IN THE MATTER of the Resource Management Act 1991

AND IN THE MATTER Of

PLAN CHANGE 9 TO THE BAY OF PLENTY NATURAL RESOURCES PLAN

REPORT AND RECOMMENDATIONS OF THE HEARING COMMITTEE

Hearing Commissioners:

- Antoine Coffin, Independent Hearing Commissioner (Chair)
- Andrew Fenemor, Independent Hearing Commissioner
- Rauru Kirikiri, Independent Hearing Commissioner
- Jane Nees, Councillor and Hearing Commissioner
- Paula Thompson, Councillor and Hearing Commissioner

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INTRODUCTION

This report and recommendations relate to Plan Change 9 (PC9) for the Bay of Plenty Regional Council's (BOPRC) Regional Natural Resources Plan.

This plan change relates specifically to water quantity provisions in the natural resources plan. It is part of a programme of changes needed for the National Policy Statement: Fresh water Management 2014 (NPSFM).

More than 110 submissions and further submissions were received between October 2016 and February 2018.

Appointment of Hearing Panel

Acting under section 34A(1) of the Resource Management Act (RMA), the council appointed the undersigned panel as hearing committee members. The panel's role is to hear, consider, report and make recommendations on submissions on PC9 to the Regional Land and Water Plan. This includes seeking and receiving reports under section 42A of the RMA.

Notification of Hearings and Council Officer Reports

PC9 was originally notified on 18 October 2016 with submissions closing on 14 December 2016. A total of 82 submissions were received, 16 of these were received late.

Further submissions were notified on 30 May 2017 and closed on 28 June. Due to an administrative error, part of the submissions of The Oil Companies and Fonterra Co-operative Group Limited were inadvertently omitted from the original submission and were separately notified on 27 June 2017. A total of 31 further submissions were received.

The section 42A council officer's report was circulated to submitters in February 2018.

Pre-hearings and Mediation

In 2017, 24 pre-hearing meetings were held between Bay of Plenty Regional Council and submitters.

An independent mediator conducted mediation with submitters who were addressing unauthorised dairy shed water takes (Policy WQ P14 and rule WQ R4). It is understood that no formal agreement was reached.

Site Visit

A site visit was undertaken on Tuesday 13 March 2018, to familiarise commissioners with water catchments and the diversity of land uses. A helicopter ride covered the area between Tauranga city to Mōtītī Island, Whakatāne, Ōpōtiki, Matahina dam, Rangitaiki catchment, Kawerau, Tarawera, Te Puke, Welcome Bay and the Wairoa River catchment.

Hearing and Appearances

Two hearings of PC9 were held in mid-March 2018, at Bay of Plenty Regional Council Offices in Tauranga and at the Eastbay REAP Centre in Whakatāne.

An audio record has been made of the hearings and minutes prepared.

The minutes record appearances (pages 1-2), a record of evidence and information tabled by submitters or requested by the panel and key points raised by submitters, as well as the likely timing of council's recommendation and decision.

Conflicts of Interest

Councillors Jane Nees and Paula Thompson raised a potential conflict of interest, relating to their being directors of Bay of Plenty Regional Council-owned company Quayside Holdings Ltd. Quayside Holdings Limited is a submitter to the municipal and water permit transfer provisions of PC9. It was determined that Cr Jane Nees and Paula Thompson have a conflict of interest and would not attend, discuss or be part of the deliberations and recommendation regarding these Quayside Holdings Limited submission points. Quayside Holdings Limited did not present evidence at the hearing.

Councillor Thompson is a trustee of Toi EDA, a submitter on Creswell NZ Limited's application for resource consent. Therefore Cr Thompson did not deliberate on Creswell NZ Limited's submission on PC9.

Antoine Coffin raised a potential conflict of interest, as author of the Ngati Rangitihi Iwi Management Plan 2012. Ngāti Rangitihi is not a submitter to PC9.

PLAN CHANGE 9 INTRODUCTION (CONTEXT)

PC9 is the first step in a two-stage approach to improving the rules for water quality and quantity management in the Bay of Plenty. It contains rules and policy changes that are designed to strengthen water allocation limits and management.

The plan change marks the beginning of the regional council's implementation of the NPSFM and addresses regional issues relating to water allocation. Council deems PC9 an important step forward in regional water management because it establishes a metering and reporting framework, strengthens the framework for decision-making based on clearer interim limits to allocation and it improves efficiency of allocation and use. PC9 identifies the region's Water Management Areas (WMA) and sets up a policy framework for working with tangata whenua and the community on local water quantity planning actions.

STATUTORY FRAMEWORK

The RMA creates a hierarchy of planning instruments including national, regional and local documents. It directs the manner in which the provisions within these instruments must be considered in preparation of this proposed plan change.

PC9 seeks to give effect to or comply with all relevant statutory requirements as outlined below.

Resource Management Act 1991

The RMA sets out the functions and duties of regional councils which, in relation to water quantity and quality, include establishing, implementing and reviewing objectives, policies and methods to achieve integrated management of the natural and physical resources of the region (s.30(1)(a)). Section 30(1)(b) and (c) gives regional councils the ability to control the use of land to maintain the quality and quantity of water in water bodies. The functions also include control of the taking, using, damming and diverting of water, as well as control of the quantity, level or flow in any water body (s.30(e) and, if appropriate, the establishment of rules in a regional plan to allocate the taking or use of water (s30(fa)(i)).

The regional council must also ensure it carries out these functions in accordance with part 2 of the act - s5 (purpose), s6 (matters of national importance), s7 (other matters) and s8 (principles of the Treaty of Waitangi).

Pursuant to section 52(2) of the RMA, National Policy Statements (NPS) are instruments that state objectives and policies for matters of national significance relevant to achieving the purpose of the RMA. The National Policy Statement for Freshwater Management (NPSFM) 2017 is one such NPS that PC9 partially implements.

Local Government Act 2002

The Local Government Act (LGA) provides for democratic and effective local government that recognises the diversity of New Zealand communities. It states the purpose of local government and provides a framework and powers for local authorities to decide which activities they undertake and the manner in which they will undertake them. Local authorities are legally required to play a broad role in meeting the current and future needs of their communities for good-quality local infrastructure, local public services, and performance of regulatory functions.

Sections 10 and 11 of the LGA states the purpose of local government and role of local authorities.

The High Court has held that the principles in sections 10 to 14 of the LGA (which state the role of local authorities and related matters) are consistent with the purpose of the RMA expressed in section 5, to promote the sustainable management of natural and physical resources. Regard must also be given to the efficient use of natural and physical resources in section 7 of the RMA. Council's primary task in considering a plan change is therefore confined to assessing matters under the RMA and relevant NPS.

In this context, the key statutory test in the RMA that must be considered when preparing PC9 is that council has regard to any management plans and strategies prepared under other acts if their content has a bearing on the region’s resource management issues. This may include any relevant Long Term Plan and/or Annual Plan prepared under the LGA. A Long Term Plan and/or Annual Plan does not override the provisions of RMA plans (or other statutory documents), nor is there any legal requirement that any new plans must conform to a Long Term Plan and/or Annual Plan that is in force. The specific legislative requirements in the RMA override the general provisions contained in the LGA in relation to the council's planning and consenting functions under the RMA.

Sec 77(i)(c)

…if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

Statutory acknowledgements

The Ngā Whakaaetanga-ā-Ture ki Te Taiao ā Toi is a compendium document setting out statutory acknowledgements in the Bay of Plenty, available on the BOPRC website. In the Bay of Plenty, several statutory acknowledgements are likely to be particularly relevant to future water management areas and relevant to PC9 because they inform on tangata whenua's wider values and interests in freshwater.

National Policy Statement for Freshwater Management (NPSFM)

The NPSFM recognises the national significance of freshwater for all New Zealanders and te mana o te wai, the mana of the water. It sets out objectives and policies that ensure local government manages water in an integrated and sustainable way, while providing for economic growth within specified water quantity and quality limits.

The main focus of the NPSFM is:

- setting freshwater objectives (goals that describe the desired state of freshwater now or in the future);
- setting limits (the maximum amount of the resource available for use)
- implementing methods to achieve the freshwater objectives and limits.

The NPSFM is divided into eight parts:

Part A and **Part B** give direction on what must be provided for or addressed in a regional plan, in terms of managing water quality and quantity. Part A is about water quality and Part B is about water quantity

Part C steers regional councils to manage freshwater in an integrated way. Councils must manage the relationship between land use and development, and freshwater. They must also manage the effects of land use and development, including cumulative effects on freshwater and coastal water

Part CA provides the process for setting freshwater objectives. This section has two appendices, which provide lists of national values (appendix 1) and attributes (appendix 2) that regional councils must use to set freshwater objectives

Part CB provides direction on how to monitor progress towards, and achievement of, freshwater objectives

Part CC gives direction to regional councils over the requirement to account for freshwater takes and discharges. This means that when it comes to setting freshwater objectives and limits, councils and the community know what water is being taken and what contaminants are being added

Part D provides direction on involving iwi and hapū and reflecting tāngata whenua values and interests in water management

Part E provides information on the timeframe for implementing the NPSFM 2014.

The NPSFM 2014 was gazetted on 4 July 2014 and came into force on 1 August 2014. This revoked the earlier NPSFM 2011 as from 1 August 2014. While the objectives of the NPSFM 2014 remain largely the same as the objectives in the NSP-FM 2011, the process regional councils must use to set

freshwater objectives - the intended environmental outcomes - is different. The NPSFM was further amended in August 2017.

PC9 (together with the RNRP) is required to give effect to the objectives of the NPSFM. However, NPSFM policies have been time-staged under Policy E1 to be implemented no later than 31 December 2030. The council may rely on subsequent plan changes, including the national objectives framework, to fully give effect to the NPSFM.

The NPSFM 2014 requires that every regional council fully implement the policies in the NPSFM 2014 by 31 December 2025 (or 31 December 2030 if certain requirements are met). If any policy in the NPSFM 2014 is not already fully implemented by the current plans, Policy E1 provides that the council may establish a progressive implementation policy to achieve full implementation of the policy by the required date (2025 or 2030). Policy E1 of the NPSFM provides for staged implementation of the policies of the NPSFM only (i.e. not the objectives).

The regional council adopted a progressive implementation policy (PIP) in October 2012 and a revised PIP in December 2015, to implement the NPSFM. This staged approach initially addresses interim objectives and water quantity allocation limits at the regional scale. Specific objectives, limits and rules that will override the regional defaults (by way of subsequent regional plans or plan changes) are then developed for each of the nine WMAs. BOPRC has indicated it will fully implement the NSPFM 2014 by 2025/2026.

PC9 must give effect to the relevant objectives of the NPSFM, particularly objectives AA1, B1 to B5, C1, CA1, CC1, and D1. Subsequent regional plans and/or plan changes to the RNRP can give effect to the remainder of the NPSFM (including the National Objectives Framework set out in policies CA1 to CA4), in accordance with its PIP and Policy E1 of the NPSFM.

Te Mana o Te Wai

Te mana o te wai was introduced to the freshwater NPS in 2014. Te mana o te wai is a concept that considers the integrated and holistic health and well-being of a freshwater body. When te mana o te wai is given effect, the water body will sustain the full range of environmental, social, cultural and economic values held by iwi and the community. The concept is expressed in te reo Māori but applies to freshwater management for and on behalf of the whole community.

Each community - and this includes councils - will decide what te mana o te wai means to them at a freshwater management unit (FMU) scale, based on their unique relationship with the water in their area or rohe.

National Policy Statement for Renewable Electricity Generation 2011

The National Policy Statement for Renewable Electricity Generation 2011 (NPS-REG) sets out an objective and policies for renewable electricity generation under the Resource Management Act 1991.

The matters of national significance to which the NPS-REG applies are:

a) the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand; and
b) the benefits of renewable electricity generation.

Its objective is "*To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity*

generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation."

The NPS-REG contains thirteen policies that include recognising the benefits of renewable electricity generation activities, managing reverse sensitivity effects, incorporating provisions in policy statements and plans and acknowledging practical constraints to develop, operate, maintain and upgrade new and existing renewable electricity generation activities.

The NPS-REG applies to renewable electricity generation activities at any scale. It covers the construction, operation and maintenance of structures associated with renewable electricity generation. This includes:

1. small and community-scale renewable generation activities
2. systems to convey electricity to the distribution network and/or the national grid
3. electricity storage technologies associated with renewable electricity storage.

The NPSREG covers all renewable electricity generation types including hydro, wind, geothermal, solar, biomass and marine.

National Policy Statement for Urban Development Capacity

This national policy statement provides direction to decision-makers under the Resource Management Act 1991 (RMA) on planning for urban environments. It recognises the national significance of well-functioning urban environments and has a particular focus on ensuring that local authorities, through their planning:

1. enable urban environments to grow and change in response to the changing needs of communities and future generations;
2. provide enough space for their populations to happily live and work. This can include allowing development to go 'up' by intensifying existing urban areas, and 'out' by releasing land in greenfield areas.

The urban capacity development statement sets out the national significance of urban environments thus "..about recognising the *national significance of urban environments and the need to enable such environments to develop and change; and providing sufficient development capacity to meet the needs of people and communities and future generations in urban environments."*

Much of the statement concerns mechanisms and requirements for councils to provide land for urban use ahead of need, according to responsive short or long term plans and strategies.

National Environmental Standards (NES)

National Environmental Standards (NES) are regulations issued under Section 43 of the RMA, to provide a nationally consistent approach to decision-making processes. They may be prescribed technical standards, methods or other requirements for environmental matters. Each council must enforce the same standard and in some circumstances can impose stricter standards. Of particular relevance to the proposed PC9 are the:

- Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 (previously an NES).
- Proposed National Environmental Standard on Ecological Flows and Water Levels (not progressed since notification in 2008).
- National Environmental Standard for Sources of Drinking Water 2007.

Water Conservation Orders

A Water Conservation Order (WCO) recognises the outstanding amenity or intrinsic values that a specific water body provides, in either a natural or modified state. The Bay of Plenty region only has one WCO – the National Water Conservation (Mōtu River) Order 1984.

Resource Management (measurement and reporting of water takes) Regulations 2010

The national water metering regulations are covered by the Resource Management Measurement and Reporting of Water Takes Regulations 2010. These apply to resource consents that allow freshwater to be taken at a rate of 5 litres per second or more. The regulations do not apply to water takes that do not need resource consent, or to consented takes:

- allowing less than 5 litres per second to be taken
- for geothermal or coastal water, or
- that are non-consumptive.

The national water metering regulations require that consented water users measure and keep records of their water take. The regulations state that consented water users taking at a rate of 5 litres per second or greater, must:

- take continuous measurements
- keep daily records of cubic metres taken (regional councils may give written approval for weekly records)
- keep records specifying 'zero' when no water is taken
- keep records in an auditable format
- use a water measuring device or system that is:
    - suited to the qualities of water it is measuring (e.g. its sediment content),
    - sealed and tamper-proof,
    - installed where water is taken (regional councils may give written approval for installation at an alternative location),
    - accurate to within plus or minus 5 percent for water taken by a full (pressurised) pipe, or plus or minus 10 percent for takes by open channels or partially full pipes,
    - verified as accurate by a person who is qualified. Verification is required initially, and then every five years,
    - able to provide data in a form suitable for electronic storage.

Consented water users must provide annual records to the regional council:

- for each year of the resource consent,
- covering all water taken from 1 July to 30 June,
- in writing (or electronically if requested by the regional council) within one month after this period.

The regulations came into effect on 10 November 2010 and resource consents granted prior to that are now required to be compliant.

Proposed National Environmental Standard on Ecological Flows and Water Levels

The intent of the proposed National Environmental Standard on Ecological Flows and Water Levels is to promote consistency in the way decisions are made to ensure sufficient variability and quantity of water flowing in rivers, groundwater systems, lakes and wetlands. It would do this by:

- Setting interim limits on the alteration to flows and/or water levels where limits have not been imposed through regional plans or water conservation orders.
- Providing a process for selecting the appropriate technical methods for evaluating the ecological component of environmental flows and water levels.

It is understood that the standards are on hold, pending decisions on the government's freshwater reform programme.

Tarawera River Catchment Plan

The Operative Regional Plan for the Tarawera River Catchment was developed primarily to manage the effects of discharges from the large pulp and paper mills near Kawerau township, by managing water quantity and water quality in the river catchment. The plan is designed to manage abstraction from the Tarawera River and to maintain water quality standards in the Tarawera River and its tributaries and lakes.

The Tarawera River plan covers the river catchment, including all its sub-catchments, as well as the upper Tarawera Lakes and their catchments. It excludes Lake Rerewhakaaitu and its catchment.

The river plan contains a section on surface water quantity that outlines the primary causes and effects of changing river flows as well as lake and wetland levels in the catchment. Rules affecting water quantity in the Tarawera River Catchment Plan have not generally been affected by PC9, meaning that any activities requiring resource consent in the area covered by the Tarawera River Catchment plan must do so under that plan.

The river plan became operative in 2004 and was reviewed in 2014. While it is due for review in 2019/2020, a Water Management Area Plan Change will probably replace this plan at the appropriate time in council's work programme.

Regional Policy Statement

The second generation Regional Policy Statement (RPS) became operative on 1 October 2014.

The RPS provides a framework for sustainably managing the region's natural and physical resources. It highlights regionally significant issues with our land, air, fresh and coastal water, infrastructure and biodiversity, including issues of significance to iwi. It sets out what needs to be achieved (objectives) and how it will be achieved (policies and methods).

It does not contain rules. Instead, it explains how regional, city and district councils, need to manage these resources. It is a directive policy document in relation to regional and district plans and the consideration of resource consents. It must be given effect by the region's city and district councils when developing their district plans.

In respect of freshwater, the RPS sets out a number of issues including:

- Increasing pressure on finite water resources
- Competing demands
- Over-abstraction
- Inefficient use
- Understanding water use

The RPS contains a section on water quality objectives, policies, and methods. All of these are identified as the responsibility of regional council.

The Kaituna River Document *Kaituna he taonga tuku iho, a treasure handed down*

The Te Maru o Kaituna River Authority established by the Tapuika Claims Settlement Act 2014 is a co-governance partnership created to manage the Kaituna River. It comprises iwi representatives from *Tapuika Iwi Authority Trust, Te Kapu Ō Waitaha, Te Pumautanga o Te Arawa Trust, Te Tāhuhu o Tawakeheimoa Trust* and *Te Komiti Nui o Ngāti Whakaue.* It also includes council representatives from *Bay of Plenty Regional Council, Rotorua Lakes Council, Western Bay of Plenty District Council* and *Tauranga City Council* and is a permanent joint committee of the four councils.

Their document - *the Kaituna River Document* - aims to promote the restoration, protection and enhancement of the well-being of the Kaituna River and its tributaries. The document contains eight proposed objectives and 21 desired outcomes, which build on the Kaituna River and Ōngātoro/Maketū Estuary Strategy (2009). Broadly, these objectives seek to enhance the quality of the Kaituna river.

Te Ara Whānui ō Rangitaiki - Pathways of the Rangitaiki

The Ngāti Manawa Claims Settlement Act 2012 and Ngaāi Whare Claims Settlement Act 2012 established the Rangitāiki River Forum, with representation from local authorities *Whakatāne District Council, Bay of Plenty Regional Council and Taupo District Council,* as well as *Ngāti Whare, Ngāti Manawa, Ngāti Awa and Ngāti Tūwharetoa (Bay of Plenty) iwi*.

Their document, *Te Ara Whānui ōRangitāiki – Pathways of the Rangitāiki*, was prepared to guide management of the river into the future. Its vision is "A healthy Rangitāiki River, valued by the community, protected for future generations. Tīhei Mauri Ora." Its stated outcomes - *mauri, he tangata, he taia(o), he awa* - speak clearly of a desire to improve the river quality. RPS change 3 incorporates the Rangitaiki River Document into the Bay of Plenty RPS.

Iwi Management Plans

Under section 61(2A)(a) of the RMA, when a regional council is preparing a plan change it must take into account any relevant planning documents recognised by an iwi authority. These documents, generally known as iwi management plans, need to be recognised by an iwi authority, are relevant to the resource management issues of the region/district and have been formally lodged with the relevant council(s).

Council has prepared a 'Review of Iwi and Hapū Management Plans' report that is included in Appendix 8 of the information supporting PC9. The panel understands 23 iwi management plans contain provisions directly relevant to PC9, including

- Matakana and Rangiwāea islands Hapū Management Plan (2012)
- Nga Aukati Taonga o Tapuika me Waitaha (1993)
- Ngā Taonga Tuku Iho: Pirirākau Hapū Environmental Management Plan (2004)
- Ngāi Te Ahi Hapū Management Plan (2013)
- Ngāi Tamawhariua Hapū Management Plan (2015)
- Ngāti Pūkenga Iwi ki Tauranga Trust Iwi Management Plan (2013)
- Ngāti Tapu Ngāi Tukairangi Hapū Management Plan (2014)
- Ngāti Whakaue ki Maketū Iwi Resource Management Plan Phase 2 (2011)
- Tapuika Environmental Management Plan (2014)
- Tauranga Moana Iwi Management Plan (2016)
- Te Mahere a Rohe mo Ngāti Rangitihi - Ngāti Rangitihi Iwi Environmental Management Plan (2012)
- Te Awanui Tauranga Harbour Iwi Management Plan (2008)
- Te Awaroa Ngāti Kahu Hapū Environmental Management Plan (2011)

- Te Mana Taiao ōNgāi Tamarāwaho Hapū Management Plan (2014)
- Te Whatu Natural Resources Environment Management Manual (2002)
- Waitaha Iwi Management Plan (2014)
- Ngāti Manawa Environmental Scoping Report (April 2007)
- Ngāti Whare Iwi Management Plan (19 March 2011)
- Tawharau o Ngā Hapū o Whakatōhea (1993)
- Ngāti Rangiwewehi Iwi Management Plan (2008)
- Te Taiao o Te Whatuoranganuku. Ngāti Tamateatutahi-Ngāti Kawiti Hapū Environmental Management Plan (2015)
- Te Rautaki Taiao a Raukawa – Raukawa Environmental Management Plan (2015)
- Te Tūāpapa o ngā wai o Te Arawa / Te Arawa Lakes Trust Cultural Values Framework (2015)
- Tūhourangi Tribal Authority Enhanced Iwi Environment Resource Management Plan (2011)

The panel has also reviewed the Mataatua Declaration, which asks that tāngata whenua retain exclusive possession of ancestral waters. The declaration recognises water is vitally important to sustaining life and that present generations have a sacred duty to ensure water is available to sustain the lives of future generations.

The declaration also asserts that indigenous people have special rights based on the Treaty of Waitangi and on aboriginal title to the use of their waters. It also says mataatua signatories will share water and manage it for the long term benefit of all peoples. The declaration says that people wanting to use water resources must seek consent from those with mana whenua.

PANEL RECOMMENDATIONS

In making its recommendations, the panel considered written submissions and further submissions, the council summary report of these submissions, verbal submissions, the staff-produced section 42A report and evidence presented at the hearing.

In terms of "reasons" for its decisions, the panel has considered the Section 42A discussion and recommendations and, where appropriate, made reference to that report. Where changes to the section 42A recommendations have been made, the panel's report notes both the change and reason. Where no change to PC9 is recommended over the notified version and no comment is provided the panel relied on Council's section 42A report.

The panel has considered and supports the section 32AA report prepared by staff in relation to the more significant changes recommended by the panel.

The following recommendations are made by topic as detailed below.

Purpose and Function of Proposed Plan Change 9

Default or Interim Plan Change

The panel expects some provisions of PC9 will be replaced on completion of proposed WMA processes and associated plan changes, though the extent of these changes is unknown. Any changes will be informed by new research and more detailed community engagement.

If the whole of PC9 were to be superseded, PC9 could be regarded as an "interim" plan. This could for instance occur if a particular WMA discarded PC9 water allocation metrics, considered new metering provisions and found the proposed issues and objectives unsuitable. However, some of the proposed regional scale provisions (objectives, policies, rules, methods) are unlikely to be replaced. Policy that aims to reduce over-allocation or covers metering requirements and many of the permitted activities appear likely to remain, regardless of WMA work. The panel understands WMA processes and consequential plan changes will focus on resource availability, allocation and limit setting and will refine PC9.

It appears parts of PC9 will remain 'default' for water quantity management, while parts addressed through WMA processes will eventually be superseded and can be considered 'interim'. This affects wording such as 'interim limits' and 'thresholds' discussed below. It also helps explain the overarching purpose of PC9; to impose conservative water allocation limits that "hold the line" pending later (WMA) review.

Information Data and Uncertainty

The panel was advised council's approach in PC9 relied on incomplete but developing data.

Several submitters e.g. *Noble 35-1* commented on the opportunity council has to supply better data to inform better water management decisions. The panel agreed that further work is needed to ensure council, industry, the public and iwi can access the best possible information to support improved decision-making.

