Now we come to the submission of the New Zealand Freshwater Sciences Society and quite a different approach to lend than the other submissions, one of very considerable interest to the Board and we're very grateful for having this. You're going to speak in support of it are you Mr Deans?

MR DEANS: Yes that's correct so you have to excuse me for changing hats but it's what I've been asked to do and I should say thank you for the opportunity to speak on behalf of this society. I am its immediate past president and apologies are given from the president Dr Kevin Collier and Professors Callum Burns and Colin Townsend who jointly coordinated the production of this. So I've had a relatively minor role in making sure the society produced one of these but and because of circumstance I'm now presenting it but Dr Collier would have been preferable if he had been able to do that.

Just very briefly, the society itself is formally known as the (inaudible) Society of New Zealand and still informally is. It was established just over 40 years ago, we currently have 370 members and obviously our focus is on the study of freshwater sciences generally. And of course I guess that's culminated and I just wanted to see if I could pick it up and not - books such as this has been published jointly by ourselves and the Hydrological Society of New Zealand only a few years ago. You're probably aware that Dr Harding is one of the editors of it and I have two colleagues here, Dr Roger Young and Dr Dean Olsen who are members of this society as well joining me here and I'm sure if I get myself into difficult technical territory they'll come to my assistance.

So the society exists and we would hope that our members and society at large is able to assist you in your process as best we can. It is the view of the society that the technical understanding of freshwater is essential to its effective management. And that freshwater science in New Zealand has evolved and progressed hugely you only need to look at the membership of the society. 20 years ago our membership was much less than half of what it is now. And many of our members are practising scientists either in research field research organisations or universities or practicing, as it were, on the ground through Regional Councils, Local Government, consultancies etc. And there's a lot more of that now than there was so the RMA has encouraged the development of this and I guess the interested water has also encouraged that.

[12.14 pm]

We have had involvement in some of the precursors to this NPS through some liaison that was taken on behalf of the Ministry of the Environment there are some concerns however expressed in this submission about whether some of the views were picked up and incorporated into this or the extents to which they were. And I guess there is some aspects which I think could benefit from reflecting on the contribution that science can make to these issues and I'm sure that all of you are well aware that it makes a big difference to the extent to which we can adequately manage the freshwater resource.

Firstly, and I'm just really referring to salient points here and I'll try and keep this brief so that you can respond to us. It's the view of the society that there is perhaps lacking an aspirational vision, Bryce Johnson just referred to that now. There are some matters which have not been incorporated that perhaps should be such as natural character. There needs to be a better framework and timetable to achieving the various objectives I'm sure you've heard this before. And certainly for example

New Zealand deserves better than achieving the status of the (inaudible) by 2035. So there are some recommendations in respect of an overarching goal which is supplied on page 3 of the submission and specifically in reference to natural character.

And as an aside I've had occasion to review case law in respect of natural character within the last week and have been surprised that there hasn't been very much in respect of freshwater, there has been in the coastal environment but only a couple of cases where this has been dealt with. It's interesting and changing in years and so we've had so little and it would be helpful I think for councils to have some thoughts in this direction.

There is reference to the precautionary principle and I'm mindful of the question you asked of Tasman District Council earlier. There is however some note here that there appears to be a difficulty or a lack of understanding and perhaps Dr Olsen would like to comment on this, about scientific risk verses the risk that decision makers are confronted with. And scientists are frequently frustrated in that their inability to be certain about something translates into an inability sometimes for a decision maker to be precautionary and that's the underlying issue here and I don't know - do you have anything to say about that? Perhaps you might like to come back to this, because it's a frustration I sense in the science community quite often that very often we don't know a lot and that may be taken to mean that well we should err on the wrong side as it were with the precautionary notion.

There are new notions such as and this is referred to at the bottom of page 3 adaptive management which we think has some utility but it needs to be clearly specified the basis on which adapted management might apply. And that implies that for example if you get something wrong you have to be able to reverse the situation and if all has been allocated as

we've discovered with the Meridian Orakei decision that may not be possible.

CHAIR: At least for the term of the consent?

MR DEANS: At least for the term of the consent, and of course that imposes a great difficulty on a consent authority as to the new application for that for consent as to how they will entertain some difference especially in the quality of water there's been a (inaudible). There is reference throughout the submission to policies from other jurisdictions such as the EU, I have to confess there's not much I can enlighten you about in respect of that was done by other members of the society. One of the concerns has been a lack of clear bottom lines and you've had reference in that to the Fish and Game submission we believe it's essential and that there is good science around that can inform that.

It's the Societies submission that the preamble needs to include, and I'm now on page 5, acknowledgment of current state of freshwater resource a discussion on the benefits derived from their use. Acknowledgment that in many areas where we are at or past an asymmetric tipping point where restoration may be considerably more expensive than protection and indeed that's a key issue that science can inform when we may get to those points. And I guess while we all know that there have been trends going in the wrong direction in respect of water quality and degradation and loss of (inaudible) freshwater habitats it's the society's view that this needs to be addressed specifically in relation to this NPS. And some recommendations are made on what those national bottom lines should be.

Environmental standards, now on page 6, do need to be placed in a framework noting that there are some environmental standards that are at various stages of process at the moment and many of the society members were actively engaged in the, particularly the ecological flows

National Environmental Standards. The linkages are not fully understood I think between this NPS and the NES.

There is concern from society that each Regional Council has had to go through exercises independently that's the wheel reinvention problem. And so the recommendation is that there be a framework to define water quality standards required and I think that's alluded to but perhaps could be tightened up in the NPS at the moment.

Turning to the specifics of the objectives it's the societies view that Objective 1 doesn't help and should be deleted, I won't say any more about that, I'm not sure other than what's included there as to the rationale of that view. Turning now to the second objective which refers specifically to or the submission refers to matters I've already discussed, there needs the inclusion of ecological matters in science aspects in integrated management. I think in particular the society believes that implementation of (inaudible), and this is halfway down page 8, doesn't link effects of land uses on water resources and this is the same tale I've just been referring to but it's reiterated in this submission as well. And concerns that water quality objectives and outcomes may be loosely defined in many plans.

There's also the concern expressed that - sorry, regional and territorial governments often have debates about who should be responsible for land the effects of land use activities and that issue. It would be helpful if some definition was given to that from this basis. I'm not sure if you're able to but it's just -

CHAIR: That again might be a battle for Parliament in the sense that this derives from what Parliament has done deliberately, if not knowingly.

MR DEANS: I believe you may be right. On the other hand it is a practical difficulty that is there. And I suppose what the society is saying is that to the extent possible it would be helpful to try and set out the basis on which

you make a distinction between who does what, if that can be set up that might assist. I can't take it much further though.

CHAIR: I think that the Board will look at this of course but it may be, as I indicated to other submitters on other similar topics, that bodies such as this have access in a way the Board does not does depend on who can be influenced in those areas.

[12.24 pm]

MR DEANS: Sir, I have a question to you on that, and I wonder with an issue such as this if the Board was to so resolve, that it might advise the Minister to whom it ultimately has to report to, this is not a matter you feel that you are able to report on, but it is a matter that ought to be addressed. I don't know if that's going beyond your brief or not, but it seems to me that if you recognise there's an issue, and you determined that you are not able to address it, but that it ought to be, then it follows that you might at least remark on that to the Minister. But perhaps, I don't know, I'm being a bit presumptuous there but it is a matter to reflect on.

CHAIR: Well it might be possible in a very diplomatic way to imply something, but it is not for a Board to imply that there's any imperfections in what Parliament has done. With our role and our terms of reference are quite closely confined to the contents of this particular instrument.

MR DEANS: Perhaps it might have to be addressed by way of omission then sir, and for us to then follow up.

CHAIR: But I understand the suggestion that you are making and other submitters have made similar suggestions on similar aspects.

MR DEANS: Moving on to Objective 3. The difficulty here is not with the intent, but with the vagueness and things like 'swimmable statuses' is intimate to my scientific colleagues. They want to know what you mean by that and again, it's not your words, but they believe that science can assist in this process and at least provide something that is more quantifiable, if indeed, but it needs to be more inclusive as well and that's the difficulty with swimmable, it's a relatively narrow aspect of matters that should be addressed.

CHAIR: And can I say that your paper, your submission, is it entirely clear - do you fully understand what's being said?

MR DEANS: Moving on to Objective 4. This is a matter, once again, of similar notice and there are some quite specific suggestions here, which I won't elaborate on, but happy to comment on if you have questions.

Managing demand, that's Objective 6, sorry - special degradation, well the difficulty that the Society found with this was that it was - it is insufficiently - well, too vague and it is the Society's view it should be addressed by and in preference to Objectives 3 and 4.