The NPSFM includes requirements for council to produce freshwater accounts showing the cumulative allocations of water against limits. The panel heard council is pursuing several data initiatives, including interim accounts, data cleansing, automated information processing and improved access to data. Had this been available before now, PC9 may have been a much simpler change. However the panel acknowledges that scientific knowledge and data supporting it is continually improving, and lack of science or data should not be used as an excuse to delay the setting of water body limits.

Whakatāne District Council (12-5) asked BOPRC to record and maintain good quality information about the water resources of the region. Further submissions including *Horticulture New Zealand* supported and linked this to other submissions on climate change, future demand, values and risks. NPSFM Policy B1 requires council to have regard to the reasonably foreseeable impacts of climate change. The panel agreed to include a new objective directing focus on good data and science acquisition.

Overarching and General Matters

Several submitters raised matters that affect a range of specific topics addressed throughout the rest of this report. These include:

1.1, 1.6,8.42 (F14.1,F15.1,F18.1,F19.1,F23.13), 8.46 (F12.1,F14.2,F15.2,F22.1,F23.14,F26.11,F27.1, F5.1,F6.1,F7.1), 9.1 (F28.335,F29.283),14.1,15.11,15.13 (F12.2), 17.1,19.12 (F12.3), 19.9 (F15.3,F23.15), 21.10 (F19.2), 23.1,24.1, 25.1 (F1.1,F18.2,F19.3,F28.130,F29.135), 25.13 (F28.142,F29.147), 25.2 (F1.2,F18.3,F19.4,F27.2,F28.131,F29.136,F8.11), 25.9 (F1.9,F27.3,F28.138,F29.143), 26.1, 28.1, 29.1, 31.53, 34.1, 35.1, 38.1 (F10.27,F14.8), 40.1,42.1,44.1 (F12.4,F22.2), 46.1,47.1 (F19.5,F28.197,F29.155), 48.1 (F14.10,F15.4,F23.16), 48.40 (F14.173), 49.1 (F14.13), 49.2 (F14.14), 49.3 (F14.174), 49.4 (F14.175), 51.1, 54.17, 56.1 (F22.3), 57.1,57.2, 57.3, 60.1 (F12.5,F20.1,F22.4,F23.9), 60.17 (F23.11), 60.18 (F23.12,F27.4), 60.2 (F20.2,F22.5,F23.10), 62.1, 64.1 (F28.328,F29.276), 67.1 (F16.9,F29.104), 67.10 (F16.17,F29.113), 67.11 (F16.18,F29.114), 67.12 (F16.19,F19.53,F19.8,F29.115), 67.13 (F16.20,F29.116), 67.14 (F16.21,F29.117), 67.2 (F16.10,F19.6,F29.105), 67.3 (F16.11,F29.106), 67.4 (F16.12,F29.107), 67.5 (F16.13,F29.108), 67.6 (F16.14,F29.109), 67.7 (F19.7,F29.110), 67.8 (F16.15,F29.111), 67.9 (F16.16,F29.112), 69.1, 70.1,72.1, 72.3, 73.1 (F14.415), 76.3 (F28.152), 76.4 (F19.9,F28.153), 76.5 (F28.154), 76.6 (F28.155), 78.1, 80.2 (F19.10,F28.389,F29.338), 80.3 (F28.390,F29.339), 82.1

Matters of Concern to Māori Consultation

Broad concerns: 25.12 (F1.12,F19.13,F28.141,F29.146), 25.3 (F1.3,F28.132,F29.137), 25.4 (F1.4,F18.4,F19.11,F28.133,F29.138), 25.5 (F1.5,F18.5,F28.134,F29.139), 25.7 (F1.7,F19.12,F28.136,F29.141), 25.8 (F1.8,F28.137,F29.142), 47.20 (F18.6,F19.14,F21.18,F28.216,F29.174), 52.1 (F28.343,F29.291), 52.10 (F28.352,F29.300), 52.11 (F28.353,F29.301), 52.2 (F19.15,F28.344,F29.292), 52.3 (F28.345,F29.293), 52.4 (F28.346,F29.294), 52.5 (F28.347,F29.295), 52.6 (F19.16,F21.37,F28.348,F29.296), 52.7 (F28.349,F29.297), 52.8 (F28.350,F29.298), 52.9 (F28.351,F29.299), 53.1 (F21.38,F28.477,F29.426), 53.2 (F28.478,F29.427), 55.1, 55.14, 58.1 (F19.17,F28.243,F29.205), 58.2 (F18.7,F19.18,F28.244,F29.192), 58.3 (F18.8,F19.19,F28.245,F29.193), 61.1 (F16.37,F20.3,F22.6,F23.5), 63.1 (F21.47,F28.434,F29.383), 63.2 (F28.435,F29.384), 67.15 (F16.22,F21.56,F23.6,F24.8,F29.118), 67.16 (F16.23,F19.20,F29.119), 67.18 (F16.25,F19.21,F23.7,F29.121), 74.1 (F23.8,F24.1,F28.143,F29.148), 76.2 (F28.151), 76.7 (F28.156), 79.1 (F10.178,F15.5,F16.1,F18.9,F19.22,F23.1,F24.3,F28.375,F29.324), 79.2 (F10.179,F15.6,F16.2,F18.10,F19.23,F23.2,F24.4,F28.376,F29.325), 79.3 (F16.3,F23.3,F24.5,F28.377,F29.326), 79.4 (F15.7,F16.4,F23.4,F28.378,F29.327), 80.4 (F28.391,F29.340), 80.5 (F28.392,F29.341)

Role of Iwi and Hapu: 14.31,27.30 (F10.96),47.36 (F19.186,F28.232),50.82 (F10.148,F14.321,F28.52,F29.52), 53.33 (F28.509,F29.459), 54.16, 58.21 (F28.263,F29.212), 62.31, 63.34 (F28.467,F29.416), 65.81, 67.23 (F16.30,F18.97,F19.187,F29.126), 71.59 (F16.85,F18.98,F19.188,F21.61), 76.38 (F28.187), 80.37 (F28.424,F29.373)

Adequacy of Consultation

The section 42A report summarises the regional council's consultation process and engagement with Māori. This includes a pre-draft plan engagement, 34 meetings between 28 August 2017 and 1 December 2017 and information about other meetings, workshops and correspondence not included in the section 42A report.

Several submitters, including Combined Tangata Whenua Forum (CTWF) (53 – 1), Motiti Rohe Moana Trust (MRMT) (25 – 13), Ngai Te Rangi (47 – 20), Ngati Ranginui (76 – 1), Pirirakau (80 – 1) were critical of council's consultation process and level of engagement for PC9, whilst others considered it adequate.

The panel learned a range of expectations existed amongst various Māori groups regarding the depth and diversity of consultation. However, the panel recommends no change to PC9 be made because council had exceeded the minimum statutory requirements established under Schedule 1 Clause (3) of the RMA. However, the panel did note if council had invested more time working with iwi and hapū, it may have avoided the level of concern raised.

It was noted part D of the NPSFM relates to iwi and hapū involvement in the management of freshwater and in decision-making regarding freshwater planning. This section requires councils to 'involve' iwi and hapū, and to 'reflect' tangata whenua values and interests in the management of freshwater.

The panel understands PC9 is the first of a suite of plan changes and programmes that will give effect to the NPSFM, including NPSFM Part D. Given the involvement of iwi and hapu to date, expectations regionally and nationally in regard to iwi involvement in freshwater management and the fact that tangata whenua values and interests are within the scope of PC9, the panel has given considerable attention to this matter. The panel understands iwi and hapū are expected to be much more involved in consultation concerning subsequent plan changes. This is particularly true with the Water Management Area ('WMA') processes, which the panel understands will be less generic and more site-specific. The panel acknowledges that tangata whenua submitters to PC9 have high expectations of consultation, collaboration and involvement in future WMA processes.

Given that consultation is ongoing and that council is at the beginning of its NPSFM implementation programme, the panel is of the opinion that Council staff have undertaken sufficient engagement, for the purposes of PC9, to give effect to their duties under the RMA and NPSFM, so far as required for PC9. We acknowledge that Council staff communicated to the hearing panel that PC9 was the overarching framework and greater detail and engagement would occur through the WMA process. But, for unknown reasons, this was not adequately communicated effectively to all tangata whenua. We reiterate that the NPSFM sets out clear expectations around iwi and hapū engagement and there are other examples of good engagement in other councils that Bay of Plenty Regional Council may look to draw from in the future.

The panel considers that provisions in policy WQ P2 (i.e. 2(b), 2(e)ii, 2(h)), combined with the directive requirements of NPSFM Part D, now clarify engagement processes required. This should ensure council meets its obligations in relation o Part D of the NPSFM by 2026.

Māori Values and Interests

45.3 (F28.387,F29.336), 47.2 (F19.24,F21.12,F28.198,F29.156), 76.1 (F28.150), 80.1 (F28.388,F29.337), 13.10 (F14.239,F21.9), 30.11 (F28.285,F29.233), 47.11 (F21.14,F28.207,F29.165), 50.9 (F10.73,F14.261,F21.24,F28.8,F29.8), 53.9 (F28.485,F29.435), 58.6 (F28.248,F29.196), 63.10 (F21.50,F28.443,F29.392), 65.5, 71.11 (F16.52), 76.14 (F28.163), 80.13 (F28.400,F29.349)

Several submissions i.e. *CTWF (53 – 3), Ngai Te Ahi (63 – 3), Ngati Pikiao (71 – 3)* consider PC9 does not adequately provide for tāngata whenua values and interests. A number of submitters requested that PC9 more explicitly and completely address iwi values, including te mana o te wai i.e. *MRMT (25 – 9)*.

The panel heard that council conducted a review of 24 iwi and hapū management plans and engaged directly with many iwi and hapū. This is outlined in Appendix 8 of the section 42A report. The panel received further information from council, outlining other engagement not detailed in the section 42A report. Council staff explained that tāngata whenua values and interests will emerge more clearly during the WMA process. This includes the recognition of the mauri of water, which is understood to be a near-universally held value. Accordingly, council staff have recommended the following changes:

1) Amend objective WQ O3 to recognise the role of tangata whenua as kaitiaki is an important consideration, particularly in relation to resource management decisions that affect the relationship of Māori with their taonga.
2) Amend policy WQ P2 to require WMA processes to explore options to set limits that have particular regard to the iwi role as kaitiaki and to explicitly consider "tangata whenua values and interests" in the WMA process.
3) Add recognition of tangata whenua values and interests including the mauri of water at WQ O4, WQ O7, WQ O8, WQ I10, WQ O9, WQ P2, WQ I10, WQ O12, WQ P15, WQ M9, WQ R4, WQ R6,

Council will connect with submitters when updating engagement plans for the Kaituna and Rangitāiki WMAs. It will also seek their involvement in establishing engagement plans for the Tauranga and Rotorua WMAs to meet additional requests. The panel supports this approach and considers it consistent with the NPSFM that requires plans to reflect the values and interests of tangata whenua. In addition, the panel recommends a line be added to WQ P2 to include *Consider how to recognise and provide for te mana o te wai in freshwater management* which more directly obliges council to operationalise *te mana of te wai* as per NPSFM requirements. Several amendments throughout the document have included these recommendations, including new objective WQ O12.

Treaty of Waitangi

Several submitters i.e. *Ngati Pikiao (71 – 60), MRMT (25 – 5), Ngai Te Rangi (47 – 2)* questioned the adequacy of PC9 in recognising the Treaty of Waitangi and/or its principles. For instance, MRMT said council has neither followed an appropriate treaty process nor adequately provided for tāngata whenua values, including kaitiakitangā and the application of matauranga Māori.

Some Māori submitters requested an explicit 'cultural allocation' of water to tangata whenua, over and above the limits proposed within PC9. Some submitters proposed there should be a percentage of flow allocated to iwi for their future use.

The panel understands many of these submissions seek to link rights set out in the Treaty of Waitangi, ownership claims and preferential use for tangata whenua in an NPSFM/RMA context. No evidence was received describing the rationale, framework or allocation model supporting 'cultural allocation'.

Council staff recommended no change to PC9 arising from these submissions, noting the WMA process must be aware of these matters (para 49, page 35).

The hearing panel view is that setting aside a cultural flow in PC9 is premature. First, a clear and definitive direction is required in higher order planning documents, along with a technical basis upon which to determine the quantum of such an allocation. Further, the panel received no evidence to support this proposition. That said, council staff have recommended policy WQ P2 in the section 42A report be amended. This amendment would require WMA processes to explore options that set limits with particular regard to iwi's role as kaitiaki and to explicitly consider "tangata whenua values and interests relating to freshwater" in the WMA process. The panel supports this being a matter for WMA processes to consider. Otherwise, the panel considers the matter of freshwater ownership beyond the scope of this plan change because it is a national issue yet to be addressed.

Motiti Island

In the section 42A report, council staff confirmed an unintended anomaly whereby Map WQ1 (labelled "Map WQ 1 Water Management Areas") - which shows the extent of the WMAs - was supposed to show Motiti Island as part of the Tauranga WMA. The shading for Motiti Island was unintentionally omitted, so this populated offshore Island was shown belonging to no WMA. The

panel understands that other unpopulated offshore islands, which have no anticipated demand for freshwater resources, are unshaded because they will not be specifically addressed in WMA work.

The panel recommends the inclusion of Motiti Island in the Tauranga WMA and asks that the map be shaded to show this. It notes that although Motiti Island has distinct cultural, social and environmental features, its inclusion in the Tauranga WMA means it will be considered now, ahead of other WMAs. The panel understands this move is strongly supported by some older island residents and kaumatua.

Mataatua Declaration

The Mataatua Declaration on Fresh Water has been referred to in the submissions *of Te Rūnanga o Ngāti Awa*. The declaration outlines the principles Mataatua tribes have signed up to and sets out recommendations on freshwater decision-making. The declaration contains broad statements that reflect tribal principles and aspirations regarding freshwater ownership, management and use, many of which are national issues beyond the jurisdiction of this panel. The panel has therefore made no specific recommendations on this matter.

Terminology

In considering more broadly how PC9 address matters of significance to Māori, the hearing panel considers that PC9 should utilise the term 'tangata whenua' or 'iwi and hapū' rather than 'Māori' when considering issues that relate to Māori groups within a geographic area. Tangata whenua provides for a more relevant consideration, specifically in relation to consultation obligations. It is also more consistent with the NPSFM. There will be exceptions to this where the term Māori is being used in the context of section 6(e) of the RMA.

The hearing panel has reviewed the use of Māori terms throughout the PC9 document checking for spelling, grammar and use of macrons.

The hearing panel believes the amendment to WQ R6(e) is appropriate. The term 'tangata whenua' implies a broader approach/wider group of people should be consulted and considered as would be the case should the term "iwi" or "hapū" be used.

An advice note at WQ R6 implies that Māori landowners are tangata whenua. This advice note is ambiguous and unhelpful and has been deleted by the panel.

Halt the PC9 Process

Several submissions have requested that PC9 be paused, restarted or rejected. Reasons given include awaiting the outcomes of Wai 2358 National Fresh Water and Geothermal Resources Claim and halting decisions until water ownership has been determined. Other reasons are identified on page 37 of the section 42A report. The panel considers these matters beyond the scope or decision-making power of the panel. Additionally, the panel notes that if council were to pause or halt its NPSFM implementation programme, it would run the risk of being unable to meet the deadlines it is required to meet under the NPSFM. Furthermore, reversion to the pre-existing plan provisions would mean no allocation limits or minimum flows are set, inviting largely unfettered exploitation of water resources.

Development of Māori Land

Several submitters noted that in some circumstances Māori land can be disadvantaged by lack of access to water. In part, this stems from some land being alienated from past, relatively easy access to water. It is also allied to the socio-economic and legal issues relating to Māori land, including multiple owners and difficulty raising investment capital.

The panel considers that future WMA plans provide an opportunity to consider setting specific water allocations to address this concern. The panel also notes that some groundwater and surface water resources appear at or beyond their allocation limit. It therefore recommends WMA processes or later plan changes carefully consider the unique relationship tangata whenua have with their land and resources, then consider ways plan provisions might provide for this within a sustainable management framework. The panel is also mindful that this matter may also be addressed by central government.

Decision-making and Management of Over-Allocated Catchments

Main Matters for Decision

In addition to submissions, further submissions and material tabled at hearings or presented verbally, the panel has reviewed several documents concerning the PC9 approach to surface and groundwater allocation status. These were all referenced on Council's website on the PC9 page.
Chief amongst these reports, a 2008 Opus International Consultants assessment looked at the effectiveness of the operative Bay of Plenty Regional Water and Land Plan as a part-catalyst for PC9 and made specific recommendations around the need to provide a more robust consent decision-making framework.

The panel recognises that proposed policies WQ P10 and WQ P11 are key parts of council's response to the Opus recommendations. As notified, WQ P10 states that council will **generally decline** applications to take and use water in over allocated catchments. This replaces the previous policy 68 in the NRRP which sought "To **consider granting** an application for a resource consent to take water from a river or stream ...".

The panel is also aware of council's 2016 "Assessment of Water Availability and estiamtes of current allocation levels October 2016" report (AWA), which determined the allocation status of surface and groundwater resources at that time. The AWA report determines the level of under or over-allocation in catchments and water bodies and is driving substantial progress to automate and improve council's 'interim' water accounts. The panel recommends council provide clear guidance as to where and how to obtain information on levels of allocation in relation to PC9 and WMA water quantity limits.
Key decisions regarding over-allocated catchments centre on the level of precaution needed versus the level of certainty required when setting allocation limits (policies WQ P7 and WQ P12). Decisions must also address the integrated management of surface water and groundwater (WQ P9). This issue also covers the way consent applications will be dealt with in relation to allocation levels in a catchment or Freshwater Management Unit (policies WQ P10, WQ P11). And it looks at whether/how the council should review the large number of pre-1991 water permits that make many catchments theoretically over-allocated but not necessarily overused.

Accounts

Many submissions sought a wide range of changes to the way council accounts for water. The section 42A report discusses some of these, as well as requirements of the NPSFM.

The panel supported recommendations in the section 42A report, noting it may be preferable to move much of this non decision-making text into an external guidance document similar to the AWA report. The report recommended WQ P25 (policy for freshwater accounting) be supported with a proviso that listed items are inclusive, not a complete list.

Definitions

Several submissions addressed definitions – listed below:

Adaptive management conditions: WQ P7 - 73.6 (F14.60, F19.203)
Crop and rootstock survival water: - 14.43, 27.42, 37.5 (F12.105,F14.414), 50.97 (F10.162,F12.106,F14.44), 62.43, 73.19 (F12.107,F14.429)
Efficient allocation: – 65.92 (F15.80,F19.202,F27.240)
Fire fighter training: - 5.1 (F30.1)
Fully allocated in permitted activity rules: – 73.18 (F14.62,F15.83,F18.113,F19.204,F27.242,F4.31)
Instream minimum flow requirement: WQ O7 - 13.28

(F14.26,F15.82,F17.50,F18.112,F20.57,F27.241,F4.29)
Net take: 73.27 (F13.7,F14.437,F14.79,F18.117,F27.248,F8.28)
Regionally significant infrastructure/industry: WQ P17 - 8.43 (F14.133,F15.81,F26.56), 48.38 (F14.171,F20.58,F26.58), 73.25 (F14.435,F14.77,F18.116,F27.246,F8.26)
Reasonable domestic needs: WQ O8 - 19.13 (F26.57)
Sustained decline in groundwater level: WQ O4 - 13.13 (F13.10,F14.241)
Water user group: WQ M8 - 30.52 (F28.326,F29.274,F4.30)
Values: - 41.4

The panel has considered the need for additional definitions throughout this report. These are discussed in this report in relation to the particular plan provision where they occur.

Limits vs Thresholds, Interim vs Default

Before considering recommendations on over-allocation, the panel needs some clarity on definitions of allocation limits, thresholds and interim limits. The notified version of PC9 described the proposed allocation limits in this overarching regional plan as 'interim limits'. The section 42A report proposed the use of the term 'interim allocation threshold' in response to a submission from *Horticulture NZ (27 - 9)*. However, that report only made the change in WQ I11, WQ P5 and WQ P15.

The term 'limit' is defined in the NPSFM 2014 as '*the maximum amount of resource use available, which allows a freshwater objective to be met*'. As each WMA plan change comes into force, the panel understands more refined allocation 'limits' for each water body or FMU will be provided. However, as noted earlier, an absence of further science or lack of priority for limit-setting in some water bodies, may mean some water bodies retain the limits provided through PC9.

Consideration was given to a staff recommendation that a new undefined term 'threshold' be utilised to distinguish fully compliant NPSFM objective-meeting limits from interim, precautionary measures included in PC9. However, the panel considered use of 'threshold' could diminish the weight given to PC9 limits so does not support this staff recommendation. Instead, the panel recommends that limits set under PC9 continue to be referred to as 'interim limits' and 'interim allocation limits' because most interim limits are intended to be superseded through plan changes following each WMA process.

Over-abstraction Issue

3.1, 8.1 (F12.8,F14.97,F17.2,F22.10,F26.5,F5.4,F6.4,F7.4), 12.2 (F14.335), 13.1 (F14.233), 30.2 (F28.276,F29.224,F4.4), 47.4 (F17.3,F18.20,F28.200,F29.159), 48.2 (F12.9,F14.136), 49.67 (F10.93), 50.1 (F10.67,F14.255,F19.38,F28.1,F29.1), 52.12 (F17.4,F18.21,F19.39,F28.354,F29.302), 53.4 (F17.5,F18.22,F28.480,F29.431), 58.4 (F28.246,F29.194), 63.5 (F17.6,F18.23,F28.438,F29.387), 67.19 (F16.26,F29.122), 71.4 (F16.47), 76.9 (F17.7,F18.24,F28.158), 77.1, 80.8 (F17.8,F18.25,F28.395,F29.344)

Several submitters suggested revision to the description of proposed issue WQ I1. They sought amendment of the reference to municipal water takes *(48-2)*, ensuring consistent terminology *(50-1)* and avoiding generalisations *(67-19).*

Tāngata whenua submitters sought a revision of the order of adverse effects, to bring tāngata whenua values forward and to delete reference to existing uses. *Ngāti Pikiao Environmental Society (71- 4)* noted an important distinction between tāngata whenua values and their cultural values and asked that the term 'cultural values' be used. This was supported by staff. The panel agreed the description could be more concise but the reference to existing uses should be retained because WQ I1 is a statement of fact, not a judgement or solution.

On balance, the panel considers WQ I1 an adequate statement of the issue with very limited statutory purpose beyond framing the objectives and policies that follow. It is recommended no other changes be made to this provision.

Precaution vs Certainty

4.8 (F10.4,F17.24,F18.72,F20.31), 6.21, 7.4, 8.17 (F14.110,F15.51,F18.73,F22.36,F26.16,F27.68), 17.5, 21.4, 30.53 (F28.327,F29.275), 31.23 (F14.390,F18.74), 39.14 (F18.75,F27.69), 43.9 (F13.3), 46.5, 47.25 (F28.221,F29.179), 48.19 (F14.152,F20.32), 49.30 (F14.196,F28.119), 50.49 (F10.86,F14.287,F19.142,F20.33,F25.39,F28.26,F29.26), 51.5, 53.22 (F28.498,F29.448), 63.23 (F28.456,F29.405), 65.48 (F18.76), 69.5, 70.5, 71.29 (F16.61), 73.5 (F10.169,F14.419,F17.25,F18.77,F28.83,F29.83), 76.27 (F28.176), 78.5, 80.26 (F28.413,F29.362)

Several submissions touched directly or indirectly on data confidence and certainty. Noble (35-1) said: The council has a challenge and an obligation to the region to give certainty to users and protection to our natural environment. Much information has been gathered over years and it will only be of value if it is explained and used to make good decisions. The precautionary principle should apply so that a natural resource is not over-allocated but it is wisely used.

As noted earlier, the panel had some difficulty addressing questions of certainty given the relatively uncertain science and data presented to it. In particular, the panel noted that the precautionary approach to allocating water, reflected in Policy WQ P7, contrasts with the certainty sought for water users, reflected in WQ P12.

In view of the pending detailed catchment-by-catchment reviews of allocations and limits in the WMA processes, the panel agreed it made sense to take a precautionary approach at this initial regional scale. An alternative, more generous allocation regime could later need to be clawed back if WMA assessments find reasons for more precautionary allocation limits. And claw-back is difficult. For this reason, no changes in relation to the precautionary tenor of WQ P7 are recommended.

Notwithstanding a need for caution, the panel agrees that existing water users should have certainty to continue their lawful use pending the outcome of WMA investigations. This includes legitimate permitted activity and non-consumptive users who, in most cases, have invested significantly and depend on water for their own wellbeing and that of their community. However, because many applicants have historically been allocated more water than is either used or justifiable (see WQ I3), that certainty should be limited to justifiable need. Allocations could also be fettered if WMA investigations support this as a suitable management option. The panel noted that consents issued under transitional arrangements prior to 1991 are likely to have been issued under much more generous conditions than is now the norm.

The panel discusses below what scope exists to review pre-1991 water take permits.