As for 6, the issue here really is one of clarification and I am interpolating here, but I think that this notion of demand that I referred to in the previous submission is part of the problem here. It's not clear how you address demand. I think if the matter that is in front of you is used and demand is - and clearly there is demand, there's no argument about that, but how you are able to provide for demand in the NPS is quite problematic I suggest.

The Objective 7 is reference to things like excessive contamination which I have to say was a bit of a red rag to various scientific bulls. They didn't know what was meant by that, with the challenge by it - in the particular

situation. There was also the notion of avoiding waste producing - reducing demand where appropriate. Clarification is required.

And this I think is a general note of concern from the Society. I'm looking now at Objective 9, that words like 'effective monitoring' is not very helpful when it comes to practical matters. Once again, the Society is of the view that rigorous and comprehensive matters can be included here and as much as possible things should be defined.

Moving on, there isn't reference specifically to the policies, but there is quite a lot of detail about the definitions and if I can refer to a couple of points particularly, the Society felt that when it came to degraded freshwater resources it supports enhancement thereof, but it opposes the implication that the more degraded the resource is, the higher the priority for enhancement should be. I believe that, and this is based on considerable knowledge held by members of the Society, that there is asymmetry in tipping points and if you have a resource which is highly degraded it may require vast resources to enhance that, when prevention of something which is at a tipping point is much more cost effective. That's not to say that areas should not be enhanced, it's just in limited resources. That's an issue that they wouldn't wish to see the wrong implication.

There is concern also about the term 'freshwater resources', which we discussed in the previous submission and specifically would like to see recognition of non-use values. A matter of considerable importance -

CHAIR: Do you think the same thing is saying the omission of the value of non-use?

MR DEANS: Yes, in general but also that there are some intrinsic values which are not use related and there's very little explicit reference of that in the National Policy Statement as currently drafted and that was the issue that was of concern to the Society.

CHAIR: Thank you.

MR DEANS: A very specific matter that has upset many Society members, including Dr Dean, is the exclusion of femoral streams and artificial water causes, particularly the femoral streams because in ecological terms, these are different from other streams but not necessarily less worthy or consideration and Dean, do you want to make particular comment about femoral streams or - there is a lot of detail in here as to why and how they differ and how intermittent ones differ from other ones. There's been quite a lot of research done on them in the recent years and I guess it was of great concern to the Society that these were somehow no longer important. In some circumstances they can be really important.

MR OLSEN: I would make two comments. One is that in some cases these systems may not have historically been a femoral, it may be due to human impacts on particularly groundwater abstraction and that sort of thing, and so therefore their historical values may have been higher than they currently are, and I forget the other one.

MR DEANS: There's a list here of matters of interest such as Canterbury Mudfish, for example, which is an endangered species specifically relying on the femoral streams, so there is concern about that. And there are some suggested recommendations for changes in respect of that. I'm happy to answer questions. There's not much else to add except that I guess the Society and its members wish to continue to be engaged in these processes and I guess in the event that the Board was

to feel that it needed further information or something specific in relation to a particular issue the Society would be well placed I think to point them in the right direction of people in New Zealand who are involved in that particular scientific field, if that's of assistance to you. I'm not sure if that's proper, but it was flagged as an issue.

CHAIR: Well may we then proceed to seeing if there is some questions.

MRS VERNON: Can I go to page 3 because we've got so many scientists in the room, I would value your comment. We've had many submitters talk about precautionary principles and I can accept and understand where you're coming from, so my question though is going to be when you're writing something like the NPS which is for the whole of New Zealand, and we don't want to put in something that is not achievable in a document like this, which is quite difficult. Is it too late really for some areas to have such a thing as precautionary principle, and I mean I'll give you an example to make it easier. It's one that I know. Say the water quality of the Waikato River, because of the land use intensification. Now I would value your comments on that because I think it's a difficult one, well it is for me personally, that how do we - we understand where you're coming from, but how do you put something in a National Policy Statement which immediately may not be achievable?

[12.34 pm]

MR DEANS: I make an initial comment and then I'd like some comment from my colleagues. One is that the exercise of this is usually in respect of decisions about future uses, not past uses, obviously we're influenced by that as well. But it is because of our legacy or the history that we don't wish to repeat and we don't wish to see mistakes made over again, that we believe that future decisions that might effect places, like say other

than the Waikato River, might not go in that direction. I understand the point you're making, but - I wonder if you could comment on that?