Stream Depleting Groundwater Takes

6.3 (F19.42), 13.6 (F14.235), 30.7 (F28.281,F29.229), 49.9 (F10.42,F14.179), 50.5 (F10.70,F14.257,F28.5,F29.5), 66.1, 71.9, 6.23 (F19.144), 8.19 (F14.112,F15.52,F22.39), 10.18, 30.31 (F28.305,F29.253), 36.4, 39.15, 47.27 (F28.223,F29.181), 49.32 (F10.60,F14.198,F18.80,F28.121), 50.51 (F10.88,F14.289,F28.28,F29.28), 65.50,71.31 (F16.63), 76.28 (F28.177), 80.27 (F28.414,F29.363)

The panel agrees with staff and submitters who are seeking integrated management between groundwater and surface water within each catchment, especially where those waters are hydraulically connected.

Policy WQ P9 promotes integration between groundwater and surface water and seeks to reinforce *te mana o te wai* when setting groundwater allocation limits. Submissions generally supported this

conjunctive management of surface water and hydraulically connected groundwaters. While some submitters supported this, some noted council needs to to better understand the relationship between surface and groundwater e.g. *Ngāti Manawa (6-23), Tauranga City Council (8-19), Irricon (36-4), Federated Farmers (50-51)*.

The *Department of Conservation (DOC) (13 - 28)* proposed incorporating a detailed definition for the degree of hydraulic connection, to ensure that stream depleting groundwater was considered in each surface water allocation block. The section 42A report recommended delaying incorporating this level of detail until it could be considered within each WMA planning process.

The panel saw some merit in including a default definition in PC9, as hydraulic interconnections are unlikely to vary significantly between WMAs. However, the panel had insufficient geohydrological evidence (e.g. scale of groundwater takes within specified distances of rivers) to justify making a decision which might significantly affect the allocation limit setting methodology and outcomes summarised in the AWA report. The hearing panel does not consider it possible to provide a detailed definition for the degree of hydraulic connection in this plan change. The staff recommendation in the section 42A report is therefore supported and the panel concurs that this level of detail can be addressed in the WMA process.

The panel agrees with *Trustpower's (49 - 32)* submission to change 'impacts' to 'effects' in WQ P9 as 'effect' is already clearly defined in s3 of the RMA.

Whether Permitted Activity takes are Included within an Allocation Limit

WQ R1 Rule groundwater <5ha: 1.7, 11.14, 11.15, 12.29 (F14.362,F27.178), 14.32, 15.2, 16.5 (F14.50,F27.179), 27.31 (F10.97), 30.42 (F28.316,F29.264), 31.42 (F14.407,F18.104,F27.180), 33.11, 39.30 (F8.18), 47.37 (F12.79,F28.233), 49.57 (F10.64,F14.223,F27.181), 50.84 (F10.149,F14.42,F19.193,F21.30,F25.53,F28.54,F29.54), 52.24 (F28.366,F29.314), 53.34 (F12.80,F27.182,F28.510,F29.460), 58.22 (F28.264,F29.213), 59.6, 61.3 (F16.38,F21.45),62.32,63.35 (F12.81,F27.183,F28.468,F29.417), 65.82,68.3 (F27.184), 71.60, 76.39 (F12.82,F27.185,F28.188), 79.9 (F28.383,F29.332), 80.38 (F12.83,F27.186,F28.425,F29.374)
WQ R2 Pule PA Groundwater >5ha: 1.8, 7.6, 11.16, 11.17, 14.33, 16.6 (F14.51,F27.188), 17.7, 20.1, 20.5, 20.6, 21.6, 27.32 (F10.98), 30.43 (F28.317,F29.265), 31.43 (F14.408,F18.105,F27.189), 33.12, 39.31 (F27.190,F8.19), 46.7, 47.38 (F12.84,F28.234), 49.58 (F10.65,F14.224,F27.191), 50.85 (F10.150,F14.323,F14.46,F19.194,F21.31,F25.54,F28.55,F29.55), 51.7, 52.25 (F28.367,F29.315), 53.35 (F12.85,F28.511,F29.461,F8.23), 58.23 (F28.265,F29.214), 59.7, 61.4 (F16.39,F21.46), 62.33, 63.36 (F12.86,F28.469,F29.418), 65.83, 66.11, 69.7, 70.7, 71.61, 73.13 (F14.424,F27.192), 76.40 (F12.87,F27.193,F28.189), 78.7, 80.39 (F12.88,F28.426,F29.375)
WQ R3 Rule permitted activity surface water: 1.9, 7.7, 11.18, 11.19, 14.34, 16.7 (F14.52,F27.194), 17.8, 20.2, 20.7, 20.8, 21.7, 27.33 (F10.23), 30.44 (F28.318,F29.266), 31.44 (F14.409,F27.195), 33.13, 38.13 (F10.38,F14.92,F27.196), 38.16 (F14.9), 39.32 (F12.89), 46.8, 47.39 (F27.187,F28.235), 48.32 (F14.166),49.59 (F10.66,F14.225,F27.197), 50.86 (F10.151,F14.43,F19.195,F21.32,F25.55,F28.56,F29.56,F31.1), 51.8, 52.26 (F28.368,F29.316), 53.36 (F28.512,F29.462), 58.24 (F28.266,F29.215), 59.8, 60.14, 62.34, 63.37 (F28.470,F29.419), 65.84, 66.12 (F14.66), 69.8, 70.8, 71.62, 73.14 (F10.176,F14.425,F28.89,F29.89), 76.41 (F28.190), 78.8, 80.40 (F28.427,F29.376)
WQ R5 Rule controlled activity (previously permitted groundwater): 1.11, 14.36 (F27.214), 16.8 (F14.53,F27.215), 17.10,27.35 (F10.25,F27.216), 30.46 (F28.320,F29.268), 31.46 (F14.57,F18.106,F27.217), 39.34 (F19.197,F27.218), 47.41 (F27.219,F28.237), 48.33 (F14.167), 49.61 (F14.228,F27.220,F3.13,F31.6,F9.32), 50.90 (F10.155,F14.327,F14.47,F21.34,F28.60,F29.60), 52.28 (F28.370,F29.318), 53.38 (F28.514,F29.464), 58.26 (F28.268,F29.217), 61.6 (F16.40,F27.222), 62.36

(F27.223), 63.39 (F27.224,F28.472,F29.421), 64.7 (F28.334,F29.282), 65.86, 66.13, 71.64, 73.16 (F10.177,F12.94,F14.427,F28.91,F29.91), 76.43 (F27.225,F28.192), 80.42 (F27.226,F28.429,F29.378)

Proposed rules WQ R1 and R2 (groundwater) and WQ R3 (surface water) set conditions for permitted activity takes.

Several submitters asked that the allocation status referred to in the rules should either specifically reference WQ P5 (the interim limit) or state how allocation status is determined. Others asked that the reference to allocation status be deleted. The Assessment of Water Availability and Estimates of Allocation Levels October 2016 Report has highlighted the fact that many streams are allocated above their theoretical limit.

The panel agrees that clarity is important, and that the interim allocation limits identified in WQ P5 are based on limited data. The document listing current allocation status (AWA) sits outside the Plan. Allocation status will change over time as new water is allocated and better data becomes available.

The panel recommends inclusion of a detailed definition of the term 'fully allocated', including a narrative for its calculation.

The question has been raised by *Trustpower (49 - 57 to 59)* and others on whether an allocation limit includes provision for some assessed level of permitted activity and s14(3) takes, which do not require consent. The *Federated Farmers* submission (50:86) sought deletion of clauses that disqualify takes in fully allocated streams. They proposed production of a table that determined limits based on stream size.

The relative uncertainty of AWA limits means that the panel supports that water taken under permitted activity rules WQ R1, WQ R2 and WQ R3 are not included in water accounts at this stage. The panel was concerned about exacerbating over-allocation in surface waters under permitted activity rule WQ R3.

Submitters on this subject, including *Royal Forest and Bird Protection Society NZ*, were concerned the potential for take from small streams could cumulatively deplete the resource beyond its sustainable limit. Consistent with the "hold the line" approach of PC9 the panel recommends that WQ R3(d) that disqualifies new takes from establishing in fully or over allocated resources be retained. Once information regarding permitted activity water takes is gathered through the registration process, and final WMA limits are established, Council will be in a strong position to determine if further action is needed to address effects of permitted takes and those drinking water takes provided for under s14(3)(b) of the Act.

WQ R1 to WQ R3 require that permitted takes must be registered with the council within one year of PC9 becoming operative, which will assist council to develop an accurate and effective set of water accounts. The panel supports this requirement.

The revision of metering requirements that relate to stock drinking water has been explained under WQ P24. Because the requirement to meter stock drinking water has been removed, an additional clause, requiring a report on the location of all water takes on a property has been added. *DairyNZ submission 38-11* sought to replace metering requirements for stock drinking water with modelling. The submission is accepted in part. In order to model water allocation/use it is necessary to know where the water is being taken in a stream or aquifer.

Section 12.1.10 of the 42A report a recommends delaying inclusion of permitted takes within allocation limits rather than adding an estimate of these takes to the totals of consented allocations. Instead, the report suggested including permitted takes in the allocation quota when each WMA plan change is drafted. The panel agrees with this approach, noting that council currently lacks sufficient data or the required technical basis to include a numerical value for permitted and

s14(3)(b) takes. Council is, however, working towards developing a more complete and accurate picture of freshwater use.

Water Harvesting and Secondary Allocation

6.20, 10.16, 13.20 (F14.247), 14.11, 27.10, 30.29 (F28.303,F29.251), 31.22 (F14.388), 32.13 (F19.140), 36.1, 36.2 (F12.48), 48.18 (F14.151,F20.30), 49.29 (F10.58,F14.195,F28.118,F9.11), 50.48 (F10.85,F12.49,F14.286), 62.11, 65.47, 71.27, 71.28, 81.2 (F12.50,F19.141,F20.28,F28.69,F29.69)

Policy WQ P6 encourages water harvesting during periods of high river or stream flow. The panel understands that this policy would enable the intermittent taking of water, when the flow exceeds the median flow. Any application to take water under this policy would be considered in accordance with relevant plan provisions as be processed as a discretionary activity under WQ R10.

Policy WQ P8 which provides for secondary allocation of surface water is considered redundant and has been deleted, because revised WQ P5 now specifically identifies secondary allocation. The panel has added additional matters to WQ P15 and WQ P16 to ensure cumulative effects, flow variability and compliance with the conditions of take are addressed in any consents for water taken under this policy or as flood harvesting.

The panel also considered the impact of secondary allocation or harvesting takes on primary allocation status, noting these are generally distinct allocation blocks. WQ P5 provides for secondary allocation and WQ P6 for flood harvesting. Water for flood harvesting or secondary allocation could be taken for either storage or, directly used where applicants were able to cope with low reliability of the water supply. Secondary flow would be switched off when particular environmental triggers such as low flows occur. The panel has recommended inclusion of additional advice in an advice note beneath WQ P5 to assist understanding of secondary allocation. The panel considers that the default allocation limit for a particular water body refers to primary allocation and does not take into account secondary allocation. Policies include several limits including that the combined total of primary and secondary allocation does not exceed 50% of the $Q_5$7 day low river flow. Amendments to WQ P16 seek to ensure consents maintain flow variability by considering take relative to the median flow.

The panel noted an *Oji Fibre (10 - 16)* submission requesting water harvesting does not adversely affect existing consented takes. *Ngāti Pikiao (71 - 28 e.g.)* requested a clause in WQ P6 aimed at achieving a sustainable balance between social, cultural, economic and environmental well-beings.

The panel has provided for amendments addressing these matters, with changes sought by *Trustpower* addressed in the section on hydroelectricity generation. The panel's general recommendation is that issues relating to specific catchments and existing consents are best addressed within the WMA and consents processes. Current, largely discretionary rules require consideration of effects on existing users via policy WQ P9.

Submissions sought to better define periods of high flow in WQ P6 and pointed out the need for flow fluctuation. The panel noted flow variation requirements and the definition of a high-flow period need to be based on scientific evidence and community - including tāngata whenua - feedback for specific water bodies. Refinement of water take limits will occur in the WMA processes. For example, it may be acceptable to take water from a stream into a storage dam for short periods at higher secondary take rates if that stream has no significant ecological values.

As noted by *DOC* and others, secondary allocation must maintain flow variability because it plays an important role in river and stream health. *DOC (13-21)* also pointed out secondary flow should only be taken from the main stem of streams larger than 1000 l/s because they are more resilient to abstraction. They also noted that lake or spring fed rivers should not be used because they are much

less variable, with secondary allocations potentially seriously affecting flow variability. For those reasons, the panel has adopted the section 42A recommendation to provide for limits for secondary water harvesting in WQ P5: *minimum flow of 100% of Q_{5}7day low flow for streams with a mean flow of greater than 5 m3/s, and a secondary allocation limit for rivers for streams with a mean flow of greater than 5 m3/s of 40% of the Q_{5}7 day low flow, providing that the combined total of primary and secondary allocation does not exceed 50% of the Q_{5}7 day low flow.* All applications to take water that exceeds the primary allocable limits identified in WQ P5(b) or WQ P5(e) will be processed as discretionary activities under WQ R10.

Tauranga City Council (8 -18) has asked that WQ P8 apply to new applications and not to renewals of existing consents. This is not considered a significant issue as existing municipal takes are renewed as a controlled activity and the applicant will determine whether they are applying for primary or secondary allocation. In any case, WQ P8 is now deleted.

Non-consumptive takes within allocation limits

Several submitters including *Federated Farmers (50-13), DOC (13-23), Fonterra (73-26)* asked that non-consumptive 'zero net' takes be more explicitly addressed within PC9.

The panel considered advice in the section 42A report that PC9 is concerned solely with consumptive uses of water (s4.1.3). It agreed with staff that damming and diversion provisions in the Natural Resources Management Plan (i.e. rules 44 to 48 in particular) are sufficiently broad to accommodate changes to the water quantity provisions proposed in PC9.

The panel notes that 'zero net take' activities such as dewatering (e.g. *Oil Companies 18-10*) are also non-consumptive takes and some takes (for example process water) have almost immediate discharges of water. For example, the Tasman Mill takes then returns water to the Tarawera River, but is not treated as net takes in the AWA accounts. This has the effect of causing a downstream over-allocation status when this non-consumed water could be used for a range of downstream purposes. The panel therefore recommends that the definition of allocation status exempts non-consumptive takes when they are deemed a 'zero net take'. The intention is not to allow debate about takes where a portion of water is returned but simply to allow for genuine net zero takes and discharges to be exempt from allocation limits when the net effect on river flows and/or groundwater levels is *de minimus*.

Fonterra sought a definition of net take. The panel agrees that clarity about how water allocation status is determined is important. Amendments to the definitions section and a new schedule have been proposed to address this concern.

"Generally decline" and "consider granting"

WQ P10 Generally decline applications: 6.24, 8.20 (F12.53,F14.113,F18.81,F19.145,F26.19,F27.82), 10.19, 12.16 (F14.348), 13.22 (F12.54,F14.249,F19.146,F27.83), 14.13, 18.4 (F10.12,F27.84,F28.95,F29.95,F8.6), 22.3 (F12.55,F27.85,F9.37), 27.12, 30.32 (F28.306,F29.254), 31.25 (F14.392,F27.86), 33.6, 37.3 (F14.412,F17.27,F19.147), 38.6 (F10.32,F14.85,F27.87), 38.7 (F10.33,F12.56,F14.86,F25.41), 39.16, 40.3 (F27.88), 43.11 (F27.89), 48.20 (F12.57,F14.153,F15.53,F20.37,F26.20,F27.90), 49.33 (F14.199,F27.91,F28.122,F9.13), 50.52 (F10.89,F14.290,F14.291,F25.40,F28.29,F29.29), 52.19 (F27.92,F28.361,F29.309), 53.24 (F28.500,F29.450), 55.4, 58.14 (F28.256,F29.204), 60.5 (F20.36,F23.19,F26.18,F27.81), 62.13, 63.25 (F28.458,F29.407), 65.51 (F27.93), 71.32 (F16.64,F27.94), 73.7 (F10.170,F14.59,F27.95,F28.84,F29.84), 76.29 (F28.178), 80.28 (F28.415,F29.364)

WQ P11 Generally grant applications: 5.6 (F30.6),6.25,8.21 (F12.59,F14.114,F18.82),14.14,27.13,30.33 (F28.307,F29.255),39.17,43.12 (F27.96),48.21 (F12.60,F14.154,F18.83,F20.38),49.34 (F14.200,F9.14),50.53

(F10.90,F14.292,F25.43,F28.30,F29.30),52.20 (F18.84,F19.148,F27.97,F28.362,F29.310),58.15 (F18.85,F19.149,F27.98,F28.257,F29.206), 62.14, 65.52, 71.33 (F18.86,F27.99), 75.5 (F27.100,F28.149,F29.154)

Policies WQ P10 and WQ P11 set the expectations of the limit-setting process being initiated under PC9. WQ P10 indicates that council will 'generally decline' water permit applications to take and/or use water where this would result in an interim allocation limit being exceeded. Policy WQ P11 is the converse, indicating that council will 'generally grant' applications that do not result in the relevant allocation limit being exceeded.

The panel reviewed whether a more proactive approach was needed in the wording of these policies, perhaps rewording Policy WQ P10 to a more positive 'generally grant' except in specified circumstances. The section 42A report identified a third option provided by water management consultant Rob van Voorthuysen, namely 'consider granting but as B-class' permits, i.e. akin to secondary allocations provided for in PC9.

On balance, the panel considers the current approach is needed to strongly signal to water users and stakeholders that council will manage water resources within limits as required under the NPSFM. The NPSFM Objective B2 states: *To <u>avoid</u> any further over-allocation of freshwater and phase out existing over-allocation.* WQ P10 achieves this. Accordingly, we recommend 'generally decline' be retained in WQ P10, while in WQ P11 the wording is modified to 'generally grant'.

The panel also considered the special case of application renewals facing a 'generally decline' policy framework. While agreeing with the PC9 approach to discourage further allocation within over-allocated resources, the panel recognises this puts existing investment at undue risk given the relatively cautious and interim nature of the current accounts. The panel therefore recommends clarifying that renewals do not face the same presumption in WQ P10 and are exempt from the policy. In addition the panel recommends that WQ R9 is amended to specifically include certain renewal applications as a Restricted Discretionary Activity.

The text beneath WQ R10 that refers to the potential review of resource consents was opposed by a number of submitters (8-39, 10-34, 48-36, 50-96). The panel agree with these submitters and consider that the paragraph should be deleted. Matters relating to review of resource consents are addressed in WQ P3.

Phase out over-allocation

WQ P3: Phase out over-allocation: 6.17 (F12.40), 7.2, 8.15 (F12.41,F14.108,F15.44,F22.34,F26.12,F27.67), 10.13 (F25.26,F26.13),13.17 (F14.244), 14.9 (F25.27), 17.3, 21.2, 27.8 (F10.18,F18.66,F25.28),30.26 (F12.42,F28.300,F29.248), 31.20 (F14.386,F26.14), 34.2, 38.5 (F10.31,F12.43,F14.84,F25.29,F8.14), 39.11, 46.3, 47.23 (F28.219,F29.177), 48.16 (F14.149), 49.25 (F10.55,F14.192,F28.114,F9.7), 50.36 (F10.111,F12.44,F14.274,F15.45,F25.30,F28.23,F29.23), 50.37 (F10.112,F14.275,F25.31), 50.38 (F10.113,F14.276,F25.32), 51.3, 53.21 (F28.497,F29.447), 54.11, 54.12, 62.9, 63.22 (F28.455,F29.404), 65.44, 69.3, 70.3, 71.24 (F16.60), 73.3 (F10.167,F12.45,F14.417,F17.18,F18.67,F20.20,F28.81,F29.81), 76.26 (F28.175), 78.3, 80.25 (F28.412,F29.361), 81.5 (F12.46,F28.72,F29.72)

Policy WQ P3 seeks to phase out water over-allocation by 1 October 2027. It supports NPSFM Objective B2. The policy has been subject to a variety of submissions commenting that it is too ambitious, insufficiently ambitious, should not apply to municipal water suppliers or is not explicit enough.

The panel considers that the target date of 2027 is likely to be optimistic given the number of WMA processes that must be completed or under way by then. The panel also recognises that there may

be situations arising out of WMA-focussed investigations that warrant a more immediate response to over-allocation concerns. For example, it may be that in working with industry an agreement is reached supporting a fast-track approach. For this reason, the panel has made changes to WQ P3 signalling an earlier date may be agreed in WMA processes.

The panel is aware council is constrained by the need to implement a process for renewing some 500 pre-1991 water permits expiring on 1 October 2026 (approximately 45% of all BOPRC water permits), as well as abiding by the timeframes in the NPSFM. In practice, this means the bulk of council's phase-out gains are unlikely to be achieved until these consents are reviewed. No change to the 2027 date is therefore recommended.

The panel has recommended changes to WQ P3 to set agreed methods and timeframes that phase out over-allocation. These additions will also set limits, manage allocation and provide for flow variability to ensure phase-out efforts are conducted in a way that provides for these additional matters. A new clause is recommended that identifies ss168(7) and 130(5) of the Act to provide broader scope to review consents in over allocated water bodies.

Policy WQ P2(i) requires the identification of methods to address over-allocation and has been slightly reworded, along with WQ P3, to clarify its intent. The phasing out of over allocation is to start by 1 October 2027 unless Council or a WMA plan change deems an earlier date appropriate.

The panel was concerned about the potential for timeframe slippage for limit setting in WMA processes, which could affect the effectiveness of the renewal processes for expiring pre-1991 consents.

Objectives relating to water takes

WQ O3 Manage abstraction of surface water: 6.6 (F19.72), 8.7 (F12.25,F14.101,F15.21,F19.73,F22.21,F26.9,F27.36,F5.7,F6.7,F7.7), 10.4 (F25.5), 11.1 (F18.55,F19.74), 12.10 (F14.48,F15.27,F17.11,F22.22), 13.12 (F14.22), 26.3, 28.3, 29.3, 30.15 (F19.75,F28.289,F29.237), 31.7 (F11.6,F11.7,F14.373,F27.37,F4.13), 32.7 (F15.22,F19.76), 43.2, 47.16 (F15.23,F18.56,F19.77,F28.212,F29.170), 49.14

WQ O4 Manage abstraction of ground water: 6.7, 12.11 (F14.343,F22.23), 30.16 (F28.290,F29.238), 31.8 (F14.374,F27.38,F4.15), 32.8, 39.2, 43.3, 49.15 (F10.48,F14.184,F28.105), 50.18 (F10.77,F14.35,F28.15,F29.15), 52.15 (F28.357,F29.305), 58.8 (F28.250,F29.198), 60.4 (F22.24,F23.17), 65.14, 65.15 (F18.57), 65.16, 65.17

Objective WQ O3 relates to the abstraction of surface water, while Objective WQ O4 relates to groundwater.

A number of submitters *32-7, 49-14, 50-13, 64-3, 67-28* sought to incorporate additional matters relating to damming and diversion. The panel does not support these submissions for reasons outlined earlier in relation to the non-consumptive uses that are addressed elsewhere in the RNRP.

The section 42A report describes a range of amendments to wording at 7.1.3.These have been accepted by the panel for the reasons provided in the section 42A report. Some, e.g. adding 'mauri' in WQ O3(a), are described elsewhere in this report.

Enforcing limits & pre - 1991 consents expiring 1 October 2026

A large number of submitters raised issues relating to enforcement within submissions classified to other topics. A fundamental aim of PC9 is to set interim water allocation limits that establish clear standards for consent holders and applicants pending decisions from WMA processes, while slowing the potential degradation of water body values caused by incremental increases in allocations. The panel considers this an important matter for consideration. For example, *Federated Farmers of New*

Zealand (50-29), CNI Iwi Land Management Ltd (65-43), Ballance Agri-Nutrients Limited (4 - 8) suggested the possible use of the RMA consent review processes, to review existing consents. *DOC (13-17)* suggested amending WQ P3 to refer to s68(7).

Almost half the region's permits to take water were granted prior to 1991. These are deemed under the RMA to expire 35 years after the RMA came into force, i.e. on 1 October 2026. The section 42A report at para 107 states that "U*ntil NPSFM compliant limits are set under policy WQ P2 of PC9, Council has limited ability to review these resource consents.*"

The panel understand this statement was made because water permits cannot be reviewed under s68(7) or s128 of the RMA for the purpose of re-allocating water to another person. That would not be the rationale for review; the rationale would be to phase out over-allocation as required under NPSFM Objective B2. The panel acknowledges that in the Aoraki court case, which pre-dated the NPSFM, the High Court said that w*here parliament gave consent authorities the power to interfere with an existing consent, it has acted expressly and for very limited purposes*. However, those purposes include the application of s68(7), s128 reviews and s329 water shortage directions. Critically, in the Aoraki case, the court noted the Act was forward looking and only in very special cases, such as where adverse effects were occurring, did it envisage a review of consents that predated the new rule.