MR YOUNG: I think it comes down to risk management to some extent as well and I think it is its future uses that are particularly important so for instance the situation of water takes, if we have an unclear site of the understanding of particularly the impacts of the particular taking, you might say there will be some risk in reducing the habitat available by 90%. But there would be a bigger risk if you were reducing it by 70% and an even bigger risk if you were reducing it by - reducing it down from 100 down to those levels, so I'm not sure how that can be done in the NPS, but that's where the precautionary principle comes in. If we don't know what effects there will be, it will be better to allow more acceptance, or less level of risk on the decision than if you've got a very clear idea and good understanding of what will happen, then maybe you can allow a less rigorous decision.

MR OLSEN: Yeah, I think just to reiterate what Roger said, it's about risk management and bringing into that, Neil referred before to this issue of scientific uncertainty. We don't know everything when we go into a hearing and we have to recognise that and it would be good if that would be recognised by decision makers as well, because often they say, "We want an answer," and the scientist says, "Well we can't really give you one. We can couch it in terms of risk, and sort of put upper and lower bounds on that, but that's sort of the best that we can do." I think a particular point to bear in mind is the potential for cumulative effects where you might have land use intensification for example in somewhere like the Waikato and the effects of that maybe compounded by another activity. It may not be anything to do with land use, it might be to do with water abstraction, that sort of thing, so just recognising that these different activities may interact with one another and that's where it gets really

tricky to start to predict what the outcome would be and I guess recognising that in the process that we go through to make these decisions.

MRS VERNON: Thank you. Neil, just to ask you, is there any current objective that you see that could sit inside - I know what Fish and Game have, but this is a different submission, so just you know to be specific. And I hear what you're saying that is that some (inaudible) and the precautionary principle is important, but when you look at the objective first and I guess they're probably (inaudible), I don't know, or preamble or the purpose, where do you think it sits?

MR DEANS: Well I would suggest perhaps to try and answer that question, it might be Objective 4. Given its headline, "Recognising and protecting life supporting capacity and ecological values." and if you recall that Fish and Game recommended some alteration to that. I honestly can't remember. I'll just have to check that's in here.

MRS VERNON: That does mean - I mean this is your submission -

MR DEANS: Yeah, no, I understand that. What I'm trying to think - I'm trying to answer your question. Yes I believe, just looking at the headlines, this would be the most appropriate of the objectives to locate a specific statement for a condition relating to the exercise of caution in decision making. I'm just trying to look at our submission. It doesn't actually specifically consider that unfortunately, but it would seem to me to be the logical place to put it.

MRS VERNON: I know. It's just that your submission didn't quite state where it should go and that's why I thought I'd ask. But you do raise in your list

there, that cumulative effects and those sorts of things, the ecosystem and that's fine, thank you very much. Thank you.

DR HARDING: I've got just a few questions here. Looking at the original submission on page 3 there's a timetable there which you couched, your Society's couched, there's four examples of a timetable. Some of the submitters we've had in front of us have suggested that you can't put rigorous timeframes on these things, that it depends on resources, etc. Other submitters have suggested very definite numbers. I'm just wondering whether your Society sort of went through any process here to come up with these numbers, so I see there are four examples, but is there actually any deep calculations behind this or are these -

MR DEANS: No, the Society members include quite a wide range of people in the role of science and many of them are people who work for Regional Councils for example who are engaged in the day to day practical capacities and others are involved with more academic or research oriented aspects and in that sense we have the ability to call on people with a wide variety of skills. Having said all of that - so I think there's probably some merit in this relatively little exercise that you can objectively take because the situation will be - I mean the problem that would arise, say, in the Waikato would be different to the problem that would arise in the West Coast for completely different reasons, but certainly our experience has been over a long timeframe, for example I have reason as a completely independent exercise to interview some of our founding members over the last 18 months or so and many of them identified for example in the 1960s that there were issues to do with water quality in the Lake Rotorua catchment, which I thought that was the case but they were able to confirm it in some detail. So many of them are concerned, and particularly the two professors whose names are attached to the submission, are very concerned at what they have seen in their

lifetime, so they believe quite strongly that it is necessary to have some milestones. The basis for them, I think to answer your question specifically, no there is no rigorous scientific approach that has been applied to this. Having said that, if you were to ask the question I'm sure they would come up with some means of assessing it on that basis, but that hasn't gone into this submission I'm afraid.