To paraphrase, s68(7) of the RMA, in conjunction with s130(5), allows a regional plan to include a rule relating to flows or rates of use of water (e.g. an allocation limit) and to state whether the rule shall affect the exercise of existing consents, such as water permits. It can also require consent holders to comply, which would normally happen through s128 reviews of consents, including reviews of the rates of water use allocated under that consent. Given that NPSFM Objective B2 requires councils to phase out over-allocation, it appears a provision aimed at phasing out over-allocation in a staged manner up to 2027 would be useful within PC9. Some submitters (e.g. C*NIF, Timberlands and Ngati Tamawera*) were concerned about the level of protection afforded existing consents while others (e.g. *Mathis, the Oil Companies and Oji Fibre*) wanted the investment in existing consents to be recognised, for example in WQ P15.

The panel understands that many of these pre-1991 consents include a condition enabling cancellation within 12 months of council giving notice. Council can also cancel a resource consent by written notice if the consent has been exercised in the past but has not been exercised in the preceding 5 years (s126 RMA).

A number of submitters (*i.e. Ngati Makino 28-23, Ngati Ranginui Incorporated Society 29-23)* oppose delays in council addressing over-allocation that they consider to be an issue now. The panel has some sympathy with these submissions and notes paper over-allocation can dramatically over-complicate consent administration by portraying a situation that may not be the case in reality. The panel also considers that the Council needs the ability to stage renewals of the pre-1991 consents, and s68(7) reviews are a mechanism to avoid what may otherwise be a massive job when 500+ consents expire at one time.

The panel has considered the applicability of s68(7) of the RMA to this situation and acknowledges there is scope to consider amendments that enable a review of consent conditions to achieve the proposed plan change limits.

The panel therefore wishes to signal that consent reviews may occur. To this end, the panel recommends a new sub clause (c) in policy WQ P3 referring to the potential for s68(7) reviews. WQ P3 could also provide an incentive for users within over-allocated water bodies to work together to lower their allocations. Water will also be clawed back via the reconsenting of consents and there is nothing to stop council proactively assessing consents in anticipation of their upcoming review.

Flows, Levels, limits and Resource Consent Considerations

A large number of submissions touched on this broad topic and are listed below. Where appropriate, those specific to particular topics are also listed beneath the relevant topic.

WQ I4 + WQ I5 Over abstraction of ground and surface water: 13.4 (F14.21), 30.5 (F28.279,F29.227), 47.7 (F28.203,F29.161), 8.3 (F12.15,F14.98,F15.10,F22.14,F26.7), 13.5 (F14.234), 30.6 (F28.280,F29.228), 47.8 (F18.30,F28.204,F29.162), 48.4 (F12.16,F14.137), 50.4 (F10.69,F14.256,F28.4,F29.4), 52.14 (F18.31,F28.356,F29.304), 58.5 (F18.32,F28.247,F29.195), 71.7 (F16.50,F18.33)
WQ I6 Abstraction reduces stream variability: 6.3 (F19.42),13.6 (F14.235), 30.7 (F28.281,F29.229), 49.9 (F10.42,F14.179), 50.5 (F10.70,F14.257,F28.5,F29.5), 66.1, 71.9
WQ I11 The taking of water in over allocated rivers or aquifers: 8.5 (F14.100,F15.15,F18.40,F19.47,F22.18), 12.7 (F14.340), 13.11 (F14.240), 30.12 (F28.286,F29.234), 31.13 (F14.379,F8.12), 38.2 (F10.28,F14.81), 48.8 (F14.141,F17.10,F18.41,F20.10), 49.12 (F14.182,F28.103,F29.103,F4.10,F9.1), 50.10 (F10.74,F14.262)
WQ O3 Manage abstraction of surface water: 6.6 (F19.72), 8.7 (F12.25,F14.101,F15.21,F19.73,F22.21,F26.9,F27.36,F5.7,F6.7,F7.7), 10.4 (F25.5), 11.1 (F18.55,F19.74), 12.10 (F14.48,F15.27,F17.11,F22.22), 13.12 (F14.22),26.3,28.3,29.3,30.15 (F19.75,F28.289,F29.237), 31.7 (F11.6,F11.7,F14.373,F27.37,F4.13), 32.7 (F15.22,F19.76), 43.2, 47.16 (F15.23,F18.56,F19.77,F28.212,F29.170), 49.14
WQ O4 Manage abstraction of ground water: 6.7, 12.11 (F14.343,F22.23), 30.16 (F28.290,F29.238), 31.8 (F14.374,F27.38,F4.15), 32.8, 39.2, 43.3, 49.15 (F10.48,F14.184,F28.105), 50.18 (F10.77,F14.35,F28.15,F29.15), 52.15 (F28.357,F29.305), 58.8 (F28.250,F29.198), 60.4 (F22.24,F23.17), 65.14, 65.15 (F18.57), 65.16, 65.17
WQ O6 Adverse effects of water abstraction: 3.4, 6.9, 8.9 (F12.28,F14.102,F15.31,F22.27), 10.6, 30.18 (F28.292,F29.240), 39.5 (F12.29), 43.4 (F13.1), 48.10 (F12.30,F14.143,F15.32,F17.12,F20.13), 49.65 (F10.101,F12.31,F14.232,F9.4), 50.20 (F10.78,F12.58,F14.264,F28.16,F29.16), 53.15 (F28.491,F29.441), 54.8, 63.16 (F28.449,F29.398), 65.19, 67.29 (F16.36,F29.132), 71.15, 76.20 (F28.169), 77.4, 80.19 (F28.406,F29.355)
WQ O7 Setting of limits: 6.10 (F19.87), 8.10 (F14.103,F15.33,F22.28), 10.7, 11.2 (F19.88), 18.2 (F10.10,F28.93,F29.93,F8.4), 30.19 (F28.293,F29.241), 31.9 (F14.375,F4.16), 37.2 (F14.58,F19.89,F27.42), 43.5, 47.46 (F19.90,F28.242,F29.190), 49.17 (F10.102,F14.17,F28.107), 50.21 (F10.79,F14.37,F28.17,F29.17), 52.16 (F28.358,F29.306), 53.16 (F19.91,F28.492,F29.442), 58.9 (F28.251,F29.199), 63.17
WQ P3: Phase out over-allocation: 6.17 (F12.40), 7.2 ,8.15 (F12.41,F14.108,F15.44,F22.34,F26.12,F27.67), 10.13 (F25.26,F26.13), 13.17 (F14.244), 14.9 (F25.27), 17.3, 21.2, 27.8 (F10.18,F18.66,F25.28), 30.26 (F12.42,F28.300,F29.248), 31.20 (F14.386,F26.14), 34.2, 38.5 (F10.31,F12.43,F14.84,F25.29,F8.14), 39.11, 46.3, 47.23 (F28.219,F29.177), 48.16 (F14.149), 49.25 (F10.55,F14.192,F28.114,F9.7), 50.36 (F10.111,F12.44,F14.274,F15.45,F25.30,F28.23,F29.23), 50.37 (F10.112,F14.275,F25.31), 50.38 (F10.113,F14.276,F25.32), 51.3, 53.21 (F28.497,F29.447), 54.11, 54.12, 62.9, 63.22 (F28.455,F29.404), 65.44, 69.3, 70.3, 71.24 (F16.60), 73.3 (F10.167,F12.45,F14.417,F17.18,F18.67,F20.20,F28.81,F29.81), 76.26 (F28.175), 78.3, 80.25 (F28.412,F29.361), 81.5 (F12.46,F28.72,F29.72)
WQ P6 Water harvesting: 6.20, 10.16, 13.20 (F14.247), 14.11, 27.10, 30.29 (F28.303,F29.251),31.22 (F14.388), 32.13 (F19.140), 36.1, 36.2 (F12.48), 48.18 (F14.151,F20.30), 49.29 (F10.58,F14.195,F28.118,F9.11), 50.48 (F10.85,F12.49,F14.286), 62.11, 65.47, 71.27, 71.28, 81.2 (F12.50,F19.141,F20.28,F28.69,F29.69)

WQ P7 Precautionary approach: 4.8 (F10.4,F17.24,F18.72,F20.31), 6.21, 7.4, 8.17 (F14.110,F15.51,F18.73,F22.36,F26.16,F27.68), 17.5, 21.4, 30.53 (F28.327,F29.275), 31.23 (F14.390,F18.74), 39.14 (F18.75,F27.69), 43.9 (F13.3), 46.5, 47.25 (F28.221,F29.179), 48.19 (F14.152,F20.32), 49.30 (F14.196,F28.119), 50.49 (F10.86,F14.287,F19.142,F20.33,F25.39,F28.26,F29.26), 51.5, 53.22 (F28.498,F29.448), 63.23 (F28.456,F29.405), 65.48 (F18.76), 69.5, 70.5, 71.29 (F16.61), 73.5 (F10.169,F14.419,F17.25,F18.77,F28.83,F29.83), 76.27 (F28.176), 78.5, 80.26 (F28.413,F29.362)
WQ P8 Secondary allocable flow: 6.22, 8.18 (F14.111,F22.37,F26.17), 10.17 (F27.70), 11.5, 11.6 (F27.71), 11.7 (F27.72), 13.21 (F12.51,F14.248,F17.26,F18.78,F19.143,F20.34,F27.73,F3.5), 14.12, 27.11, 30.30 (F28.304,F29.252), 31.24 (F14.391,F27.74), 36.3 (F27.75,F27.79), 43.10 (F27.76), 47.26 (F28.222,F29.180), 49.31 (F10.59,F14.197,F27.77,F28.120,F3.6,F9.12), 50.50 (F10.87,F14.288,F28.27,F29.27), 55.3, 60.11 (F20.35,F22.38,F27.78), 62.12, 65.49, 71.30 (F16.62), 81.3 (F12.52,F18.79,F27.80,F28.70,F29.70)
WQ P9 Integrate ground and surface water management: 6.23 (F19.144), 8.19 (F14.112,F15.52,F22.39), 10.18, 30.31 (F28.305,F29.253), 36.4, 39.15, 47.27 (F28.223,F29.181), 49.32 (F10.60,F14.198,F18.80,F28.121), 50.51 (F10.88,F14.289,F28.28,F29.28), 65.50, 71.31 (F16.63), 76.28 (F28.177), 80.27 (F28.414,F29.363)
WQ P10 Generally decline applications: 6.24, 8.20 (F12.53,F14.113,F18.81,F19.145,F26.19,F27.82), 10.19, 12.16 (F14.348), 13.22 (F12.54,F14.249,F19.146,F27.83), 14.13, 18.4 (F10.12,F27.84,F28.95,F29.95,F8.6), 22.3 (F12.55,F27.85,F9.37), 27.12, 30.32 (F28.306,F29.254), 31.25 (F14.392,F27.86), 33.6, 37.3 (F14.412,F17.27,F19.147), 38.6 (F10.32,F14.85,F27.87), 38.7 (F10.33,F12.56,F14.86,F25.41), 39.16, 40.3 (F27.88), 43.11 (F27.89), 48.20 (F12.57,F14.153,F15.53,F20.37,F26.20,F27.90), 49.33 (F14.199,F27.91,F28.122,F9.13), 50.52 (F10.89,F14.290,F14.291,F25.40,F28.29,F29.29), 52.19 (F27.92,F28.361,F29.309), 53.24 (F28.500,F29.450), 55.4, 58.14 (F28.256,F29.204), 60.5 (F20.36,F23.19,F26.18,F27.81), 62.13, 63.25 (F28.458,F29.407), 65.51 (F27.93), 71.32 (F16.64,F27.94), 73.7 (F10.170,F14.59,F27.95,F28.84,F29.84), 76.29 (F28.178), 80.28 (F28.415,F29.364)
WQ P11 Generally grant applications: 5.6 (F30.6), 6.25, 8.21 (F12.59,F14.114,F18.82), 14.14, 27.13, 30.33 (F28.307,F29.255), 39.17, 43.12 (F27.96),48.21 (F12.60,F14.154,F18.83,F20.38), 49.34 (F14.200,F9.14), 50.53 (F10.90,F14.292,F25.43,F28.30,F29.30), 52.20 (F18.84,F19.148,F27.97,F28.362,F29.310), 58.15 (F18.85,F19.149,F27.98,F28.257,F29.206), 62.14, 65.52, 71.33 (F18.86,F27.99), 75.5 (F27.100,F28.149,F29.154)
WQ P15 Considering applications to take and use water: 4.10 (F10.6), 6.29, 8.24 (F12.63,F14.117,F15.58,F22.42,F26.24,F27.115,F5.9,F6.9,F7.9), 10.23 (F17.38), 14.18, 18.5 (F28.96,F29.96), 18.6 (F28.97,F29.97,F8.7), 26.5, 27.17, 28.5, 29.5,30.37 (F28.311,F29.259), 31.29 (F14.395,F27.116), 32.15 (F19.156), 33.8, 36.5, 39.20 (F13.9,F27.117,F3.7,F8.17), 43.15, 49.39 (F14.205,F18.88,F27.118,F28.125,F9.16), 50.57 (F10.123,F14.296,F28.34,F29.34), 50.58 (F10.124,F14.297,F28.35,F29.35), 50.59 (F10.125,F14.298,F28.36,F29.36), 50.60 (F10.126,F14.299,F19.157,F25.45,F28.37,F29.37,F8.21), 56.5, 58.17 (F27.119,F28.259,F29.208), 62.18, 65.56, 71.37 (F16.68,F17.39,F19.158,F27.120), 73.23 (F14.433,F14.75), 77.6, 81.7 (F28.74,F29.74)
WQ P16 Conditions on resource consents: 8.25 (F12.64,F14.118,F15.59,F22.43,F26.23), 10.24, 12.19 (F14.352), 13.23 (F12.65,F14.250,F3.8), 14.19, 18.7 (F10.8,F28.98,F29.98), 27.18, 31.30 (F14.396,F20.43), 39.21 (F19.159,F3.9), 49.40 (F10.61,F14.206,F28.126,F9.18), 50.61 (F10.127,F14.300,F25.47,F28.38,F29.38), 53.25 (F28.501,F29.451), 62.19, 63.26 (F28.459,F29.408), 65.57, 65.58, 66.8, 71.38, 73.9 (F10.172,F14.421,F28.86,F29.86), 76.30 (F28.179), 77.7, 80.29 (F28.416,F29.365)
WQ P17 Duration of a resource consent: 2.1 (F17.40), 6.30 (F12.66), 8.26 (F12.67,F14.119,F17.41,F22.44,F27.122,F5.10,F6.10,F7.10), 10.25 (F27.123), 12.20 (F12.68,F14.353,F22.45,F27.124), 14.20, 26.6, 27.19, 28.6, 29.6, 30.38 (F27.125,F28.312,F29.260), 31.31 (F14.397,F2.4), 32.16,39.22 (F27.126), 40.5, 43.16, 47.29 (F27.127,F28.225,F29.183), 48.23

(F12.69,F14.156,F14.157,F20.44,F26.25,F27.128), 49.41 (F14.207,F27.129,F28.127,F9.19), 50.62 (F10.128,F14.301,F25.46,F28.39,F29.39,F8.22), 53.26 (F27.130,F28.502,F29.452), 55.10 (F27.131), 55.12 (F17.42,F27.132), 56.6, 60.6 (F12.70,F23.20,F26.26,F27.133), 61.2 (F19.160,F27.134), 62.20, 63.27 (F27.135,F28.460,F29.409), 64.5 (F17.43,F19.161,F27.136,F28.332,F29.280), 65.59 (F27.137), 68.1 (F12.71,F26.27,F27.138), 71.39 (F16.69,F17.44,F19.162), 73.24 (F10.173,F14.434,F14.76,F18.115,F8.25), 76.31 (F27.139,F28.180), 80.30 (F27.140,F28.417,F29.366)
WQ P18 NPSFM requirement: 47.30 (F19.163,F28.226,F29.184), 50.63 (F10.129,F14.302,F18.89), 53.27 (F19.164,F28.503,F29.453), 63.28 (F19.165,F28.461,F29.410), 65.60, 71.40, 76.32 (F19.166,F28.181), 80.31 (F19.167,F28.418,F29.367)
WQ P22 Groundwater bore construction: 48.25 (F14.159), 50.67 (F10.133,F14.306), 65.64, 71.43
WQ M6 Connection ground and surface water: 39.28 (F12.104), 48.29 (F14.163), 50.79 (F10.145,F14.318), 65.78, 71.56 (F16.82)
WQ R10 RDA take and use water: 1.16, 7.8, 8.38 (F14.130,F22.55,F26.49), 10.33, 14.41, 16.9 (F14.54,F27.238), 18.9 (F10.13,F14.70,F27.249,F8.9), 21.9, 27.40, 30.51 (F28.325,F29.273), 31.51 (F18.109), 33.17, 33.18, 39.37, 43.20 (F14.67), 46.10, 47.45 (F28.241,F29.189), 50.95 (F10.160,F14.332,F28.65,F29.65), 51.10, 52.32 (F29.322),53.42 (F28.518,F29.468), 58.31
WQ R11 DA take and use water: 1.17, 8.39 (F12.103,F14.131,F15.71,F18.110,F26.50), 10.34 (F14.68,F15.72,F17.48), 14.42, 18.10 (F14.71,F8.10), 27.41, 39.38 (F15.73,F17.49,F3.15,F8.20), 43.21, 48.36 (F14.12,F20.55,F26.51), 50.96 (F10.161,F14.333,F18.111,F28.66,F29.66), 62.42, 71.70

WQ P18

WQ P18 was inserted by the NPSFM 2014 and as such the panel has recommended no changes be made to it.

Minimum flows and allocation limits

WQ P4: Maintain flow variation in streams: 6.18 (F19.134), 10.14 (F15.46), 13.18 (F14.245,F15.47,F17.19,F18.68,F19.135,F20.21,F3.3), 30.27 (F19.136,F28.301,F29.249), 39.12, 47.24 (F18.69,F28.220,F29.178), 49.27 (F10.56,F11.11,F14.193,F28.116,F9.9), 50.39 (F10.84,F14.277), 65.45, 71.25
WQ P5: Interim allocation limits: 6.19, 7.3, 8.16 (F14.109,F15.50,F18.70,F22.35,F26.15), 10.15 (F17.20), 11.3 (F15.49), 11.4 (F15.48,F20.22), 12.15 (F14.347,F17.21), 13.19 (F12.47,F14.246,F17.22,F19.137,F20.23,F3.4), 14.10, 17.4, 21.3, 22.2 (F18.71,F9.36), 27.9 (F10.19), 30.28 (F28.302,F29.250), 31.21 (F14.387), 34.3, 39.13, 43.8, 46.4, 48.17 (F14.150,F20.24), 49.28 (F10.57,F14.194,F28.117,F9.10), 50.40 (F10.114,F14.278,F17.23,F20.25), 50.41 (F10.115,F14.279,F20.26,F25.33), 50.42 (F10.116,F14.280,F20.27,F25.34,F28.24,F29.24), 50.43 (F10.117,F14.281,F25.35), 50.44 (F10.118,F14.282,F25.36,F28.25,F29.25), 50.45 (F10.119,F14.283,F19.138,F25.37), 50.46 (F10.120,F14.284,F25.38), 50.47 (F10.121,F14.285), 51.4, 62.10, 65.46, 69.4, 70.4, 71.26, 73.4 (F10.168,F14.418,F28.82,F29.82), 78.4, 81.1 (F19.139,F20.29,F28.68,F29.68)

The panel has made minor editorial changes to WQ I5 intended to improve readability.

Policy WQ P4 provides for consideration of flow variability, while WQ P5 sets interim (default) primary allocation limits and potentially secondary allocation limits pending establishment of locally specific limits under WMA plan changes. Minor changes were sought by *Trustpower (49 - 27)* to replace "setting limits" with "setting environmental flows and/or levels" to ensure consistency with NPSFM terminology. The panel supports this change. Some submissions sought to either include or limit this policy to damming and diversion activities, which are covered by the RNRP and therefore not within the scope of PC9. The panel concurs with the section 42a responses to other submissions on WQ P4.

Policy WQ P5 sets interim water allocation "limits" until locally specific limits are set via a WMA process. Submissions were balanced both for and against calling these interim "limits". The panel discussed whether PC9 should be regarded as an interim plan or a default plan, as documented earlier in this report.

The panel notes that policy WQ P5 is largely technical and provides for a primary surface water allocation limit of 10% of the $Q_5$7 day low flow and 35% of residual average annual aquifer recharge for groundwater. The interim limits are intended to "roll over" existing water and land plan practices ($Q_5$7 Day, 35% RAAR) and to support clearer decision-making through more directive policy. While several amendments are proposed, the panel generally supports the roll over and use of the proposed metrics.

$Q_5$7 day vs MALF as basis for setting allocation limits and minimum flows

The panel makes some detailed observations below, in relation to the AWA report about the technical metrics used to set allocation limits and minimum flows. The discussion also looks at ways to provide certainty to users and stakeholders about the calculation of those limits and existing allocation status.

The panel supports basing PC9 surface water allocation limits on the five-year seven-day low flow (Q_5 7-day). This is the historic metric used in the Bay of Plenty. MALF is widely used, including in the draft NES on Ecological Flows. But Q_5 7day is used in neighbouring regions Gisborne and Waikato. The critical factor is the percentage of Q_5 7-day used to set an allocation limit (10% is proposed in WQ P5) and minimum flow (90% in WQ P5). Both are conservative, necessarily broad in scope and are not tailored to the specific values of specific rivers or streams, which will occur in the WMA process. Water permit applications can still be made above these limits, although WQ P10 puts the onus on applicants to provide a thorough assessment.

Federated Farmers (50 - 43) has suggested inclusion of an additional clause recognising existing allocation as being within the limits. Their purpose is to ensure renewal applications are not assessed as exceeding interim limits and then declined. The panel supports this intent but considers that because WQ P10, WQ P12 and WQ R9 all provide for renewals of consents in over-allocated water bodies, subject to efficient use and other criteria, the effect of the submission is achieved in PC9. However an advice note is provided at WQ P5 explaining how these exceptions operate. The panel notes that the draft NES on ecological flows and water levels provided a similar exemption from limits for existing allocation.

Federated Farmers (50 - 43, 50 - 44) also sought to provide for secondary allocations for surface water within WQ P5. The panel supports this and recommends adopting the specific limits identified in the section 42a report for streams with a mean flow exceeding 5 m^3/s. These limits are loosely based on the proposed NES on ecological flows and water levels, which generally has less conservative limits than proposed in PC9. Combining the primary allocable flow with the secondary allocable flow of 40% of Q_5 7 day enables an allocation of 50% of Q_5 7 day on streams where the mean flow exceeds $5m^3/s$.

Trustpower (49 - 18) sought an additional objective stating that environmental flows and/or levels and freshwater quality limits will be set in all WMAs, to achieve the freshwater objectives established for each FMU. This additional objective is unnecessary as it is addressed in the NPSFM (Policy CA2).

Low flows and aquifer levels

WQ P29 Water conservation: 8.31 (F14.124,F22.50,F26.31), 10.28, 11.12, 31.39 (F14.404,F18.93), 49.48 (F14.214,F9.27),50.73 (F10.139,F14.312,F28.48,F29.48), 65.71

WQ P30 Actions during low flow: 5.8 (F30.8), 8.32 (F12.73,F14.125,F22.51,F26.32), 14.25, 27.24 (F18.94), 31.40 (F14.405), 49.49 (F14.215,F9.28), 50.74 (F10.140,F14.313,F28.49,F29.49), 62.25, 65.72, 71.50 (F16.76)
WQ P31 Priority during low flow: 4.11 (F10.7,F18.95,F27.164), 5.4 (F28.129,F29.134,F30.4), 8.33 (F14.126,F26.33), 12.25 (F14.358,F20.47), 14.26 (F26.34), 15.10, 19.8, 26.9, 27.25 (F10.94,F26.35), 28.9, 29.9, 31.41 (F14.406,F18.103,F2.6,F26.36,F27.165), 37.4 (F12.74,F14.413), 38.15 (F14.94,F25.51), 43.19 (F27.166), 48.27 (F12.75,F14.161),49.50 (F11.14,F14.216,F27.167,F9.29), 50.75
WQ P31 Priority during low flow 4.11 (F10.7,F18.95,F27.164), 5.4 (F28.129,F29.134,F30.4), 8.33 (F14.126,F26.33), 12.25 (F14.358,F20.47), 14.26 (F26.34), 15.10, 19.8, 26.9, 27.25 (F10.94,F26.35), 28.9, 29.9, 31.41 (F14.406,F18.103,F2.6,F26.36,F27.165), 37.4 (F12.74,F14.413), 38.15 (F14.94,F25.51), 43.19 (F27.166), 48.27 (F12.75,F14.161), 49.50 (F11.14,F14.216,F27.167,F9.29), 50.75

Low flows and aquifer levels relate to periods when, for reasons such as drought or cumulative water use, the stream flow or aquifer levels have fallen. At these times, permits to take water are restricted to stop the minimum flow or level being breached through continued taking of water.