DR HARDING: So, the scientists also emphasised the issue of a clear bottom line and that sort of thing. You talk in your submission about (inaudible) cultural, economic, social and environmental and on page 6 there's some suggestions in relation to Policy 1 which emphasise, I guess perhaps primarily the environmental sort of bottom lines that the Society might be thinking about. Does the Society have any view on those other bottom lines? Cultural, social, economic -

MR DEANS: It's not a view that's been traversed widely by the Society at large, but there are members in the Society I'm aware that are looking at those very specific things now as part of other contracts. I guess unsurprisingly the Society members have an emphasis in this direction, but there are certainly people who are turning their minds to this issue now and I've certainly been involved in exercises where this has been undertaken, so as a body the Society hasn't done that, but I think it's quite amenable to being done. That's quite a challenge. I know for example in the area of Māori culture there's a great deal going on in that field at the moment, Val Tipa (ph) in the South Island. Garth Harnsworth is doing work in this part of the world, there's various other work going on in the different parts of the country and I think that provides a similar basis for these decisions. Unfortunately I suspect that those things won't be available to you in order to weave them into the - dealing with the NPS. But they're certainly available and councils and through things like environment processes they are being developed and implemented at the moment.

[12.44 pm]

DR HARDING: I notice in a number of your other areas referring to some objectives, Objective 2 and Objective 3 again, you have pointed out that there seems to be an omission in reference to things like habitat quality, biodiversity and those sort of things and the question I asked you in your Fish and Game submission was this idea of the definition perhaps of freshwater resources, whether thinking about them as freshwater ecosystems might be more -

MR DEANS: Yeah, I mean the Society feels very strongly that the basis for this form of resource management should be based on ecosystems which of course are much wider than just the biota, it's the whole freshwater system and incorporates many things, including human use to the extent that that impinges on the system or is part of the system. So I think it is fair to say, and I don't know if you guys have got something to add to that, I mean it's an area of your specialty really because of the functional basis and so on, if you've got something to add to that, if you want to.

MR YOUNG: Yeah, there was certainly a strong feeling. The resources implied sometimes were used by humanity rather than the intrinsic values, that was the first thing, but yeah the ecosystem, recognising more than just the particular aspects. The swimmability things, was emphasised in the Proposed National Policy Statement, but there's a lot of other values other than the swimmability that need to be recognised in a document like this, so that was the widespread feeling among Society members.

MR DEANS: If I can give an example, in recent years there have been a lot of work done on underground or hyporeas communities of invertebrates in rivers or associated with rivers, which actually we now know formed the

basis to replenish those rivers after floods or low flows or whatever and we didn't know that 10 years ago, but it wouldn't have been regarded as important until this research had been done, so it's an example where we don't always know, as it were, what we don't know and in this case we've discovered inadvertently, and prove me if I'm wrong Dean that these communities are actually very important to the maintenance of the visible fauna in those rivers and streams as well as the invisible. So that's the kind of thing which is I guess - we're eluding to here that decisions are being made sometimes without us knowing the implications.

MR OLSEN: I might also add to that what we see as being a river or a lake extends - the influence of those waterways extend beyond what we see as expressed in the surface water. In the case of braided rivers, the aquifer and the river are quite intimately linked and processes in, or activities that influence surface water may have flow-on effects into the wider landscape. There are also connections energetically between rivers and streams with invertebrates and things that are produced in streams, then supporting terrestrial progress. These are the sorts of things that you don't generally sort of traverse in your standard hearings because public and often people who aren't maybe as intimately familiar with the signs of things that we are, they just don't think of that connectivity and the broader landscape between waterways and the land, so I think that's something that I certainly would like to see recognised. And it's not just in-stream values that we're managing here. It goes beyond that.

DR HARDING: I've got no further questions, thank you, sir.

CHAIR: On that question and relating it to precautionary principle and so forth, it almost sounds as if the scientific community and the legal community are not really listening to each other or not communicating very well. But it's also possible that some of the lack of, well, understanding may derive

To be read in conjunction with
the tabled evidence/statement

from a particular case or cases and it reminds me of that folk saying about one swallow doesn't make a summer, or as the lawyers sometimes say, hard cases make bad law. Just because there might be one or two decisions that make people wonder whether there's an appropriate precautionary approach being taken where they think it should be, doesn't mean to say that it can't ever be taken. In individual cases it just depends on the accident of who's there and how they present themselves at the time and so on, so while it's got very little benefit with the NPS as such, all isn't necessarily lost in the potential of its unities for better communication over these things with different parts of those acting in this area.