Several submitters to policy WQ P31 (priority at low flow) sought a ranking. The panel felt it was unnecessary to specifically identify priorities. The *New Zealand Fire Service Commission (5-4)* sought to include water for emergency firefighting response. Firefighting is provided for in legislation so it is unnecessary to include. Other submitters sought water for energy, industrial and farming purposes, in addition to drinking water. These are not supported as they fail to identify how cultural, ecological and recreational impacts on the environment would be addressed.

The panel agrees that management of water takes under low flow or low groundwater level conditions may not necessarily require cessation of the water take. Replacing the word “cease” in proposed policy WQ P30(d) with “manage” is more appropriate.

The section 42A report at para 106 states ‘While the concept of taking action during periods of low flows or aquifer levels was generally supported by submitters, it is agreed that beyond the rights provided for by RMA s329, or identified on specific resource consents, Council has no ability to give effect to restrictions prior to WMA environmental flows and/or levels being set under proposed policy WQ P2(e). Therefore proposed policy WQ P29 is redundant and should be deleted.’ The panel does not agree with this view, as it is possible that consent reviews could set minimum flows or levels on consents. Furthermore, the panel considers that as PC9 is to operate as a default plan, WQ P29 remains relevant in any circumstance where a s329 water shortage direction needs to be issued. This is the same reason given in the section 42A report for retaining WQ P30. It clarifies the council’s expected response, both then and when minimum flows or levels have been set under WMA processes. Therefore WQ P29 has been retained.

Beef + Lamb New Zealand suggested some useful amendments to policies to provide more specificity about efficient water use *(81 - 11)* and priority during low flows *(81 - 12)*. The panel agrees the measures suggested in *81 - 11* are useful pointers for efficient water use and has incorporated them into policy WQ P13. However the suggestions in *81 - 12* either conflict with other policies or have already been included elsewhere and have not therefore been recommended.

Matters of Consideration and Conditions on Resource Consents

Proposed policy WQ P15 lists matters that must be taken into account when considering any application for resource consent. The policy attracted a large number of submitters, with many seeking the adoption of the policy without change. Several submitters specifically sought to retain clauses (d) and (e), which relate to consideration of the benefits of the proposed take and the value

of investment it relates to. WQ P16 sets out matters to be addressed by conditions on resource consents.

The panel considered a large number of submissions as summarised in the staff section 42A report relating to resource consent assessment and conditions (Policies WQ P15 and WQ P16). The panel is generally supportive of the staff analysis. However it notes use of the term "must" in WQ P16 was confusing and identified the importance of distinguishing between types of limits referenced in WQ P5, ensuring cumulative effects of activities are addressed and using clear and more appropriate language (for example, "manage or cease" vs "cease"). The panel further notes that these lists will be non-exclusive.

As referred to in the Water Harvesting and Secondary Allocation section above, additional matters have been added to WQ P15 and WQ P16 in relation to consideration of such applications.

Crop and rootstock survival water

Horticulture NZ provided evidence supporting its premise that retaining 25% of base irrigation allocation would be acceptable to them at times when minimum flows or levels occur. They did not however present any evidence as to the vulnerability of irrigated kiwifruit and avocados to cessation of watering. The panel heard that some of these crops are not irrigated and are naturally resilient to low water situations. Given the prevalence of irrigation consents for horticultural crops among all consents in the Bay of Plenty and their particular concentration in some areas, allowing irrigation to continue after cease-taking was implemented would potentially have a significant effect on minimum flows. This is at odds with the directives in the NPSFM. The panel understands there have been few if any recent periods of extreme weather events that might warrant the need for such arbitrary measures.

The panel supports in part the submission of *Eastern Regional Fish and Game (37 - 4)* by requiring (in WQ P16, WQ P31 and in Schedule 7) that any provision for crop and rootstock survival water must be supported by scientific evidence of need. Furthermore, the panel considers a limit of 25% of the allocated (consented) water should be the maximum allowable for rootstock survival, once scientific need for crop and rootstock survival water has been established.

The panel recommends that Schedule 7 Irrigation be revised to include a statement that for the purposes of crop and rootstock survival water the allocation must not exceed 25% of the total consented daily water demand, that an assessment of need be provided and that the cumulative effect of all allocation shall not cause the minimum flow to fall below 80% of Q_5 7 day. An additonal clause is included in WQ P16 to this effect.

Stock drinking water

Beef + Lamb New Zealand Ltd (81 - 9) requested an objective that specifically states water allocation should, even at minimum flows or below, provide for stock and human drinking. Policy WQ P31 specifically gives priority to reasonable animal drinking and sanitation needs during times of low water flows or aquifer levels. Furthermore, the Act expressly provides for domestic and human water consumption as of right and within environmental limits (RMA s14(3)). The panel therefore considers no new objective is needed.

Flows, levels, limits and resource consents

The hearing panel supports in part the proposed amendment to Issue WQ I11. However, it is recommended amendments more clearly state over-allocation as an issue .

The hearing panel recommends that wording be amended in WQ O11 to include replacing 'problem' with the word 'issue' and to provide some geographic context. The hearing panel also recommends

that clause (b) be amended to replace 'water take consents' with 'water take permits' to more accurately reflect RMA terminology as water permits are a type of resource consent (RMA s87).

Amendment to Objective 3 to replace the word 'restore' with 'improve' is recommended by the panel. This provides greater clarity as the term 'restore' sets undefined targets and creates unrealistic expectations of achieving a near-pristine or original environmental state. This amended wording better reflects the objectives of the NPSFM.

The hearing panel recommends WQ O3 clause d is amended to clarify that the objective is referring to authorised users of water.

The use of the term mauri is supported by the hearing panel as a defined term in the RPS. The panel notes that the RPS requires that proposals that m*ay affect the relationship of Māori and their culture and traditions must recognise and provide for a number of matters including the role of tangata whenua as kaitiaki of the mauri of their resources* (RPS Policy IW2B). Similarly, proposals that may affect matters of significance to Māori must re*cognise and provide for mauri, particularly in relation to fresh, geothermal and coastal waters, land and air* (IW 5B). Furthermore, the panel notes council has a supportive policy towards development of iwi management plans. These plans, particularly the more recent ones, may help staff to better understand the mauri of freshwater resources. Therefore, the panel supports an amendment to the staff-proposed new clause (h) that seeks to ensure all water takes recognise and provide for mauri. This is likely to be a matter for consideration in larger consent applications.

The panel also recommends inclusion of a new clause in WQ O4 to provide for the interrelationships of ground and surface water. Provisions highlighting the need to maintain the relationship of tangata whenua with freshwater resources are also recommended by the panel. These amendments provide consistency with Rule WQ R6.

The panel noted dewatering and the discharge of sediment contaminated water from building and construction sites is a permitted activity under RNRP rule 42, which was not reviewed in the plan change. The *Oil Companies (submitter 18)* and *Oceania Gold (submitter 43)* sought to enable and provide for dewatering. The hearing panel considered staff recommendations and agreed that amending WQ O4(a) to provide for dewatering would provide certainty for dewatering activities without posing any more than a minor and very short-term local risk. This matter has also been discussed in relation to non-consumptive takes.

Royal Forest and Bird Protection Society NZ (39-2) and *DOC* (13-13) sought a definition of sustained decline, in light of the prominence of this phrase in objective O4. The panel agrees that the term requires clarification and supports the staff recommendation that it be: *A continuing long term decline in mean annual groundwater levels or artesian pressure,* with additional caveats that the period and significance of decline depend on factors such as climate and the characteristics of the aquifer in question.

Consent terms

WQ P17 Duration of a resource consent: 2.1 (F17.40), 6.30 (F12.66), 8.26 (F12.67,F14.119,F17.41,F22.44,F27.122,F5.10,F6.10,F7.10), 10.25 (F27.123), 12.20 (F12.68,F14.353,F22.45,F27.124), 14.20, 26.6, 27.19, 28.6, 29.6, 30.38 (F27.125,F28.312,F29.260), 31.31 (F14.397,F2.4), 32.16, 39.22 (F27.126), 40.5, 43.16, 47.29 (F27.127,F28.225,F29.183), 48.23 (F12.69,F14.156,F14.157,F20.44,F26.25,F27.128), 49.41 (F14.207,F27.129,F28.127,F9.19), 50.62 (F10.128,F14.301,F25.46,F28.39,F29.39,F8.22), 53.26 (F27.130,F28.502,F29.452), 55.10 (F27.131), 55.12 (F17.42,F27.132), 56.6, 60.6 (F12.70,F23.20,F26.26,F27.133), 61.2 (F19.160,F27.134), 62.20, 63.27 (F27.135,F28.460,F29.409), 64.5 (F17.43,F19.161,F27.136,F28.332,F29.280), 65.59 (F27.137), 68.1 (F12.71,F26.27,F27.138), 71.39 (F16.69,F17.44,F19.162), 73.24 (F10.173,F14.434,F14.76,F18.115,F8.25), 76.31 (F27.139,F28.180), 80.30 (F27.140,F28.417,F29.366)

Proposed policy WQ P17 provides for a consent term of no more than 10 years where the water body exceeds the interim limits (WQ P5), or no more than 15 years for all other water bodies. This is consistent with the RPS. A longer term is proposed for regionally significant infrastructure, non-typical activities such as dewatering or when the applicant can demonstrate a longer term is appropriate.

The panel recognises that the term of a resource consent is an important consideration to a consent holder because it provides security of access to water, it supports capital investment and the application process can be costly. However the panel is also aware that long consent terms can lead to inefficiencies due to changes to technology or markets, or when new information becomes available. In the case of PC9, which is an interim and default plan change, the panel is also concerned that longer consent terms imply a greater level of confidence in the state of the resource than may be warranted. This is in light of limitations in the information supporting the plan change.

On this basis, the hearing panel supports the guidance provided to applicants in Policy WQ P17 when applying for resource consents. It also supports the recommendations provided by staff in relation to the wording of WQ P17 clauses (a) and (c). These amendments highlight that these clauses are alternatives, where the applicant can demonstrate the longer duration of a consent is appropriate.

The hearing panel does not support the reduction of consent terms from 10 years to 5 years as sought by some submitters. This conservative approach would likely create undue pressure and restrictions on water supply and regional infrastructure and could dramatically increase consent administrative costs and times.

The hearing panel considers that increasing the length of resource consent durations for water takes will limit the ability to encourage or require uptake of improved technology and promote new water management practices. As previously noted, it is also inappropriate in light of the WMA plan changes which will follow PC9.

The panel considers listing regionally significant infrastructure is unnecessary as this information is already listed in the RPS. The list (taken from the RPS) includes:

- Rotorua International, Whakatāne and Tauranga airports
- The regional strategic transport network as defined in the Bay of Plenty Regional Land Transport Plan
  or state highways as defined in the National State Highway Classification System
- The Bay of Plenty rail network
- Commercial port areas including Tauranga Harbour and its channels necessary for the operation of ports and related adjoining land and storage tanks for bulk liquids
- The national electricity grid, as defined by the Electricity Governance Rules 2003
- Facilities for the generation and/or transmission of electricity where it is supplied to the national electricity grid and/or the local distribution network. Broadband and strategic telecommunications facilities, as defined in section 5 of the Telecommunications Act 2001
- Strategic radio communications facilities, as defined in section 2(1) of the Radio Communications Act 1989
- Local authority water supply network and water treatment plants
- Local authority wastewater and stormwater networks, systems and wastewater treatment plants
- Pipelines for the distribution or transmission of natural or manufactured gas or petroleum and other energy sources
- Regional parks
- Tauranga, Rotorua and Whakatāne public hospitals.

Consent assessment and conditions

Proposed policy WQ P15 lists matters that must be taken into account when considering an application for resource consent. The policy attracted a large number of submitters, with many seeking the adoption of the policy without change. Several submitters sought to retain clauses (d) and (e), which consider the benefits of the proposed take and the value of investment it relates to.

The hearing panel accepts in part the staff recommendations to amend WQ P15. In particular:

- Reword clause (a) to emphasise the need to consider efficiency of water use (and link it to WQ P13). This change is consistent with the NPSFM (Objective A2, Policies B2, B4)
- Clause (b) should emphasise water availability relative to the interim allocation limits and allocation within the catchment and also consider measures to phase out over-allocation. This is more directive and clear that the notified text.
- Volume and timing of water take are important considerations, in addition to rate. Volume is particularly relevant in limiting the duration of high-rate takes.
- Amend clause f to consider the cumulative effects of water abstraction which can significantly impact water quality. This amendment provides clarification that assimilative capacity is not progressively eroded as water is removed from a system. It needs to be an important consideration.
- For the sake of clarity, add an additional clause (la) considering t*he extent to which the applicant may have consulted with tangata whenua and taken into account any views expressed*. This recommendation expresses the need for consent staff to consider how iwi or hapu matters are considered, to ensure consultation is as meaningful as possible, even though it is not mandatory for consent applications.
- The panel does not support the deletion of clause (g) as proposed by staff in the section 42A report. The panel considers the effect on tangata whenua values should be considered in this policy, consistent with part D of the NPSFM.
- The *Galatea-Murupara Irrigation Society* (32 - 15) suggested the take and use of water may have beneficial effects on downstream flooding risk and on erosion resulting from flooding, which should be taken into account when considering an application for resource consent. The hearing panel finds it extremely unlikely that water takes will have a material effect on downstream flooding because water takes usually occur at times of water shortage, which is not generally the case with flooding. Furthermore, irrigation demand is vastly lower than flow rates during flood events that affect the lower catchments.

In addition a new clause relating to cumulative effects of water harvesting and secondary allocation is previously discussed in that section.

Technical basis for allocation limits and minimum flows

The AWA report was released at the same time as PC9. This document provides information on how estimates of water availability have been made, how much water is available for allocation from a particular water body and how much water is already allocated or remains available for allocation, applying policy WQ P5 from PC9. Rules in PC9 use the water accounting described in the report to determine the type of consent applicants must seek. Therefore, water accounting is a crucial aspect of PC9 – without it, water permit applicants are unable to determine their consent activity status.

The AWA report shows that a large number of surface water and some groundwater resources are allocated above the interim limits identified in policy WQ P5. The AWA report does not include estimates of unconsented water use that relate to unauthorised use, nor permitted takes such as for stock and domestic drinking water. The report subtracts allocation but does not add back in any water returned to the streams – such as cooling water or industrial process water. The groundwater section does not cover the whole of the region and AWA does not report on surface water bodies without consented allocations.

The hearing panel understands council's reasons for not including current water allocation status for water bodies in PC9. Those numbers would rapidly make the plan outdated as further information is gathered through BOPRC's proposed water accounting system or through metering or other tools. Council is moving swiftly to replace the static AWA report with a real-time/daily updated web-based tool that performs a similar function. AWA information will eventually be presented more accurately via on-line tools.

The panel recognises that although AWA provides guidance on how allocation limits have been set, this is not clear in the plan itself. Council's proposed in-house water accounting system will substantially improve on the AWA report by documenting the allocation of a water resource at any given time and must, for legal reasons, be transparent in terms of how these allocations are calculated. Under s76(2) and 68(2) of the RMA, rules have the force and effect of a regulation but are still subject to the Act and must conform to common law principles and conventions regarding validity.

Accordingly, the hearing panel considers that the bulk of AWA methodological guidance should sit outside PC9 for entirely practical reasons. However, the broad scale approach to allocation status assessment methodology for creating water allocation limits should be included in the plan. This should give readers of the plan certainty about factors that may affect the status of allocation relating to them or water bodies of interest to them. Tauranga City Council (8-16) sought clarity on the linkage to the interim allocation and how it fits within PC9 provisions. It is agreed that the role of AWA and its relationship to PC9 should be clarified.

Water information is continually updating, especially as new consents are granted. The panel believes council would be unduly burdened if it had to update the plan whenever this information changed. This would, in most instances, require additional plan change processes. Accordingly, the panel has added new Schedule 15 of PC9 being a summary of the methods for the calculation of average annual recharge (renamed as Residual Average Annual Recharge as explained below) for groundwater, the 5-year low flow Q_5 7 day for rivers and streams, and the consequential allocation status of a water body. As discussed earlier, submissions asked that 'fully allocated' be defined, which the panel has included in the definitions section of PC9.

Please see below for some recommendations on the AWA methodology. While they mostly sit outside the PC9 decisions, the do affect the allocation status of particular catchments and are included here to assist council staff implementing the methodology. They have also influenced the panel recommendations on Schedule 15 of PC9 which is more correctly labelled Method for estimating surface water and groundwater allocation status.

The interim groundwater allocation limit for each groundwater catchment is calculated as 35% of the what is labelled Average Annual Recharge (s3.1 AWA report). The Average Annual Recharge is clearly shown (e.g. Fig 4 AWA) as excluding a proportion of groundwater flow required to sustain stream flow. The panel conserved that redefining a technical term (Average Annual Recharge) that already has a clear hydrological meaning could create uncertainty about the actual allocation limit in an aquifer. Average Annual Recharge would normally be calculated as the sum of annual effective rainfall plus any irrigation recharge (i.e. rainfall+irrigation-evapotranspiration), plus net annual surface water losses to groundwater for that aquifer. To avoid confusion, the panel recommends that Average Annual Recharge be relabelled Residual Average Annual Recharge (RAAR). Total Average Annual Recharge would be calculated for each aquifer or zone, then the proportion estimated for sustaining stream flow subtracted to calculate RAAR upon which the 35% allocation limit is based. It should be noted that this does not change allocation status or revise the method by which allocation status is calculated, it simply clarifies terminology.

Allocating 35% of RAAR is very conservative, i.e. precautionary, but may reflect the high levels of uncertainty and spatial averaging around the calculated values. For Canterbury aquifers, for

example, a figure of 50% of total Average Annual Recharge has been used. As knowledge of the dynamics of BOP groundwater catchments is developed, and WMA and FMU-specific rules follow, it will be possible to tailor the allocation regime to specific management objectives for each water body. These would usually include avoidance of seawater intrusion, maintenance of minimum flows in connected surface water, and avoidance of excessive localised groundwater drawdowns that are caused by high pumping rates and lead to loss of well yields. In that case, policy is likely to move away from an allocation approach of percentage of RAAR. Section 3.1 of the AWA report states the actual method to estimate groundwater recharge varies depending on data availability. The panel's opinion is the methodology needs consistency and needs to be documented to provide some certainty for applicants. Schedule 15 has been developed to do this.

PC9 proposes an allocation limit for rivers and streams of 10% of the 5-year 7-day annual low flow (Q5) as well as a minimum flow of 90% of Q5. There appears to be some confusion about the terminology, including reference to 'mean' annual low flow. Unlike Mean Annual Low Flow (MALF) advocated by *DOC* as an alternative hydrological metric, Q5 is not an averaged (mean) flow. The 5-year 7-day annual low flow should be calculated from the time series of the annual lowest weekly naturalised flow - meaning no upstream water takes affect the flow - as the low flow which occurs on average every 5 years. This is described in brief in Schedule 15.

Q5 and MALF are readily calculated for river and stream sites where flow recording sites exist. However, other sites in the same stream or similar streams must be estimated by correlation or catchment flow modelling. Figure 6 of the AWA report does not explain how this is done. The AWA report (s3.2) rightly points out that the Q5 at the bottom of each catchment may differ from the listed values, as those values apply at a monitored point in the catchment. The implication is that allocation status must be compliant only for each catchment overall, not at every point along the river or stream. Trustpower submission (49-28) sought clarity as to where and how interim environmental flow and allocation limits will be set in catchments. For example, a large water take in the headwaters of an otherwise unstressed catchment may comply overall, but could have depleted local flows significantly more than 10% of Q5 at the point of take. Thus, policy needs to be clear that the 10% and 90% of Q5 metrics apply and vary at every reach of the river or stream. To be fair, this is stated later in s4.4 and is now stated in Schedule 15.

There is a potential overlap between the policy-making function of PC9 and the technical implementation of allocation limits stated in s4.2 of the AWA report. Effectively, s4.2 states that as permitted activity and currently unauthorised takes are formalised, the amounts considered allocated will be added to current allocation totals for the relevant water body in BOPRC's internal accounting system. The section 42A report at 12.1.10 recommended not doing this until WMA processes refine the allocation status in each WMA and FMU. The panel supports this approach for the reasons described above. The AWA report will need to be revised to ensure consistency between it and PC9.

Section 4.3 of the AWA report summarises the reasons actual use may differ from allocations. It is a reasonable expectation that PC9 and subsequent WMA policy should encourage efficient use of allocated water. However, at the scale of a water body or FMU, it is unreasonable to expect total water use to reach the sum of allocations for daily, weekly, seasonal or annual timeframes due to variance in peak usage and its timing. Efficiency should be encouraged but it is not reasonable to assume that a discrepancy between total use and total allocations represents some measure of inefficiency.

It is important that the basis by which water allocated by water permits is aggregated is clear and standardised. Almost without exception, permits for both ground and surface water currently state a rate of allocation in litres per second (the instantaneous rate of take) and a maximum daily or weekly or annual quantity as relevant to the particular use and the source of water.

Section 4.5 of AWA addresses aggregation of surface water takes. It could be clarified by stating that this refers to the instantaneous rate of take. The panel has included a statement in schedule 15 to provide clarity that, for surface water, the total allocation is the sum of the instantaneous rates of take in water permits, but does not currently include water allocated to frost protection.

Sections 4.7 and 4.8 of AWA refer to groundwater allocation. AWA shows groundwater allocation in litres per second, and illustrates how this is calculated based on the annual limit authorised by permits. AWA also shows how, for the purpose of the water accounts, an additional consideration regarding annual allocation is applied in situations where older permits do not specify such a limit. This additional consideration is to apply a maximum usage of 155 days for irrigation, 30 days for frost protection and 365 days for all other purposes. The panel has retained this statement in schedule 15. The panel also understands that future accounts for groundwater may show allocation as cubic metres per year rather than litres per second, but this is simply expressing the same data in a different format and does not alter the quantity assessed as allocated.

Consent applications in relation to level of allocation

When considering how council and the wider community best assess the availability of water for particular purposes the panel looked at the information provided to support good decision-making. Several submitters, including W*hakatane District Council 12-5, Ballance Agri-Nutrients Limited 4-2, New Zealand Kiwifruit Growers 14-4 and Horticulture New Zealand 27-3,* highlighted the importance of quality information to underpin good decisions. Several highlighted the need for modelling to support council's allocation work. The panel supports this work and any interim progress council can make towards making information on who has water and also how much is being used and where, relative to the interim limit. This information should be publicly available and discoverable.

Low Flows

The operative RNRP has a default minimum flow for surface water of 90% of the Q5 7-day low flow (Method 179). In addition, the primary allocation limit for rivers and streams has been set as 10% of Q5 7-day low flow in PC9. This is more conservative than the proposed National Environmental Standard on Ecological Flows and Water Levels (2008) (pNES).

The panel understands some submitters may consider the 90% Q5 (five year low flow) limits arbitrary but the majority are generally supportive of council carrying its current practice into the plan change. Most submitters appeared to support the metric, though some did propose use of the alternative (MALF) metric. Policy WQ P10 provides flexibility for applicants in over-allocated catchments to provide evidence as to when an exceedance may be considered. On balance, the panel accepts the metric is conservative and appropriate as an interim measure. On the basis that this measure is carried over from current practice, the panel accepts this is likely to be a relatively efficient, albeit coarse measure.

The panel anticipates the WMA process will provide greater detail and catchment-specific information that may change these limits.

The panel notes that the proposed plan refers throughout to ‘take and use’ of water. Staff were asked whether BOPRC always issues water permits to ‘take and use’ water or whether there are some consents granted for water ‘take’ or ‘use’ only, pursuant to s13 of the Act. It is possible that separate consents could be issued. Therefore, to clarify administratively, all relevant references to ‘take and use’ have been modified to ‘take and/or use’ water. This question is particularly relevant to site-to-site transfers of the ‘take’ part of water allocations, which is discussed below under the ‘water permit transfers’ section.

Temporary allocations

PC9 does not deal well with temporary/short term water allocations. Many submitters including *Mercury NZ Ltd 31-13, Oceana Gold (New Zealand) Ltd 8-12, Federated Farmers of New Zealand 50-25* addressed the importance of distinguishing between takes that are short and long term. They also sought better coordination of takes to address concerns arising from overlaps in peak demand. This concern is partially addressed with the addition of a new clause 9(d) to WQ O11. Council currently has only rudimentary tools by which it might allocate and manage short-term takes. Therefore, the panel deems it appropriate for temporary water takes to require resource consents and for these takes to take into account hydrological and seasonal effects. The panel notes WQ P16(a) largely achieves this.

Temporary dewatering

The Oil Companies (submitter 18) and *Oceania Gold* (submitter 43) sought to enable and provide for dewatering. The section 42A report advises that dewatering and the discharge of sediment-contaminated water from building and construction sites is a permitted activity under RNRP rule 42, at an unlimited rate of take.

The panel has reviewed this rule which reads:

Rule 42 Permitted – Take of Water and Discharge of Sediment Contaminated Water from the Dewatering of Building and Construction Sites

The: 1 Take of water, and 2 Temporary discharge of sediment contaminated water to water or to land where the contaminant may enter water, for the purposes of dewatering of building and construction sites is a permitted activity subject to compliance with the following conditions: [not included here]

The rate of take typically sought for dewatering is no more than 40 litres per second, which provides considerable scope as the discharge under Rule 42 of the RNRP must not exceed 80 litres per second. In conjunction with earlier discussions about non-consumptive water takes, this provision appears to cover the situation the submitters raise. However, the panel considers it appropriate to identify dewatering in WQ O4, which relates to groundwater, and to modify (a) to allow sustained decline in groundwater levels only when the purpose of the take is dewatering.

In principle, the hearing panel supports the consenting of non-consumptive takes for temporary uses, including for dewatering and pump testing. Industries requiring temporary resource consents for activities such as dewatering or aquifer or pump testing are now adequately provided for between new Rule RX and existing Rule 42.

The hearing panel agrees with the remaining section 42A recommendations at 7.1.6 for the reasons given therein.

Fish screens

Royal Forest and Bird Protection Society NZ 39-32 noted a requirement for limits on intake screen mesh size has been inexplicably deleted from the operative plan. This may in part be because staff believed that permanent structures - most intakes would be permanent - are required to meet RNRP activity standards that include fish screens. Notwithstanding this, the panel notes that intakes may be portable and may not meet the Act's definition of a structure (being fixed to the ground) and that this reference is somewhat obscure. For that reason, the panel has recommended additions to WQ R3(h) that provide for fish screening.

Bore Construction WQ P22

WQ P22 Groundwater bore construction: 48.25 (F14.159), 50.67 (F10.133,F14.306), 65.64, 71.43

Policy WQ P22 contains a list of requirements for good construction practice of water bores.

The small number of submitters to policy WQ P22 were generally supportive, with *Federated Farmers of New Zealand 50-67* seeking an additional requirement to require the bore to fully penetrate the aquifer.

Existing RNRP provisions include rules on drilling bores and the council has the ability to control the bore installation. These provisions do not have any requirement for bores to fully penetrate the aquifer, though this will often be desirable. Nor does the New Zealand Standard 4411:2001 Environmental Standard for Drilling of Soil and Rock contain requirements to fully penetrate.

Full penetration of an aquifer is supported because it ensures that the bore can efficiently access the water in the aquifer and it minimises the interference drawdown effects of pumping from neighbouring bores, which may 'dry out' shallow bores during periods when aquifer levels are low. However, the panel considers this requirement should not apply universally, but rather when there is a risk of interference drawdowns causing such problems. This is because the costs of drilling to the full depth of an aquifer may be considerable and should only be incurred where necessary. Later deepening of a bore is an option where shallow well depth becomes an issue.

Additional wording has been added to WQ P22(f) to require full penetration where appropriate.

Fire fighting

The New Zealand Fire Commission (5-2) was opposed in part to objectives and policies that fail to address the contribution that emergency services make to the health, safety and wellbeing of people and the community. The commission requested amendments to objectives and policies to particularly address this matter and to reflect section 14(3) of the RMA. Several submitters were largely supportive.

As discussed earlier, the panel considered a proposed amendment to WQ P31 to include a new clause *(ba) Emergency firefighting response* as a priority water use. However, it considers s14(3)(e) of the RMA and the firefighting legislation already address this issue.

Water bodies, FMUs or WMAs

The panel heard considerable discussion and some confusion over the terms 'FMU' (Fresh water Management Unit) and 'WMA' (Water Management Area). The NPSFM defines a freshwater management unit as "the water body, multiple water bodies or any part of a water body determined by the regional council as the appropriate spatial scale for setting freshwater objectives and limits and for freshwater accounting and management purposes".

The panel understands the confusion and recognises the point of take is the most significant consideration for water take and use. The panel agrees council must define "FMUs" and implement the NPSFM in a staged manner by smaller geographic units. However, the panel also understands how this new term "water management area" has caused confusion.

Submitters including *Federated Farmers 50-26, Trustpower 49-19 and Fonterra 73-4* have noted inconsistencies in the use of surface water terminology. As a result, changes have been made to refer to rivers and streams rather than a multitude of variations. Elsewhere minor amendments to wording have been made to clarify the use of terms, including the use of the fundamental hydrological unit 'water body' when referring to allocation limits.

Water Use Efficiency, Water Metering, Reporting and Information Requirements, Water Accounts, & Schedule 7

WQ I2 Increasing demand for water: 8.2 (F12.10,F14.3,F15.9,F22.11,F26.6,F27.15,F5.5,F6.5,F7.5), 10.2 (F4.5), 12.3 (F14.336,F20.6,F22.12), 13.2 (F14.19), 30.3 (F28.277,F29.225), 47.5 (F28.201,F29.158), 48.3 (F12.11,F14.11,F20.7,F27.16), 49.7 (F10.40,F14.15,F18.26), 50.2 (F10.68,F14.27,F28.2,F29.2), 53.5 (F28.481,F29.430), 63.6 (F28.439,F29.388), 71.5 (F16.48,F19.40), 76.10 (F28.159),80.9 (F28.396,F29.345)
WQ I3 3.2, 4.1, 6.2, 12.4 (F14.337,F22.13), 13.3 (F14.20), 14.3 (F27.17,F4.6), 27.2 (F27.18), 30.4 (F28.278,F29.226), 37.1 (F14.411,F18.27,F27.20), 47.6 (F28.202,F29.160), 49.8 (F10.41,F12.12,F14.178,F18.28,F28.100,F29.100), 50.3 (F12.13,F14.28,F28.3,F29.3), 53.6 (F28.482,F29.432), 54.3, 54.4, 62.3 (F27.19), 63.7 (F28.440,F29.389), 65.1 (F18.29,F19.41,F27.21), 65.2 (F12.14,F27.22), 71.6 (F16.49), 76.11 (F28.160), 77.2, 80.10 (F28.397,F29.346)
WQ I7 The availability of good information: 4.2, 12.5 (F11.2,F12.17,F14.338,F20.8,F22.15,F4.7), 13.7 (F14.236,F18.34), 14.4, 27.3 (F10.14,F11.1), 30.8 (F28.282,F29.230), 31.3 (F14.370,F18.35), 32.1, 48.5 (F14.138), 50.6 (F10.71,F12.18,F14.258,F28.6,F29.6), 53.7 (F28.483,F29.433), 54.5, 62.4, 63.8 (F28.441,F29.390), 65.3, 71.10 (F16.51), 76.12 (F28.161), 80.11 (F28.398,F29.347)
WQ I8 Water available for growing social and economic needs: 3.3, 4.3 (F12.19,F19.43,F8.1), 8.4 (F12.20,F14.99,F15.11,F22.16,F27.23,F5.6,F6.6,F7.6), 10.3 (F12.21,F17.9), 12.6 (F14.339,F15.12,F20.9,F4.8), 13.8 (F14.237), 14.5 (F18.36,F19.44), 26.2, 27.4 (F10.15,F18.37,F19.45), 28.2, 29.2, 30.9 (F28.283,F29.231), 31.4 (F14.371), 32.2, 33.1, 43.1 ,47.10 (F28.206,F29.164), 48.6 (F12.22,F14.139,F15.13,F27.24), 49.10 (F10.43,F12.23,F14.180,F28.101,F29.101), 50.7 (F14.259), 53.8 (F28.484,F29.434), 56.2, 62.5 (F18.38), 63.9 (F28.442,F29.391), 73.20 (F14.430,F14.72), 76.13 (F28.162), 77.3, 80.12 (F28.399,F29.348)
WQ O1 Efficient allocation and use of water: 6.4, 8.6 (F12.24,F14.4,F15.19,F19.57,F22.20,F26.8,F27.32), 30.13 (F28.287,F29.235), 33.2, 47.13 (F18.49,F28.209,F29.167), 50.11 (F10.75,F14.29,F15.20,F28.9,F29.9), 53.10 (F18.50,F28.486,F29.436), 54.6, 63.11 (F18.51,F28.444,F29.393), 65.6 (F18.52,F19.58,F27.33), 76.15 (F18.53,F28.164), 80.14 (F18.54,F28.401,F29.350), 15.4 (F14.69,F26.52)
WQ O5 Land use change: 6.8 (F19.83), 8.8 (F12.26,F14.5,F19.84,F22.25,F27.39), 10.5, 30.17 (F28.291,F29.239), 39.3, 48.9 (F14.142,F20.11), 49.16 (F10.49,F14.185,F28.106), 50.19 (F14.36), 53.14 (F28.490,F29.440), 60.3 (F12.27,F22.26,F23.18), 63.15 (F28.448,F29.397), 65.18 (F15.29,F19.85,F27.40), 66.2 (F19.86,F27.41), 71.14 (F15.30,F16.54,F20.12), 76.19 (F28.168), 80.18 (F28.405,F29.354)
WQ O10 All takes are authorised and accounted for: 6.13 (F19.107), 30.22 (F28.296,F29.244), 31.12 (F14.378,F18.58), 33.4, 39.7, 47.19 (F21.17,F28.215,F29.173), 48.12 (F14.145,F15.37), 49.21 (F10.52,F14.188,F25.13,F28.110), 50.24 (F10.81,F14.266,F19.108,F21.26,F25.14), 53.18 (F28.494,F29.444), 63.19 (F21.53,F28.452,F29.401), 65.25, 71.19, 76.23 (F28.172), 80.22 (F28.409,F29.358)
WQ O11 Water shortage: 5.5 (F30.5), 6.14 (F19.109), 8.12 (F12.35,F14.105,F15.38,F27.51), 10.10, 13.14 (F14.23), 14.7, 27.6 (F10.17), 30.23 (F28.297,F29.245,F4.17), 32.10, 47.12 (F28.208,F29.166), 48.13 (F14.146), 49.22 (F10.53,F14.189,F28.111), 50.25 (F10.82,F12.36,F14.39), 52.17 (F28.359,F29.307), 55.2 (F19.110), 58.12 (F28.254,F29.202), 62.7, 65.26 (F19.111), 66.4 (F19.112), 71.20
WQ P 25 Fresh water accounting system: 8.28 (F14.121,F15.62), 11.10, 31.36 (F14.401,F18.91), 49.46 (F14.212,F9.25), 50.70 (F10.136,F14.309,F28.45,F29.45), 65.67, 71.46 (F16.72,F21.59,F24.10)
WQ P26 Establish accurate record of permitted takes: 11.11 (F21.8,F27.158), 15.3 (F27.159), 31.37 (F14.402,F18.92), 38.12 (F14.91), 38.9 (F10.37,F14.88), 39.25 (F27.160), 47.34 (F21.22,F28.230), 50.71 (F10.137,F14.310,F19.182,F21.29,F28.46,F29.46), 53.31 (F21.44,F28.507,F29.457), 59.2, 63.32

(F21.55,F28.465,F29.414), 65.68, 71.47 (F16.73,F21.60,F24.11), 76.36 (F28.185), 80.35 (F28.422,F29.371)
WQ M1 Submissions on district plans and consents: 49.52 (F14.218,F18.96), 65.74, 71.52 (F16.78)
WQ M2 Information on water availability: 14.27, 15.6, 19.4, 27.26, 32.20, 48.28 (F14.162), 49.53 (F10.63,F14.219), 50.76 (F10.142,F14.315), 59.4, 62.27, 65.75, 71.53 (F16.79)
WQ M3 Encourage efficiency measures: 8.34 (F14.127,F22.52), 12.26 (F14.359), 14.28, 26.10, 27.27, 28.10, 29.10, 32.21, 50.77 (F10.143,F14.316), 56.10, 62.28, 65.76, 71.54 (F16.80)
WQ M4 Support initiatives: 12.27 (F14.360), 13.25 (F14.251), 14.29, 26.11, 27.28, 28.11, 29.11, 32.22, 39.26, 50.78 (F10.144,F14.317), 55.13, 56.11, 62.29, 65.77, 71.55 (F16.81)
WQ M7 Requirements for measurements: 50.80 (F10.146,F14.319), 65.79, 71.57 (F16.83)
WQ M8 Water management groups: 8.36 (F14.129,F22.53), 47.35 (F28.231), 48.30 (F14.164,F27.171), 49.54 (F14.220,F9.30), 50.81 (F10.147,F14.320,F28.51,F29.51), 53.32 (F28.508,F29.458), 54.15, 59.5, 63.33 (F28.466,F29.415), 65.80, 71.58 (F16.84), 76.37 (F28.186), 80.36 (F28.423,F29.372)
WQ O9 Integrated management: 4.5 (F10.2,F27.50,F8.2), 6.12, 10.9, 16.2 (F14.365), 30.21 (F28.295,F29.243), 31.11 (F14.377), 39.6 (F8.16), 41.2, 47.18 (F19.103,F21.16,F28.214,F29.172), 49.20 (F10.51,F14.187,F28.109), 50.23 (F10.109,F14.265,F21.25,F28.19,F29.19), 53.17 (F19.104,F28.493,F29.443), 53.23 (F28.499,F29.449), 54.9, 58.11 (F28.253,F29.201), 63.18 (F19.105,F21.52,F28.451,F29.400), 63.24 (F28.457,F29.406), 65.24, 71.18 (F16.56), 76.22 (F28.171), 80.21 (F19.106,F28.408,F29.357)

Metering, use and efficiency

WQ P24 Metering: 6.33 (F21.3), 7.5, 9.2 (F21.4,F28.336,F29.284), 9.3 (F21.5,F28.337,F29.285), 12.22 (F14.355,F17.46,F22.47), 14.23, 17.6, 18.8 (F10.9,F28.99,F29.99,F8.8), 20.3, 20.4, 21.5, 27.22, 30.41 (F28.315,F29.263), 31.35 (F14.400), 34.4, 36.6,3 8.11 (F10.36,F14.90,F19.181), 39.24 (F21.10), 43.18, 46.6, 47.33 (F21.21,F28.229), 50.69 (F10.135,F14.308,F21.28,F25.50,F28.44,F29.44), 51.6, 53.30 (F18.90,F21.43,F28.506,F29.456), 54.14, 60.15, 60.8, 60.9, 62.23, 63.31 (F21.54,F28.464,F29.413), 65.66, 68.2, 69.6, 70.6, 71.45 (F16.71,F21.58,F24.9), 73.11 (F10.174,F14.422,F28.88,F29.88), 74.2 (F24.2,F28.144,F29.149), 75.1 (F28.145,F29.150), 76.35 (F28.184), 77.8, 78.6, 79.8 (F16.8,F24.7,F28.382,F29.331), 80.34 (F28.421,F29.370)

Issue WQ I3 recognises there can be opportunity costs as a result of inefficient allocation. The panel recommends minor editorial changes to this issue statement, to provide greater clarity. Issue WQ I7 addresses information requirements and acknowledges the importance of good information systems to underpin water management decisions. This issue must acknowledge the value of information for users other than council. The panel has also recommended changes as discussed above in relation to Schedule 15 and the AWA report.

A large number of submissions on water metering showed mixed support. Farming groups raised concerns about the cost of meeting standards than were higher than metering regulations. PC9 sets a high standard for metering, exceeding that of the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010. The panel was advised that one third of surface water takes and approximately half of groundwater takes in the Bay of Plenty are for less than 5 litres per second and are therefore not required to meter under the 2010 Regulations. The requirement to meter to a higher standard than the 2010 Regulations is considered sensible due to the characteristics of water bodies and use patterns in the Bay of Plenty. There are obvious difficulties determining compliance when use is not metered. A robust metering policy addresses the need for information to support water accounts and to evaluate efficiency of allocation as well providing data to help understand aquifer dynamics.

Staffs advised in the section 42A report that council's experience with manual reporting of data showed a large number of consent holders do not provide data in a timely or accurate manner. In the 2016/17 year, many were charged late fees for failing to provide metering data, despite

reminders to do so. The panel understands that supplied data is often of poor quality, and because it is not electronic requires further work by council to enable even basic assessments.

Lack of metering hampers efforts to understand the effects of current allocation levels on streams or aquifers. Allocation *per se* does not cause harm to freshwater ecology or aquifers; it is the taking of water that creates a potential harm and it is only through meters that council can assess taking. The absence of comprehensive records on use is therefore a particular concern. Anecdotal evidence and preliminary assessments from staff indicate that a significant proportion of allocation is unused, even after allowance for variability due to weather. This is also the case in other parts of the country. Allocations should over time be reduced closer to actual water need, in the interests of efficient allocation.

Many legacy consents, granted at a time when the benefits of metering were not well understood and technology less advanced are unmetered. The panel acknowledges that the revised metering policy applies only to new consents, and to certain takes allowed as a permitted activity. Unless metering is already required under the 2010 Regulations there are legal constraints to imposing metering on existing unmetered consents.

The panel supports the use of water meters and monthly electronic reporting to provide accurate information on water use. The format by which data is submitted is important because it determines the ease and reliability by which it can subsequently be used. Some councils provide detailed information on their websites, outlining the format required for electronic data submission. Many have adopted the Open Geospatial Consortium (OGC) WML2 standard format but accept data in other formats, too. BOPRC follows similar conventions, allowing data upload to its database, but also allows paper returns and, we understand, has limited quality assurance of data returns in whatever format they are submitted. Specifying that reporting must be in a Council approved electronic format ensures that all data is able to be used without additional handling. This should ensure the best possible use of metering data.

The panel reviewed the complexity of metering and reporting requirements that applied to different regimes according to rates of take, allocation status and whether the water was from ground or surface water sources. Metering is considered by the panel to be one of the most efficient methods of implementing council's responsibilities under the NPSFM. This core tool must be implemented effectively in order to discharge its responsibilities. Robust metering and reporting requirements improve understanding of the water resource, providing applicants, council staff, iwi and the wider community reassurance that evidence-based decisions are being made.

The panel determined that some simplification was justified, including to:

- remove the need to separately meter and report water taken under s14(3)(b) of the Act, but to retain the requirement for certain permitted activities to meter and report use
- retain the minimum requirement that all consented water takes be metered and reported monthly
- only require daily reporting if considered necessary to meet the objectives of the plan
- specify that reporting must be in a council approved electronic format

The panel consider that the revised policy WQ P24 better balances the cost and physical difficulties that would make daily reporting excessively onerous in certain circumstances while ensuring that Council obtains data necessary to confirm compliance, support water accounts and undertake efficiency analysis. It recommends daily reporting only in cases where takes are larger than 5 l/sec, are secondary or flood harvesting takes, where the resource is allocated above the interim limit or where resource use is under restriction.

Evidence was presented at the hearing that some dairy farms would require up to 7 meters to comply with requirements. However, submitters also highlighted that information gained from registration of permitted takes would support a greater understanding of total water use on a property. The deletion of the requirement for separate metering and reporting of water taken as a permitted activity and under 14(3)(b) (stock drinking water) is not considered to significantly impact on Council's understanding of total water use, as there are many other properties that were not required to meter stock drinking or permitted activity water use. Council should be able to model the size and cumulative effect of those smaller takes.

Schedule 7

Schedule 7 Reasonable and efficient use criteria: 5.9, 8.44 (F14.134,F15.76), 9.5 (F28.339,F29.287), 9.6 (F28.340,F29.288), 12.32, 13.29 (F14.254,F19.205), 15.8, 19.6, 31.52 (F15.74,F18.114,F20.59,F27.244), 38.18 (F14.96), 39.39, 43.22 (F13.5), 48.39 (F14.172), 50.99 (F10.164,F25.57,F28.67,F29.67,F4.32), 52.33 (F28.374,F29.323), 58.32 (F28.274,F29.191), 60.10 (F20.60,F23.23), 60.16, 65.93 (F15.75), 65.94 (F27.243), 68.4 (F26.59), 14.45 (F19.206,F4.33), 27.44 (F10.99), 62.45

Schedule 7 in PC9 is referenced in multiple policies and rules and specifies how efficient use will be determined. As notified, detail was provided only for irrigation and municipal water supplies. Other uses will be calculated by reference to good management practices, including an independent party audit.

The panel noted that while extensive guidance is provided for municipal and irrigation takes, this is not the case for other uses. This is either because the takes either have somewhat unique characteristics or more detailed information is unavailable. *Federated Farmers of New Zealand 50-99* proposed an opening paragraph that explains the purpose of the schedule is to ensure the amount of water taken is both reasonable and justifiable, pursuant to a rule in the plan. It is recommended that the following text be included in the schedule to provide greater clarity as to its purpose: "*The amount of water taken pursuant to any provision in this plan must be reasonable and justifiable with regard to the intended use and, where appropriate, comply with this schedule.*"

Policies P21 and P31 and Rule R6 require a water management plan (WMP) for municipal water supplies. The schedule provides details about the content of sucha plan. Submissions from *Tauranga City Council* (8-44), *Whakatāne District Council* (12-32), *Western Bay of Plenty District Council* (48-39), *Rotorua Lakes Council* (60-10) and *Ōpōtiki District Council* (68-4) sought points of clarification or minor change to the requirement. These are mostly supported.

The panel does not consider there is scope in submissions to address soil moisture testing as a tool for water allocation.

Climate Change

30.3 (F28.277,F29.225), (also listed in WQ I2), 30.6 (F28.280,F29.228) (also in WQ I4), 12.17 (F14.349,F17.32,F20.39,F22.40), 14.4(also WQ I7), 27.3 (F10.14,F11.1) (also WQ I7), 11.1 (F18.55,F19.74), (also WQ O3), 62.4 (also WQ I7), 32.6 (also WQ O2), 14.7 (also WQ O11), 27.6 (also WQ O11), 62.7 (also WQ O11), 1.6, 27.45 (F10.100,F20.62,F26.61), (also in municipal water supplies), 62.46 (F20.63,F26.62) (also in municipal water supplies

Several submitters including *Ngati Manawa 30-6, Horticulture NZ 12-17, New Zealand Kiwifruit Growers 14-4* considered PC9 should make more explicit statements on climate change.

Climate change is a significant regional, national and global issue. The NPSFM Policy B1 requires council to have regard to the reasonably foreseeable impacts of climate change. In Policy IR 2B, the BOP RPS explicitly requires climate change to be considered:

Having regard to the likely effects of climate change:
Recognise and provide for the predicted effects of climate change having particular regard to:
(a) Predicted increase in rainfall intensity, taking account of the most recent national guidance and assuming a minimum increase in the annual mean temperature of 2°C by 2090 (relative to 1990 levels); and
(b) Predicted increase in sea level, taking into account the most recent national guidance and the minimum sea-level rise projections in Policy NH 11B.

The panel is acutely aware that climate change must be considered in developing all RMA policy and acknowledges the many strong directives along this line. Preferably, climate change will be directly considered in developing policy as opposed to incrementally considered consent by consent. The panel considers WQ P2(f)(i) adequate because it provides a specific reference and consideration of climate change in PC9. In addition, sufficient direction on this matter is given in the amendment of WQ P2(d)(viii) and requirements in the numerous external guides and policies including the NPSFM itself.