I wanted to say that on reading this submission I thought it was one of the clearest and most persuasive of the submissions that I've been reading and of course we're grateful to you coming to add further clarification today, but above all, we're thankful to the Society for taking part in the exercise and for looking for ways in which the NPS can be improved. Thank you very much.

MR DEANS: Thank you sir.

ADJOURNED [12.51 pm]

Audio File: DPM0116

RESUMED [1.50 PM]

MR MORAN: Hello, Simon speaking.

MR RICE: Hi Simon, Steve Rice, just turning you over to the Board of Inquiry.

MR MORAN: Okay.

CHAIR: Yes, good afternoon it's Judge Sheppard here of the Board of Inquiry here. Thank you for cooperating with us to take part in this telephone conference. We're sorry that you weren't able to meet us face-to-face in Christchurch. So we're glad to have this opportunity to hear from you now. Now, I have with me members of the board. There's Jenny Vernon from the Waikato, there's Mr Kevin Prime from the Far North and there's Dr Jon Harding from the University of Canterbury. And perhaps you'd like just to introduce yourself and then to speak in support of the council's submission.

MR MORAN: Okay, thank you very much for that. I'm Simon Moran; I'm the Planning and Environment Manager for the West Coast Regional Council. And thanks for the opportunity of doing this by telephone, because it certainly makes life a little easier at this end.

I guess your guys are pressed for time so I won't get into too much detail around the submission, because obviously you've read it already. But the key points I think that we raise that I would like to reiterate are around the general direction that's contained within the document. In our council's view, or my council's view, we believe that's it relatively light on providing direction and quite heavy on identifying the processes. And part of that would also be the timeframes that are included within it.

There's several things in there, one is in terms of having to put things in our RPS in terms, of providing first schedule process. There's quite a cost in going through that. And in terms of the participation by all the parties, for what in essence, can be really an affordability issue for the community.

Another part of that is the timeframe linking to other regional plans and district plans having to, within 40 days, commence changes to theirs. Again, because they've got to give effect to something, I think the idea

would be to be able to know what they're giving effect to. And if you're already in an open ended or relatively open ended first schedule process then you wouldn't want to be making changes to plans unless you've got an operative RPS where you know it's settled and you know what you have to work with.

I'm just trying to work my way through here. Along with that cost issue around the first schedule process, one of the things that we find with that, is that it ends up costing the community in a couple of ways. One is that the level of community participation in regional plans around the RPS is relatively low. And the parties do tend to get involved are certainly those non-governmental organisations and things like who can end up, if you're disagreeing on timeframes or on anything, can require quite a substantial amount of money to resolve that, which the ratepayers are paying for.

But then it also overrides the fact that it's actually the ratepayers who have to be able to afford whatever programs that need to be put in place to meet those timeframes. So, one of the questions there is, whether that is better settled within the LTCCP process with direction from the NPS rather than having the debate through the RPS on timing.

Aligned to that is in one of the policies there, the first policy, Policy 1. There's quite a substantial amount of work that looks like it's required under that. Again, this comes back to our community and whether they're able to afford it and what the timing of that work should be done.

The last thing that I really want to talk about there is just around the objectives in terms of how some of those stack up. There seems to be some fairly strong objectives in terms of improving water quality overall and then applying the appropriate - or whether that's actually "inappropriate" test. And whether some of that is recognising the current balance in the Act whereby, I guess, it is in a way through whether the activity is inappropriate. But in terms of some of the terms that are used, there was degraded water quality, there was making all rivers swimmable, things like that. There's just the terminology that's used is not, and I think you've probably heard this from some other sources, it's not currently used within the Act and there is concern around how much litigation would be required to sort that out. And whether if the intention was to go down that track I think we've put in there, in our submission, that using those third schedule water classes and saying, well these area must be

managed to a contact recreation standards. Or, let's just be clear which areas that those are for. At the moment our water plan identifies areas that should be managed for contact recreation and it identifies that everything else should be managed to aquatic ecosystems.