Water Management Areas

WQ O11 Water shortage: 5.5 (F30.5), 6.14 (F19.109), 8.12 (F12.35,F14.105,F15.38,F27.51), 10.10, 13.14 (F14.23), 14.7, 27.6 (F10.17), 30.23 (F28.297,F29.245,F4.17), 32.10, 47.12 (F28.208,F29.166), 48.13 (F14.146), 49.22 (F10.53,F14.189,F28.111), 50.25 (F10.82,F12.36,F14.39), 52.17 (F28.359,F29.307), 55.2 (F19.110), 58.12 (F28.254,F29.202), 62.7, 65.26 (F19.111), 66.4 (F19.112), 71.20

WQ P1 Establish FMU: 4.6 (F10.3,F17.15,F19.115,F27.60), 6.15, 8.13 (F14.106,F15.42,F17.16,F22.33), 10.11, 13.15 (F14.24,F19.116), 15.5, 19.3, 25.10 (F1.10,F27.61,F28.139,F29.144), 30.24 (F28.298,F29.246), 48.14 (F14.147), 49.23 (F14.190,F28.112), 50.26 (F10.83,F14.267,F19.117,F28.20,F29.20), 53.19 (F19.118,F21.41,F27.62,F28.495,F29.445), 63.20 (F19.119,F27.63,F28.453,F29.402), 65.27, 71.21 (F16.57), 76.24 (F19.120,F27.64,F28.173), 80.23 (F19.121,F27.65,F28.410,F29.359)

WQ P2 Work within WMA: 3.5, 4.7, 6.16, 7.1, 8.14 (F12.37,F14.107,F15.43,F26.10), 10.12 (F25.15), 12.13 (F14.345), 12.14 (F14.346), 13.16 (F14.242,F14.243,F19.122,F3.1), 14.8,17.2,18.3 (F10.11,F28.94,F29.94,F8.5), 21.1,22.1 (F9.35), 25.11 (F1.11,F28.140,F29.145), 27.7, 30.25 (F28.299,F29.247), 31.14 (F14.380), 31.15 (F14.381), 31.16 (F14.382), 31.17 (F14.383), 31.18 (F14.384), 31.19 (F14.385), 32.12, 33.5, 38.4 (F10.30,F14.83,F19.123,F25.16), 39.10, 39.8, 39.9 (F19.124,F27.66,F3.2), 41.3, 43.7 (F13.2,F13.4), 46.2 ,47.21 (F18.62,F19.125,F21.19,F28.217,F29.175), 47.22 (F19.126,F21.20,F28.218,F29.176), 48.15 (F12.38,F14.148), 49.24 (F10.54,F14.191,F18.63,F25.17,F28.113), 50.27 (F10.110,F14.268,F21.27,F28.21,F29.21), 50.28 (F14.40,F25.18,F4.21), 50.29 (F25.19), 50.30 (F14.269,F25.20,F28.22,F29.22), 50.31 (F14.270,F25.21), 50.32 (F14.41,F19.127,F25.22), 50.33 (F14.271,F25.23), 50.34 (F14.272,F25.24), 50.35 (F12.39,F14.273,F25.25), 51.2, 52.18 (F19.128,F28.360,F29.308), 53.20 (F19.129,F21.42,F28.496,F29.446), 54.10, 58.13 (F28.255,F29.203), 62.8, 63.21 (F19.130,F28.454,F29.403), 65.28, 65.29, 65.30, 65.31, 65.32, 65.33 (F11.10), 65.34, 65.35, 65.36, 65.37, 65.38, 65.39, 65.40, 65.41, 65.42, 65.43, 66.5, 69.2, 70.2, 71.22 (F16.58), 71.23 (F16.59), 73.2 (F10.166,F14.416,F28.80,F29.80), 76.25 (F18.64,F19.131,F28.174), 77.5, 78.2, 80.24 (F18.65,F19.132,F28.411,F29.360), 81.4 (F17.17,F19.133,F20.19,F28.71,F29.71), 81.6 (F28.73,F29.73)

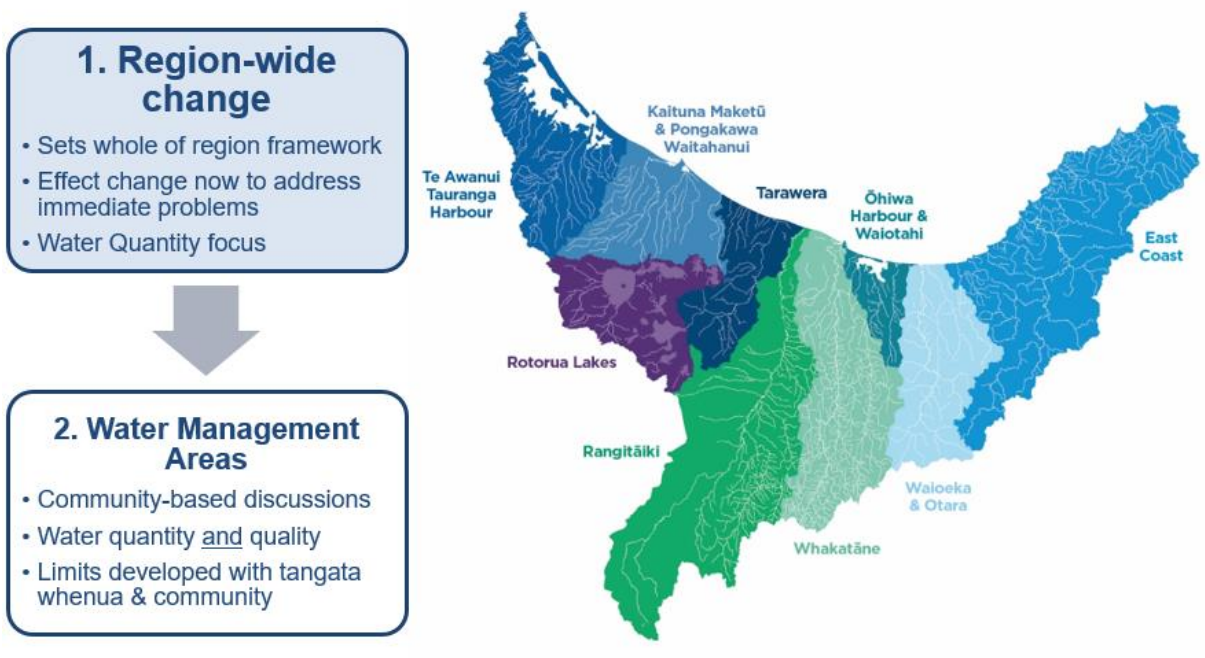
WQ P13 Promote efficient use: 5.7 (F30.7), 6.27, 8.23 (F14.116,F15.55), 10.21, 12.18 (F14.350,F14.351,F15.56,F20.42,F22.41), 14.16, 27.15, 30.35 (F27.108,F28.309,F29.257), 31.27 (F14.393,F19.153,F27.109), 32.14 (F19.154), 33.7, 39.18, 43.14, 44.5, 47.28 (F28.224,F29.182), 49.36 (F14.202,F28.123), 50.55 (F10.122,F14.294,F28.32,F29.32), 52.21 (F28.363,F29.311), 55.5, 58.16 (F28.258,F29.207), 62.16, 65.54 (F4.23), 71.35 (F16.66,F4.24), 81.11 (F11.12,F27.110,F28.78,F29.78)

Framework

The panel received comprehensive background information for the two-stage (PC9 first, then WMA later) approach proposed by council.

The notified plan change provided very little introduction to the background and rationale for the plan change and how it linked to future work at the WMA and FMU level. This is discussed in early sections of this report.

The following diagram was therefore useful:



The panel believes the introduction to the plan change, under heading Part ll Quantity, requires greater explanation. As a result, amendments have been made to provide a more detailed introduction and explanation of the key concepts and ideas behind PC9. In particular, the reference to interim limits in PC9 and terms FMU and WMA are explained. The panel notes that PC9 seeks to change the RNRP and, once PC9 is operative, a separate PC9 document will no longer exist. The panel does not support providing lengthy explanatory text specific to PC9 within the RNRP itself.

Water user groups

A large number of submitters supported water user groups as an innovative and efficient way to promote sustainable use of freshwater resources, particularly transfers. *Federated Farmers (50-93)* made detailed submissions on the role of water user groups.

The panel is supportive of water user groups but notes these groups, as described in WQ P 13, require definition. Consequently, the panel has recommended a new definition for water user group.

PC9 seeks to encourage the establishment of water user groups. Method WQ M8 says their purpose is:

(a) Co-ordinating the take and use of water authorised by resource consent.
(b) Voluntary rostering or rationing of water takes during times of low water availability.
(c) Pro rata reduction of water allocated by resource consent.
(d) Recording and reporting information to Council.

In addition to this statement of function, the hearing panel supports providing a definition of water user group as the term is used throughout the plan, particularly in the rules section.

Water Permit Transfers

WQ P23 Transfer of resource consents: 6.32, 10.26 (F17.45), 14.22, 27.21 (F10.22), 30.40 (F28.314,F29.262), 31.34 (F14.399), 32.18, 33.9, 38.8 (F10.35,F14.87), 43.17, 44.6 (F19.179,F27.154), 47.32 (F28.228,F29.186), 49.45 (F14.211,F27.155,F9.24), 50.68 (F10.134,F14.307,F28.43,F29.43), 52.23 (F27.156,F28.365,F29.313), 53.29 (F28.505,F29.455), 54.13, 55.6, 58.20 (F27.157,F28.262,F29.211), 62.22, 63.30 (F28.463,F29.412), 65.65 (F19.180,F25.49), 71.44 (F16.70), 76.34 (F28.183) 80.33 (F28.420,F29.369)
WQ R7 Rule permitted transfer: 1.13, 6.34 (F4.26), 10.30, 11.22, 14.38, 27.37, 30.48 (F28.322,F29.270), 31.48 (F12.97,F27.227), 33.14, 48.35 (F14.169), 50.92 (F10.157,F14.329,F21.35,F28.62,F29.62), 52.29 (F27.228,F28.371,F29.319), 55.7, 58.28 (F27.229,F28.270,F29.219), 61.8 (F16.42,F27.230), 62.38, 65.89, 71.66 (F27.231)
WQ R8 Rule controlled activity transfer: 1.14, 6.35 (F27.232,F4.27), 10.31, 11.23, 11.24, 11.25, 14.39, 27.38, 30.49 (F27.233,F28.323,F29.271), 31.49 (F18.108), 32.23, 33.15, 44.7 (F12.98,F19.198,F27.234), 47.43 (F28.239,F29.187), 49.62 (F14.229,F31.7), 50.93 (F10.158,F14.330,F19.199,F21.36,F25.56,F28.63,F29.63), 52.30 (F28.372,F29.320), 53.40 (F28.516,F29.466), 55.8 (F12.99), 58.29 (F28.271,F29.220), 61.9 (F16.43), 62.39, 63.41 (F28.474,F29.423), 65.88 (F12.100), 71.67, 73.17 (F14.428,F28.92,F29.92), 75.2 (F28.146,F29.151), 76.45 (F28.194),80.44 (F28.431,F29.380)
WQ R9 Rule RDA transfer: 1.15, 6.36 (F19.200,F27.235,F4.28), 10.32, 11.26, 11.27, 14.40, 27.39, 30.50 (F19.201,F27.236,F28.324,F29.272), 31.50, 33.16, 39.36, 44.8 (F12.101,F27.237), 47.44 (F28.240,F29.188), 49.63 (F11.15,F14.230,F9.34), 50.94 (F10.159,F14.331,F28.64,F29.64), 52.31 (F28.373,F29.321), 53.41 (F28.517,F29.467), 55.9, 58.30 (F28.272,F29.221), 61.10 (F16.44), 62.40, 63.42 (F28.475,F29.424), 65.90 (F11.16,F12.102), 71.68, 76.46 (F28.195), 80.45 (F28.432,F29.381)

A large number of submissions related directly or indirectly to water permit transfers. Iwi submitters in particular (*30-40, 52-23, 55-6, 65-65, 71-44)* opposed the transfer of water totally, unless it was subject to approval by tāngata whenua. *CNI Iwi Land Management (65-26, 65-65) and Ngāti Pikiao Environmental Society (71-44)* opposed the principle of transfer on both philosophical and commercial grounds, on the basis that those not using their original allocation should relinquish it back to the pool of water available for allocation. The breadth of perspectives presented made this a challenging topic.

The transfer of permits for the take and use of water is provided for under s136(2)(b) of the RMA. Under this section, a person may transfer the whole or any part of the holder's interest in the permit to another person on the site for which the permit is granted, or to another site if both sites are in the same catchment or aquifer. In the latter situation, the transfer is expressly allowed only by a rule in a plan or if it has been approved by the consent authority that granted the permit.

The staff section 42A report noted that in *Hampton v Canterbury Regional Council* the court stated that water permits are only freely transferable to an owner or occupier of the site for which the permit was granted. The court's view was that transfer to anyone else was only available in limited circumstances, where either the regional plan expressly allows it or the consent authority has approved it as if it were an application for resource consent. From this case, it is clear that PC9 needs to provide a rule to enable transfers between properties.

The NPSFM (Policy B3) requires regional councils to "state the criteria by which applications for the approval of transfers of water take permits are to be decided, including to improve and maximise the efficient allocation of water." The Ministry for the Environment's guide to the NPSFM confirms that the focus of Policy B3 is to support greater uptake of consent transfers, to maximise efficient allocation. Stating assessment criteria is designed to increase certainty and remove unnecessary administrative barriers or inefficiencies.

The RPS specifically references water transfers in Policy WQ 1A. It says:

Policy WQ 1A: Promoting efficient water use, water harvesting and water transfers *Promote the efficient use of water, enable water harvesting where adverse effects on the environment can be avoided, remedied or mitigated, and enable the transfer of water permits in whole or in part.*

The panel considered evidence that both supported and opposed water transfers. It also studied detailed discussion in the staff section 42A report that included statements concerning the potential for unfettered water transfers to embed consent over-allocation. This is where the transfer of water that is never likely to be used by the consent holder simply increases actual use.

On balance, the panel supports the use of water permit transfers pursuant to s136 of the RMA as an efficient means of managing and, potentially, clawing back water use. The panel recognises that by providing for water permit transfers, PC9 is giving effect to the Bay of Plenty Regional Policy Statement (RPS) Policy WQ 1A.

Limitations on transfer

Several factors have been considered for and against a permissive water transfer regime. The panel is concerned that enabling the transfer of unused water could embed over-allocation by enabling use of water that, currently, is allocated but unlikely to be used. This could lead to significant environmental harm. The panel is also concerned that transfer may not be well understood by many submitters and appears to cause significant cultural offence. The extent to which water becomes "monetised" under a transfer scheme may sit behind many of these issues. The panel considers that many of these problems will become clearer when WMA limits are assessed. The WMA process is considered the appropriate place to review policy and develop rules for transfer.

The panel believes amendments made to WQ R7 and deletion of the controlled and restricted discretionary rules for transfers will result in greater clarity over when a water transfer can be undertaken. This will ensure assessment of a transfer will be undertaken. It will now allow for the trading of water permits within a catchment and between users, only subject to the full discretion of the council.

To avoid embedding over-allocation, the panel supports a new clause to WQ P23, specifying that the transferor must show the water has been taken and lawfully used for the purpose for which it was granted in the preceding 5 years.

Temporary transfer

The panel considers the amendment to permitted activity rule WQ R7(b) limits permitted transfers to temporary transfers only and requires specified information to be provided to council. The amendment also ensures an understanding of the volume and the level at which the take has been occurring over the previous 5 years.

Recognising Existing Users

WQ O8 Decision making when allocating water: 4.4 (F10.1,F12.32,F22.29,F27.43), 5.2 (F25.6,F30.2), 6.11 (F19.95), 8.11 (F12.33,F14.104,F15.34,F22.30,F5.8,F6.8,F7.8), 10.8 (F17.13), 12.12 (F14.344,F15.35,F20.14,F22.31), 14.6 (F25.7,F27.44), 15.12 (F20.15,F22.32), 19.10, 26.4, 27.5 (F10.16,F19.96,F25.11,F27.45), 28.4, 29.4, 30.20 (F28.294,F29.242), 31.10 (F11.9,F14.376,F2.3,F27.46), 32.9 (F19.97,F25.8), 33.3 (F19.98,F27.47), 38.3 (F10.29,F14.82,F19.99,F25.12), 40.2, 43.6, 44.3 (F20.16,F27.48), 47.17 (F28.213,F29.171), 48.11 (F14.144,F15.36,F20.17), 49.19 (F10.50,F25.9,F9.5), 50.22 (F10.80,F12.34,F14.38,F17.14,F19.100,F25.10,F28.18,F29.18), 56.4, 58.10 (F28.252,F29.200), 62.6 (F19.101,F27.49), 65.21, 65.22, 65.23, 66.3, 71.17 (F16.55,F19.102), 73.21 (F10.165,F14.431,F14.73,F27.245)
WQ P12 Recognise existing users: 4.9 (F10.5,F17.28), 6.26 (F17.29), 8.22 (F12.61,F14.115,F15.54,F26.21,F27.101), 9.8 (F17.30,F19.150,F21.7,F27.102,F28.342,F29.290), 10.20 (F17.31), 11.8, 12.17 (F14.349,F17.32,F20.39,F22.40), 14.15, 27.14 (F10.20,F19.151), 30.34 (F17.33,F28.308,F29.256), 31.26 (F14.389), 40.4, 43.13 (F27.103), 48.22 (F12.62,F14.155,F20.40,F26.22,F27.104), 49.35 (F14.201,F17.34,F18.87,F25.42,F9.17), 50.54 (F10.91,F14.293,F28.31,F29.31), 55.11, 59.1, 62.15, 65.53 (F17.35,F27.105), 66.6 (F17.36,F27.106), 71.34 (F16.65,F17.37,F19.152,F20.41,F27.107), 73.22 (F10.171,F14.432,F14.74,F4.22)

First in, first served

The hearing panel received several submissions suggesting alternative approaches to allocation, ranging from moratoriums to reviews of all consents.

Under the Act, allocation between competing uses of the same resource is determined by the first-in, first-served process confirmed in the Court of Appeal's decision in *Fleetwing Farms Ltd v Marlborough District Council.* The Court of Appeal found the consent authority was required to decide each application on its merits "without regard" to any competing application. The Court stated that if the sustainable management purpose of the Act is satisfied in a particular case, the consent should be granted.

Trustpower (49-51) has noted the deletion of policy 71 that stated water was to be allocated on a first in, first served basis. Policy 71 is "*To allocate water on a first in first served basis, subject to efficient use as specified in policy 73"*. The panel notes the default allocation method under the Act is first in, first served. The panel supported this deletion. Policie WQ P21 is the only policy that potentially moves one use ahead of others in a concurrent assessment situation.

The panel is very mindful that there is nothing in the Act to warrant refusing an application on the grounds that another applicant might better meet the Act's purpose. This matter was further explored and confirmed in *Central Plains Water Trust v Synlait Ltd,* where the court concluded the point at which an application was lodged determined priority for processing purposes.

Although the Act provides plenty of scope for councils to write rules that allocate water on other than a first in, first served basis, there is little guidance on how this might occur. Therefore, the panel is unable to support any alternative.

It should be noted that the hearing panel understands the principle of first in, first served remains in relation to existing water users and those seeking consent.

Registering permitted activities

Federated Farmers of New Zealand 50-56 presented a submission on WQ P14. *Mercury NZ 25-44* and others made submissions concerning timing - when permitted activities (Rules WQ R1 - 3) should be registered with council. Similarly, WQ R4 (controlled activity for dairy sheds) and WQ R5 (controlled

groundwater takes) rely on applications being received within a specified planning milestone period. Council has considerable discretion to determine whether that milestone should be when council notifies its decision on those matters or when appeals on the matter or whole plan have been resolved. The panel notes the registration process depends on applicants presenting the appropriate documents to council and on council's in-house systems being able to accommodate those documents. The panel understands considerable work is needed to manage this process, ranging from database amendments to establishing appropriate monitoring and compliance checking processes.

The panel considers permitted take registration (WQ R1-3) a relatively important but somewhat onerous requirement. Permitted take information is an important part of water accounts and, without registration, subsequent WMA processes will be more difficult. Therefore, the panel concludes the timeframe for lodging a resource consent or registration of a permitted activity should remain at 12 months from the relevant rule becoming operative, providing sufficient time for council to communicate the new rules and prepare registration systems..

Rules WQ R4-5 concerning controlled activities for dairy shed and existing currently permitted groundwater takes also require reasonably timely implementation. In both cases the panel considers it appropriate that council bring current activities into the planning regime as soon as possible, to provide confidence the Act is being soundly administered. The panel therefore recommends that the opportunity for accessing these controlled activity rules is within 12 months of the rule becoming operative.

Additional Permitted Activities

5.2 (25.6, 30.2)

Well Testing

When seeking resource consent to take water from a well or bore, the applicant is often required to undertake a pump test to ascertain the potential effects the proposed take would have on the aquifer and other users. The rate and volume of the test generally exceeds permitted activity volumes. *Federated Farmers of New Zealand (50 – 87)* seeks a new permitted activity rule to allow for well or aquifer testing.

The taking of water for aquifer of pump testing is normally included in a resource consent under rule 40B(g) of the NRRP. In limited circumstances, such as seeking resource consent for an existing bore drilled prior to rule 40B becoming operative in 2010, testing may not be required. Also, the testing may not have been required at the time of drilling if the initial take and use of water did not require resource consent.

As further submitters, T*rustpower (FS 19-90) and Ngāti Mākino (FS 28-57)* raised concerns about the risk a permitted activity rule could create to the sustainability of the resource and also controls on the undertaking of such tests.

The panel agrees with the section 42A report, which says it would be inefficient to require a resource consent to temporarily take water in order to obtain a resource consent to more permanently take water. Concerns raised by further submitters and others about the potential abuse of any provisions can be managed by utilising conditions that require council must be advised and volumes limited.

The new rule WQ RX provides for well testing and allows the additional time submitters had sought. The panel considers the temporary nature of aquifer or pump testing is appropriately considered as a permitted activity.

Unauthorised Water Takes

WQ I9 Unauthorised taking of water: 12.8 (F14.341,F15.14,F22.17,F4.9), 13.9 (F14.238), 30.10 (F28.284,F29.232), 31.5 (F14.372), 48.7 (F14.140), 49.11 (F10.45,F14.181,F18.39,F28.102,F29.102), 50.8 (F10.72,F14.260,F19.46,F21.23,F28.7,F29.7), 65.4
WQ P14 Opportunity for existing unauthorised: 6.28 (F21.1), 10.22, 11.9, 14.17, 22.4, 27.16, 30.36 (F28.310,F29.258), 31.28 (F14.394,F27.111), 38.10 (F10.34,F14.89), 39.19, 49.38 (F14.204,F27.112,F28.124), 50.56 (F10.92,F14.295,F19.155,F25.44,F28.33,F29.33), 62.17, 65.55 (F27.113), 66.7 (F27.114), 71.36 (F16.67), 73.8 (F14.420,F28.85,F29.85), 79.10 (F15.57,F28.384,F29.333)
WQ R4 Controlled activity rule – existing dairy: 1.10, 10.29 (F27.198), 14.35 (F27.199), 17.9,21.8, 27.34 (F10.24,F27.200,F31.3), 30.45 (F28.319,F29.267), 31.45 (F14.410,F27.201,F31.2), 38.14 (F10.39,F14.93), 38.17 (F12.90,F14.95), 39.33 (F12.91,F19.196,F21.11,F27.202), 41.1, 46.9, 47.40 (F27.203,F28.236), 49.60 (F14.226,F14.227,F27.204,F3.12,F31.5,F9.31), 50.88 (F10.153,F14.325,F21.33,F28.58,F29.58), 50.89 (F10.154,F12.92,F14.326,F28.59,F29.59), 51.9, 52.27 (F28.369,F29.317), 53.37 (F27.205,F28.513,F29.463), 58.25 (F28.267,F29.216), 59.9 (F27.206), 61.5 (F27.207), 62.35 (F27.208), 63.38 (F27.209,F28.471,F29.420), 64.6 (F27.210,F28.333,F29.281), 65.85 (F27.211),69.9, 70.9, 71.63, 72.6, 73.15 (F12.93,F14.426,F28.90,F29.90), 75.3 (F28.147,F29.152), 76.42 (F27.212,F28.191), 78.9, 80.41 (F27.213,F28.428,F29.377)

Issue

Council is aware approximately 160 of the region's dairy farmers and 130 horticultural irrigators are potentially taking water at volumes that exceed permitted activity limits and do not have resource consent. There are various reasons for this, including a lack of awareness of the limitations of what is allowed under s14(3)(b) of the Act. The panel understands the precise number of unauthorised dairy farms is uncertain, partly due to lack of information about whether water is being taken from groundwater, surface water or from a reticulated supply. There is no practical means to ascertain the source of the water or verify use when no consent is held. Council and the dairy industry have shared data to better understand the problem and this has helped significantly.

The panel understands council seeks to bring unauthorised dairy activities into its consenting system by way of a controlled activity consent. The proposal, as notified, is to "grandfather" these unlawful dairy takes - i.e. guarantee their consent on the basis that the water takes are relatively minor and the activity is longstanding. All these unconsented-for-take dairy farms have obtained council discharge consents but were not advised that they required consents to take water, too. To further complicate matters, some of these takes are in over-allocated catchments and several occur above hydro-electric power stations that hold consents for downstream water.

The controlled activity dairy rule has been particularly contentious, with the dairy community supporting the principle of "grandfathering" users in, while most tāngata whenua, other water users and environmental interests seek greater control. The issue was subject to a formally mediated session.

The panel understands the unauthorised dairy use problem has arisen at several councils around New Zealand.

Other councils have:

- Provided a permitted activity rule for all existing dairy shed takes; or
- Provided a controlled activity for all existing dairy shed takes; or
- Provided a controlled activity for the majority of dairy shed takes and no special rules for the largest takes

The section 42A report provided the panel with options on the basis that staff considered these dairy takes had a minor effect on the environment and other users. Technically, an argument for derogation could be made but the impact is small, the activity longstanding and it seems extremely unlikely consents would be declined if discretionary. Derogation depended on the particulars of the consent(s) in question.

Horticultural irrigation takes, which are more water-use-dense per hectare, and less easily confused with takes allowed under s14(3)(b) do not have the same special status as is proposed for dairy.

Principles

In brief, the panel supports council's intent to ensure all water takes sit within the framework established by PC9, meaning they are consented, metered and managed. There is an expectation that council will administer the Act appropriately, which means ensuring administrative systems and processes are in place to manage the effects of activities. The panel supports council's intent to provide a pathway to compliance that is proportionate to the issue and understands that existing consented users have an expectation for continued use for the length of the consent. However, no user has the ability to claim perpetual rights to an allocation. In the panel's opinion, the WMA process is the correct process to consider the available allocation of a particular water supply. On this basis, the panel has some sympathy for the position of *Horticulture NZ* and others who note that granting unlawful users consent en masse, via a controlled activity consent, potentially reduces their own long term rights to water and reliability of use.