So it's actually providing that clarity within the NPS rather than creating more ambiguity I suppose. And just harking back to the original comment on cost. For our council that is a serious concern we have a very low rate take in comparison to all other regions. I think we're in that order of about \$1.8 million. And some of these programs or projects that might have to be kicked off to meet the NPS could be substantial in their price tag. And we would want the Board to fairly carefully consider how those are weighed up.

So I think that pretty much gives an outline of what the council's concerns were with the NPS. There's obviously a bit more detail in the total submission, but quite happy to take any questions now.

CHAIR: Well thank you very much for that summary of the submission, all of us have it in front of us and which we've all read. I'd like now to see if there are some questions that can enhance our understanding of it. And I'm going to call first on Mrs Vernon.

MRS VERNON: Thank you. And thank you Simon for a comprehensive submission and also your further submission and information that you provided. I've just got two questions. One is about the term and you're not the only submitter that has mentioned about using new terms that aren't in the Act. But then you've got others that are saying, well as long as they're defined properly then there's nothing wrong with the new terms. So, I wonder where you would sit if that in fact the term "notable value" for example, was given a clearer definition, would it be acceptable rather than using "significant" or "outstanding"?

[2 pm]

MR MORAN: Quite possibly. It's one of those awkward situations where defining at the end of the process or asking people how they would feel about it, but then defining it later is a bit of an awkward situation. But yeah, if it had been defined at the start it may well be that there was far less concern around the use of "notable". Again, it comes down to the

definition and how much ambiguity there would be within that. At the moment, it's considerable because it obviously isn't defined. But yeah, on the face of it, if it had a definition we could be a lot more comfortable with it. We would have been a lot more comfortable with it if we'd been able to see that at the start I suppose.

MRS VERNON: True. Just one other question; I notice on your original submission, you talk about Policy 7, degraded freshwater resources. And I hear your comments that you made before. But you talk about that you don't want the term "shall" incorporated. What would you replace the word "shall" with? It's in your third page of your original general submission.

MR MORAN: Normally that would - you'd be looking to replace that with maybe something like "if council should". It's just the comment there and it was also a comment that linked back to I think the preamble.

MRS VERNON: Yes it does.

MR MORAN: Which was, "providing flexibility in how those goals are achieved", and it's something that I think we've revisited a couple of times within here. Which is that, we would like to see the direction, but then the flexibility to I suppose, meet that goal, go in that direction, however you want to word it. And having "shall" in there doesn't really allow for that flexibility.

MRS VERNON: You think it's too directive?

MR MORAN: Yes.

CHAIR: Dr Harding?

DR HARDING: Thank you. I've just got a couple of questions. One of the ones that of course you mentioned is the deletion of timeframes and we've had a number of submitters who have suggested a similar view. And a number of other submitters who have said well, you need to have timeframes in there otherwise some of these things might never happen. Do you have a response to that?

MR MORAN: Yeah I would agree with both parties on that one, I can identify things quite happily there. As I've said, I think the main concern for us is

that if we have to go through a process, a first schedule process to set that timeframe and they generally aren't set by the local community, they tend to be set more by, in our case, the government department, being the Department of Conservation and Forest and Bird. I personally don't see that as fair to our local community. It's just that they have the ability to engage in that process over a much longer timeframe. It's almost at times a battle of attrition to see who's left in the game. That's one of the main concerns.

I think the NPS could possibly, well could probably set some timeframes there and then they would obviously have to be given effect to. So, the concern that I've got is how many processes do you have to jump through? If you've got an NPS then yeah, there's probably no reason why you couldn't set a timeframe in there that was reasonable, and then depending on the funding that the council has. Some may well decide that they're going to undertake all that work in the first year. Whereas, some might have to spread it out over the next three to five years or whatever that might be. But I think the key thing is getting what would be a reasonable timeframe and then councils would have the flexibility to program in those costs as they could afford them.

DR HARDING: So you mentioned some numbers there like three to five years and that sort of thing, I mean, can I -

MR MORAN: Can you quote me on that?

DR HARDING: Yeah, can I quote you on that? Are you offering some suggestions on what you think might be a reasonable timeframe?

MR MORAN: Honestly, I haven't quantified the amount of work that is particularly looking at the stuff that's in Policy 1. It looks like there is a substantial amount of work there. And it really comes down to how many people, I mean for us, we have a small council, we have a small staff, our resource science group has got four people in it, a water quality science, a hydrologist and a couple of technicians. So, if you're talking about having to buy in the expertise to go and do these things or to basically start up to do them, it is a significant cost.

So for us, the longer the timeframe the better, but I would temper that with it's got to be done. So it's really just what is a reasonable timeframe? I

would say at least for us, a five year timeframe would be the minimum of what would be reasonable.

DR HARDING: Okay, thank you. You also make a comment about the water quality standards, if you like, in this reference in the proposed document, “swimmable” and those sort of things. And you made the comment there that of course some of your systems people don’t swim in. I guess the intent here is to think about some sort of minimum standards. Do you have a view on that?

MR MORAN: Yeah, in terms of - I think there was a couple of things. One is around the swimmable one. We have gone through a process of identifying contact recreation sites. And a large part of that is, sort of, popular swimming sites and putting those in our water plan as sites that should be managed for contact recreation standards. In other areas we have kept that at aquatic ecosystems, so we’ve got those classes for all the water bodies. I’m not sure why that process can’t be gone through under the current legislation and why it needs an NPS for people to do that.

As a minimum standard one of the - yeah, I think probably the biggest issue around that is the link to the policies that refer to “degraded” or “degrading” the water quality. One of the things that I think, I’m pretty sure we’ve got it in the submission there, is that we do have a relatively high water quality here. So essentially what you could be doing is saying, well you know, you’ve got it up at this level, say out of the one to ten scale, it’s at a seven or eight. But that means that’s the minimum standard that you’re at. Because otherwise if there’s activity that takes place in that area then you’re degrading, you know, and it drops down to a five or six, you’re degrading the water quality. Well, compared to some areas, a five or six is still a relatively high level of water quality.

One of the examples of that would be, at the moment just south of the Foxhill there’s some more dairy conversions going on. Now, there has been extensive grazing down there. So there will be - have been some impact on the water quality but it won’t have been significant. Dairying will obviously have a bit more of an impact, but the likelihood of those creeks being severely impacted with these new conversions is relatively low, given the controls that we have in our plans and the increased level of regulation that they have to go through.

[2.10 pm]

So, that's where my main concern is with "degraded" and "swimmable" is another one, setting that threshold. Well, swimmable is a difficult one 'cos I really don't understand what is meant by that. Is it managing all water bodies to a contact recreational standard? And if that's the case, well you know, there's going to be a lot of problems for a lot of activities around the area. Whereas, the approach that we've taken is identifying those areas where that definitely needs to be the standard that is attained and managing activities to that level. I know that's a highly sort of convoluted way of answering that question, but it's -

DR HARDING: Okay, no that's good, thanks. I guess just one other question, some of the other submitters we've had have commented about systems that are naturally degraded. So, on the West Coast how do you deal with or do you deal with things like brown water streams and glacial fed streams where water clarity might be reduced due to those natural processes?

MR MORAN: Not specifically with the glacial fed ones and obviously there is a lot of tannin or brown water. The main area that we have for managing naturally degraded, naturally lesser water quality, is the Brunner Coal Measures and some of that's due to old acid mine drainage. But in a number of places it's due to the background levels from the acid rock, so you do have a ph that's down around about 4, 4 ½. And they are specifically identified in the water planning and managed so that the effects of those recognise the fact that, you know, you've already got a pretty low or a pretty poor environment for biological diversity for a start.

CHAIR: Any questions Mr Prime?

MR PRIME: I have no questions thank you sir.

CHAIR: Well Mr Moran thank you very much. What we're to be focusing on is national policies that are to be applied in regions with quite varied circumstances. And you've been very helpful to us in bringing to our attention the particular circumstances of the West Coast region. And how the original proposed NPS could create difficulties. We're grateful to you for that and thank you very much.

MR MORAN: Thank you for your time and again, thank you for being able to accommodate this phone conference.

Just on your last comment there, I would like to just add, that certainly the flexibility with an NPS and NES is important to us and it's something that we do comment on each time we make submissions. Particularly if you compare it with the water allocation-type policies, we don't really have an issue with that. There's very few water takes for this region it's about 650 ks long. There's about, I think over that, there's about 400 takes and really the only major ones that we've got are for municipal water supply and there's run of the river hydroelectric. So yeah, where NPSs and NESs don't have any flexibility we can get caught on some occasions with policies that bear no resemblance to what the resource issues actually are within our region.

CHAIR: Thank you Mr Moran. Thank you.

MR MORAN: Thank you very much.

ADJOURNED [2.15pm]