To address concern about derogation, the panel have incorporated additional matters for control into the controlled activity rule for existing dairy shed wash down and milk cooling takes. In water bodies that are allocated above the limit Council has reserved its control over measures to avoid or mitigate adverse effects on existing authorised users. The panel supports the overarching drive of PC9 to provide a sustainable water management framework that supplies more information. In obtaining this information, Bay of Plenty Regional Council will be better able to assess those catchments that are over-allocated and those that have additional supply capacity.

Unauthorised dairy farm water takes

WQ R4 Controlled activity rule – existing dairy: 1.10, 10.29 (F27.198), 14.35 (F27.199), 17.9, 21.8, 27.34 (F10.24,F27.200,F31.3), 30.45 (F28.319,F29.267), 31.45 (F14.410,F27.201,F31.2), 38.14 (F10.39,F14.93), 38.17 (F12.90,F14.95), 39.33 (F12.91,F19.196,F21.11,F27.202), 41.1, 46.9, 47.40 (F27.203,F28.236), 49.60 (F14.226,F14.227,F27.204,F3.12,F31.5,F9.31), 50.88 (F10.153,F14.325,F21.33,F28.58,F29.58), 50.89 (F10.154,F12.92,F14.326,F28.59,F29.59), 51.9, 52.27 (F28.369,F29.317), 53.37 (F27.205,F28.513,F29.463), 58.25 (F28.267,F29.216), 59.9 (F27.206), 61.5 (F27.207), 62.35 (F27.208), 63.38 (F27.209,F28.471,F29.420), 64.6 (F27.210,F28.333,F29.281), 65.85 (F27.211), 69.9, 70.9, 71.63, 72.6, 73.15 (F12.93,F14.426,F28.90,F29.90), 75.3 (F28.147,F29.152), 76.42 (F27.212,F28.191), 78.9, 80.41 (F27.213,F28.428,F29.377)

The majority of the panel considers a controlled activity status the most balanced approach for both existing consent holders and unauthorised takes associated with water for dairy shed wash down and milk cooling purposes. Using section 42A option 1, the panel proposes an appropriate middle-ground. Special note is made of the inclusion matter (e) in WQ R4. This is intended to provide an opportunity for applicants, industry and the council to consider the practical measures they intend to implement to manage the aforementioned effects. This will happen before the first consent is lodged.

The panel believes lodging the necessary information within 12 months of PC9 being operative is an appropriate timeframe, for the same reasons given above for notifying council of permitted water takes.

The panel also wished to highlight both the extent to which this issue has challenged its members and the importance of metering in PC9 to ensure successful implementation of WQ R4. Those dairy shed operations that do require resource consent for a controlled activity are, by the nature of their operation, of a scale that should be assessed and accounted for in the Bay of Plenty Region water take accounts.

The panel believes it appropriate that WQ R4 address both surface water and groundwater takes and has provided specific conditions for each.

Municipal water Takes

??? Municipal water supplies: 14.46 (F15.77,F20.61,F26.60), 27.45 (F10.100,F20.62,F26.61), 62.46 (F20.63,F26.62), 8.40 (F12.108,F14.7,F15.78,F22.56), 12.31 (F12.109,F14.49), 14.44 (F26.53), 27.43 (F14.63,F26.54), 44.2 (F20.56,F27.239), 48.37 (F14.170), 50.98 (F10.163,F15.79), 62.44 (F26.55)
WQ P21 Essential nature of domestic municipal water: 8.27 (F12.72,F14.120,F22.46,F27.143), 12.21 (F14.354,F15.60), 14.21 (F26.28,F27.144), 15.9, 19.7, 27.20 (F10.21,F20.45,F26.29,F27.145), 31.33 (F14.398), 44.4 (F20.46,F27.147), 47.31 (F27.148,F28.227,F29.185), 48.24 (F14.158,F15.61,F27.149), 50.66 (F10.132,F14.305,F28.42,F29.42), 53.28 (F27.150,F28.504,F29.454), 58.19 (F28.261,F29.210), 62.21 (F26.30,F27.146), 63.29 (F27.151,F28.462,F29.411), 65.63, 73.10 (F14.61,F28.87,F29.87), 76.33 (F27.152,F28.182), 80.32 (F27.153,F28.419,F29.368)
WQ M5 Metering in reticulated areas: 12.28 (F14.361), 14.30, 27.29 (F10.95), 33.10, 39.27, 62.30
WQ R6 Municipal renewal: 1.12, 8.37 (F12.95,F14.6,F22.54,F26.41,F5.12,F6.12,F7.12), 9.4 (F20.49,F21.6,F26.42,F28.338,F29.286), 11.20, 11.21 (F15.68), 12.30 (F14.363,F20.50), 14.37 (F26.43), 15.7 (F15.67,F20.51), 19.5 (F20.52), 26.12, 27.36 (F10.26,F14.64,F26.44), 28.12, 29.12, 30.47 (F28.321,F29.269), 31.47 (F18.107), 39.35, 47.42 (F28.238), 48.34 (F14.168), 50.91 (F10.156,F14.328,F15.69,F20.53,F26.45,F28.61,F29.61), 53.39 (F27.221,F28.515,F29.465), 56.12, 58.27 (F28.269,F29.218), 60.13 (F20.54), 60.7 (F12.96,F23.22,F26.46), 61.7 (F16.41), 62.37 (F26.47), 63.40 (F28.473,F29.422), 65.87 (F15.70,F26.48), 71.65, 75.4 (F28.148,F29.153), 76.44 (F28.193), 79.5 (F10.180,F15.65,F16.5,F24.6,F28.379,F29.328), 79.6 (F10.181,F16.6,F28.380,F29.329), 79.7 (F15.66,F16.7,F28.381,F29.330), 80.43 (F28.430,F29.379)

Territorial Authorities (8-46, 60-2) and developers submitted and presented strong arguments that the importance of municipal water supplies was insufficiently acknowledged by proposed PC9 and the section 32 report. They sought to further prioritise municipal takes.

The panel notes policy WQ I2 identifies that urban growth increases demand for water and is already increasing demand on some streams, rivers, springs and groundwater. Municipal water supplies are an important part of local government services, including urban development and health in terms of drinking water. Policy WQ P21 expressly provides for municipal water supplies. Territorial authorities and developers ask for this to be recognised further by giving municipal water takes additional priority over other freshwater values and uses.

Trustpower has noted a number of the provisions in the PC9 should acknowledge that the taking and use of water from lakes - in addition to rivers and streams - will also require management. The panel agrees and has therefore amended issue WQ I2 to include lakes. Further as pointed out by (*Oji Fibre)* we consider land use change can have cumulative effects and support the inclusion of cumulative effects in WQ I2 to acknowledge this.

Tauranga City Council (8-7) was highly supportive of objective WQ O3(e) and sought an additional objective to provide long term certainty for municipal water supplies. Territorial authority submitters sought to add an additional clause to WQ O8 to include "*(e) The long term certainty and priority required for safe and adequate municipal water supplies, recognising the need to provide for future growth and urban development capacity". They asked that this* matter to be recognised when allocating water and making decisions on freshwater resources.

The NPSFM 2017 identifies water supply as one of the 'other national values' to be identified on a case-by-case basis, depending on the respective FMU.

In the panel's view, objective WQ O8 currently aligns with operative policy WQ 3B of the RPS. It would therefore be inappropriate to add further items that are not stated in the RPS. The panel considers WQ O8(a) "*Social benefits from the use of water for domestic, marae, or municipal water supply, including in particular essential drinking and sanitation requirements.*" provides appropriate recognition of the importance of municipal water when making decisions about water

allocation. Operative Policy WQ 3B of the BOP RPS states in its explanation that "*the scope of this [municipal use] priority is not unlimited and must be considered in relation to other matters listed in Policy WQ 3B, especially efficient use and the availability of water for other uses. …Demands on domestic or municipal water supply must not be seen as unlimited and should be constrained to avoid waste, uncontrolled consumption and associated cost*".

While it is important to recognise drinking-water and sanitation needs, further strengthening the priority of municipal water supply or the inclusion of private industrial development needs is inconsistent with national and regional policies. These policies demand a more considered and balanced approach. The panel considers it unnecessary to make reference to the development of Māori owned land and the need for specific water allocation. As amended to include the values and interests of tangata whenua, the panel believes WQ O8 provides adequate provision in relation to this issue.

Definition of municipal water supply

Several submitters including *Quayside Properties Ltd 44-3, Horticulture NZ 12-108, New Zealand Kiwifruit Growers 14-44* and *Tauranga City Council (various)* questioned the definition of municipal water supply. They were split between support and opposition for the preference given to domestic water takes in the definition.

As noted above, the panel acknowledges the importance of municipal water supplies and considers objectives and policies adequately provide for municipal use and priority for water. However, it is not solely councils that provide municipal water supplies and until these assets are vested with council it is often developers who provide the infrastructure. By inserting 'or for' ahead of the reference to a territorial authority, allowance is made for those private and/or partnership arrangements to provide municipal water supply. The panel considers this entirely consistent with legislation and land development norms.

Other municipal uses

Several submitters suggested that private drinking water supplies could be included in proposed Rule WQ R6 and subject to similar conditions. This idea was further supported by *Tauranga City Council* and *Rotorua Lakes Council*.

Drinking and sanitation use of water is prioritised through objective WQ O8 and policies WQ P21 & WQ P31. The panel has recommended changes to WQ O8 to reinforce and further recognise benefits derived from the use of water for energy generation and municipal water supplies, consistent with national policy and the requests of several municipal and generation authorities.

Initiatives by local communities, tāngata whenua or sector groups are further supported by proposed methods WQ M4 community initiatives and WQ M8 as water user groups. Many small-scale water takes that support rural homes, marae and papakāinga are likely to be within the permitted activity provisions.. For example a bore in a property larger than 5 ha could support an estimated 70 households (roughly 180 people), while a smaller property could draw water from above or below the ground to support an estimate of 30 households (roughly 80 people). Any volume of take exceeding this would require resource consent. Small scale takes are, in most situations, likely to be permitted activities and not subject to WQ R6. Drinking water supplies must be listed on the Ministry of Health's drinking water register. However, only local authorities are bound by the legislative requirements specific to local government. Accordingly, the hearing panel supports staff recommendations to exclude private water supply from Rule WQ R6.

Policy WQ P21 specifically recognises the essential nature of domestic, marae water supplies in addition to municipal water supplies and policy WQ P15 requires decision makers to consider the relative social and economic benefits of the proposed use of water. In this regard, other suppliers for

domestic type purposes are supported by these policies. The C*ombined Tāngata Whenua Forum (53-28)* sought to include papakainga in policy WQ P21. This is supported because papakainga water requirements are domestic related.

The panel believes small scale community initiatives should be encouraged and requiring municipal take regulations to apply to community activities would be a disincentive to community water supply initiatives.

While the panel is generally supportive of the priority afforded municipal water, it notes other submitters asked that priority be given to water for energy, industrial and farming purposes. These uses are not supported as they fail to identify how cultural, ecological and recreational impacts on the environment would be addressed. The panel does not consider these uses should be afforded the same legislated prominence as municipal and domestic/drinking supply.

Controlled renewal of municipal consents.

Rule WQ R6 establishes a controlled activity instruction for the renewal of existing municipal takes at the same rate and volume. The panel understands that under the operative plan there is no special rule for municipal takes.

Local authorities and the public health sector were strongly supportive of the controlled activity status and sought that it be broadened to cover increases in water demand/take, or have less onerous conditions. Other parties, including farming and horticulture representatives, generally agreed in principle but raised matters regarding the importance of the water management plan. They specified the need for control over non domestic uses such as industry and horticulture that draw from municipal supplies. Iwi noted the importance of taking account of tāngata whenua values.

Most submissions supported the 'controlled activity' status for existing water take for municipal water supply, subject to minor amendments. The panel notes the support and concerns raised, particularly in relation to situations where municipal takes provide water for non-municipal purposes.

The panel considers the proposed provisions are appropriate and that concerns can be addressed through minor amendments to proposed rule WQ R6, to reference the current consent and to tighten the definition of "municipal water supply".

Some confusion has arisen by restricting takes under WQ R6 to those in existence at the date of plan notification 18 October 2016. *Tauranga City Council (8-37)* sought to include the term "subsequent renewals" in (1) and (2), to confirm the rule applies to renewals. The panel believes the rule is intended to enable simple renewals on a like for like ongoing basis, not once only. A modification of the consent volume is an entirely different RMA process, akin seeking a new consent. This would be considered on its merit and, potentially, notified. On this basis, the panel sees no problem referring solely to the consented take, excluding any reference to date.

Tauranga City Council and some iwi submitters also raised concern about consultation. As part of the water management plan, an applicant is required to provide information on any consultation undertaken with key stakeholders. The Regional Council has retained control over the extent to which the applicant has consulted and taken into account Māori values. As the circumstance of each take will differ, it is not possible to define consultation requirements. However, it is assumed that local councils have existing relationships and protocols with tāngata whenua that will assist in determining the appropriate level. The panel sees no basis to change this requirement.

The amendment to WQ R6(c) replaces 'the cessation' with 'management'. This is considered appropriate by the panel as use of the term 'management' is consistent with RMA terminology and the amendment provides for greater flexibility in low flow events.

The hearing panel agrees with the proposed amendment to Rule WQ R6 clause 3 to include the word 'set' and delete the word 'outlined'. The wording change provides greater certainty and consistency in the application of Schedule 7.

The insertion of WQ R6(h) is appropriate in the panel's view as council should have an understanding of what volumes are being used for non-domestic uses. This new clause is more appropriately located following clause c.

Exempt smaller municipal supplies from a water management plan

Whakatane District Council 26-59 has requested establishing a minimum threshold, below which water management plans are not required. This would be the case for very small municipal supplies. While the panel agrees and supports delivering the NPSFM without undue costly process, it is also mindful that municipal supplies enjoy certain policy advantages over other, less privileged uses.

On the basis that these very small takes are within the permitted activity standard, the panel recommends changing Schedule 7 to allow smaller municipal water supplies to occur without the requirement to develop a water management plan. This amendment provides consistency with other activities in PC9 that have permitted activity status.

The development of and requirement for a water management plan is deemed an appropriate resource management tool where the scale of the activity is likely to have effects that should be assessed.

Availability of water for development and land use change

Tauranga City Council 8-2 and Western Bay of Plenty District Council (48-3) noted that land development decisions are made on a long time-frame basis. As well as providing water for drinking purposes, water is an essential part of the whole land development cycle. The submitters requested the removal of references to urban growth being limited due to lack of available water resources.

As noted previously, the panel considers PC9 provides adequately for urban development. The panel is unaware of local circumstances where water availability would needlessly curtail urban development, which has the potential to access water from a wide variety of sources not so readily available for rural purposes. Urban development should be considered a priority and the panel is comfortable that PC9 achieves this.

PC9 is focused on water quantity and cannot consider water quality-specific issues.

In relation to WQ O5, the panel considers it particularly important that urban development leverage the long-term planning process available to it and consider options to secure long-term access to water. It should not, carte blanche, assume access to the closest, most cost-effective source. In the Bay of Plenty, in particular, a looming tension exists between horticultural water demands and the potential for urban development water demand to impose limits on available water.

The panel believes WQ O5 appropriately considers the issue of urban growth and land use change and its effects on water quantity and supply. In the panel's opinion, WQ O5's companion policy WQ P27 is an appropriate policy to ensure that development and land use consider the effects of these uses and how that development relates to water availability.

Taking into account resource limitations and investigating water availability

WQ P27 : Take account of resource limitations: 5.3 (F28.128,F29.133,F30.3), 8.29 (F14.122,F19.183,F22.48,F27.161,F5.11,F6.11,F7.11), 10.27 (F27.162), 12.23 (F14.356,F15.63), 26.7, 28.7, 29.7, 49.47 (F10.62,F14.213,F27.163), 56.7, 65.69, 71.48 (F16.74,F19.184)
WQ P28 Promote investigate water availability: 8.30 (F14.123,F22.49,F27.121), 12.24 (F14.357),

14.24, 26.8, 27.23, 28.8, 29.8, 31.38 (F14.403), 32.19, 48.26 (F14.160), 49.66 (F9.26), 50.72 (F10.138,F14.311,F19.185,F28.47,F29.47), 56.8, 62.24, 65.70, 71.49 (F16.75)

Proposed policy WQ P27 encourages landowners and others to take account of any water resource limitations before making a land use change. Most of the submissions received supported the policy but others sought amendments to either create a more regulatory approach or to exempt the activities of firefighting or urban growth. Proposed policy WQ P27 provides good direction to ensure that resource constraints are factored into decisions and the panel supports this sentiment.

Proposed policy WQ P28 and proposed method WQ M4 promote or support the investigation of options to enhance water availability such as water storage. These were mainly supported by a range of submitters. *Federated Farmers* (50-72) noted that WQ P28 may be more appropriate as a method and this was supported by *Trustpower*. The panel disagrees with *Federated Farmers* that the policy should be deleted; however it has merged parts of WQP 28 with WQ M4.

Method WQ M4 supports initiatives to identify and enhance water availability and lists examples of possible options, including water storage dams, and including investigations supported by the Council itself.

Hydro-electric Power Schemes and Renewable Energy Generation

WQ O2 ????: 6.5 (F11.4,F19.59), 30.14 (F19.60,F28.288,F29.236), 31.6 (F11.5,F14.55,F2.2,F27.34), 32.6 (F19.61,F25.3), 47.14 (F19.62,F28.210,F29.168), 49.13 (F10.46,F14.183,F25.1,F27.35,F9.2), 50.12 (F14.30,F19.63,F25.2,F28.10,F29.10), 52.13 (F19.64,F28.355,F29.303), 53.12 (F28.488,F29.438), 63.13 (F19.66,F28.446,F29.395), 64.2 (F19.67,F28.329,F29.277), 65.7 (F19.68), 71.12 (F19.69,F25.4), 76.17 (F19.70,F28.166), 80.16 (F19.71,F28.403,F29.352)
WQ P19 Importance of renewable energy: 1.4, 6.31 (F19.168,F21.2), 9.7 (F28.341,F29.289), 30.39 (F19.169,F28.313,F29.261), 32.17 (F19.170), 49.43 (F14.209,F27.141,F3.11,F31.4,F9.21), 50.64 (F10.130,F14.303,F19.171,F25.48,F28.40,F29.40), 52.22 (F19.172,F28.364,F29.312), 58.18 (F19.173,F28.260,F29.209), 65.61 (F19.174), 66.9 (F19.175), 71.41, 71.42
WQ P20 Taking upstream of existing HEP: 1.5, 39.23, 49.44 (F14.210,F27.142,F9.22), 50.65 (F10.131,F14.304,F19.176,F28.41,F29.41), 65.62 (F11.13,F19.177), 66.10 (F19.178), 71.71

Hydro-electric power schemes

Proposed objective WQ O2 states that "Allocation of water resources in the Bay of Plenty recognises and maintains the generation capacity of hydro-electric power schemes as a renewable energy source". This provision responds to RPS Policy EI 6B and supports Policy E2 of NPSREG.

Many submitters disagreed that maintaining hydro generation capacity should be an objective when allocating water, and they particularly objected to its being prioritised above other values. In particular, many iwi consider hydro-electric power generation has seriously affected their awa by, for example, impacting the migration of eels or passage of vessels. Others, such as *Mercury Energy* recognise renewable energy includes geothermal energy, which also needs access to water.

Eight submissions specifically asked for the word "maintain" to be removed from WQ O2. A further submission from *Trustpower (19)* opposes this request given the NPSREG requirements.

While the NPSREG does not direct freshwater allocation and prioritisation, there is a clear relationship between the allocation of water and the ability to meet the objective of the NPSREG. The RPS requires decision-makers to provide for the on-going renewable energy electricity generation therefore, the panel considers it appropriate to retain the word maintain.

Policy WQ 3B of the RPS takes a slightly different approach. It directs that "the benefits to be derived from the use of water for […] electricity generation from renewable sources" be considered as one of 10 matters listed in no order of priority.

Renewable energy generation

Having provided for hydro-electric generation capacity in WQ O2, the panel has recommended the inclusion of an additional clause in WQ O8 to provide for a broader range of renewable energy sources.

Extent of derogation of existing consents

The panel considered the importance of renewable energy carefully and, in reviewing WQ P19 and WQ P20, formed the view that these would read more clearly as a single omnibus provision similar to that relating to municipal water use in WQ P21. The panel considered arguments from Ms Hamm and Mr Matheson concerning the extent to which existing consents had exclusive access to catchment water and was persuaded by Mr Matheson that *Trustpower* does not have exclusive

access to water in the Rangitaiki catchment above the Matahina dam nor, necessarily, above many other hydroelectric schemes.

The panel considered a range of typical rural activities likely to be significantly affected in the face of a strong, exclusionary policy position. In the panel's view, hydroelectric/renewable energy generation is a significant and important resource but not to the extent that it has exclusive rights to water. In cases such as the Matahina dam, there appears to be considerable uncertainty over the precise effect of the consents (exclusive or not).

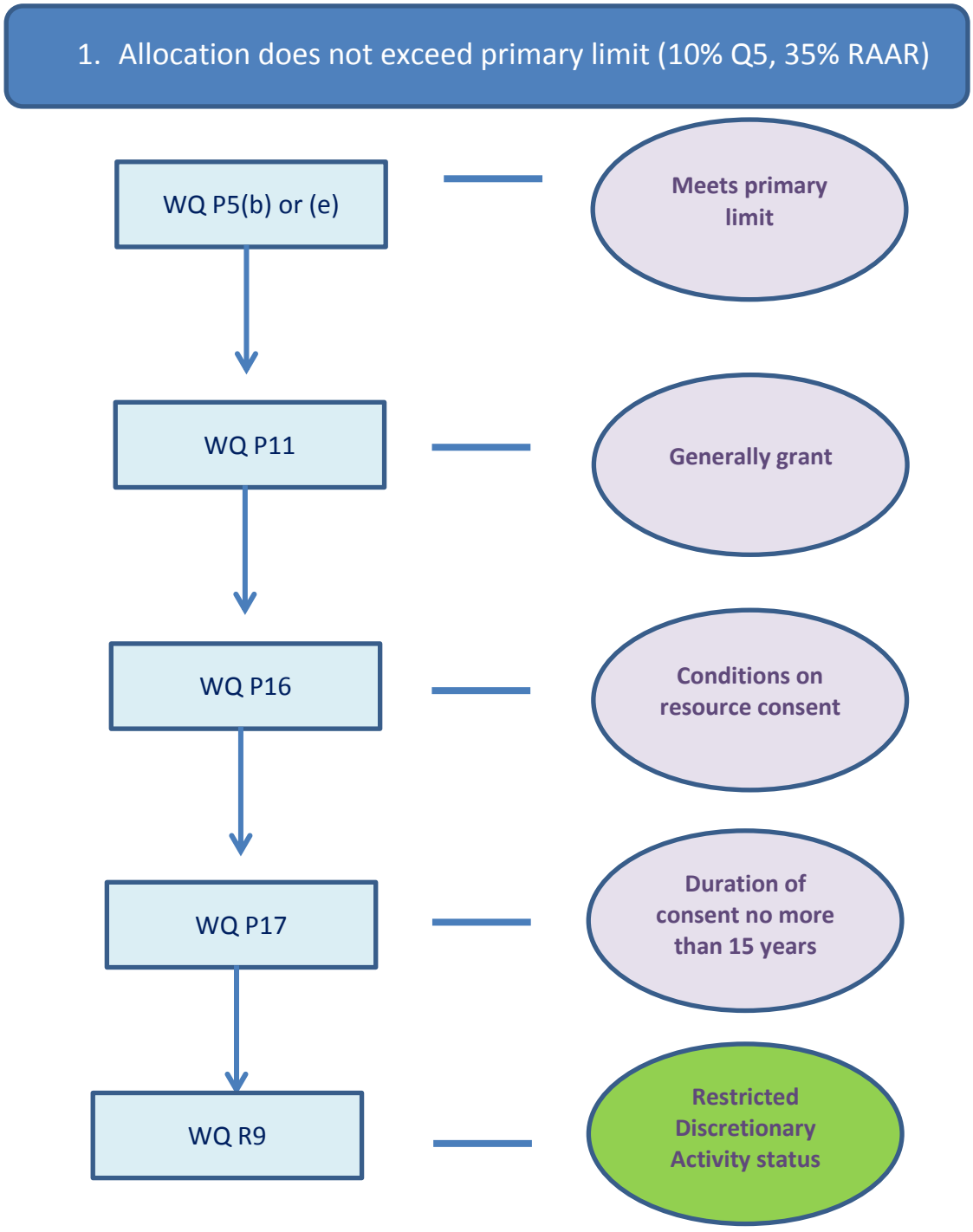
The panel considers the most appropriate interpretation is that which gives best effect to the RMA purpose. In light of the very minor impact some activities can have on hydroelectric output, the panel therefore favours strong policy direction to consider these effects in light of national policy direction.

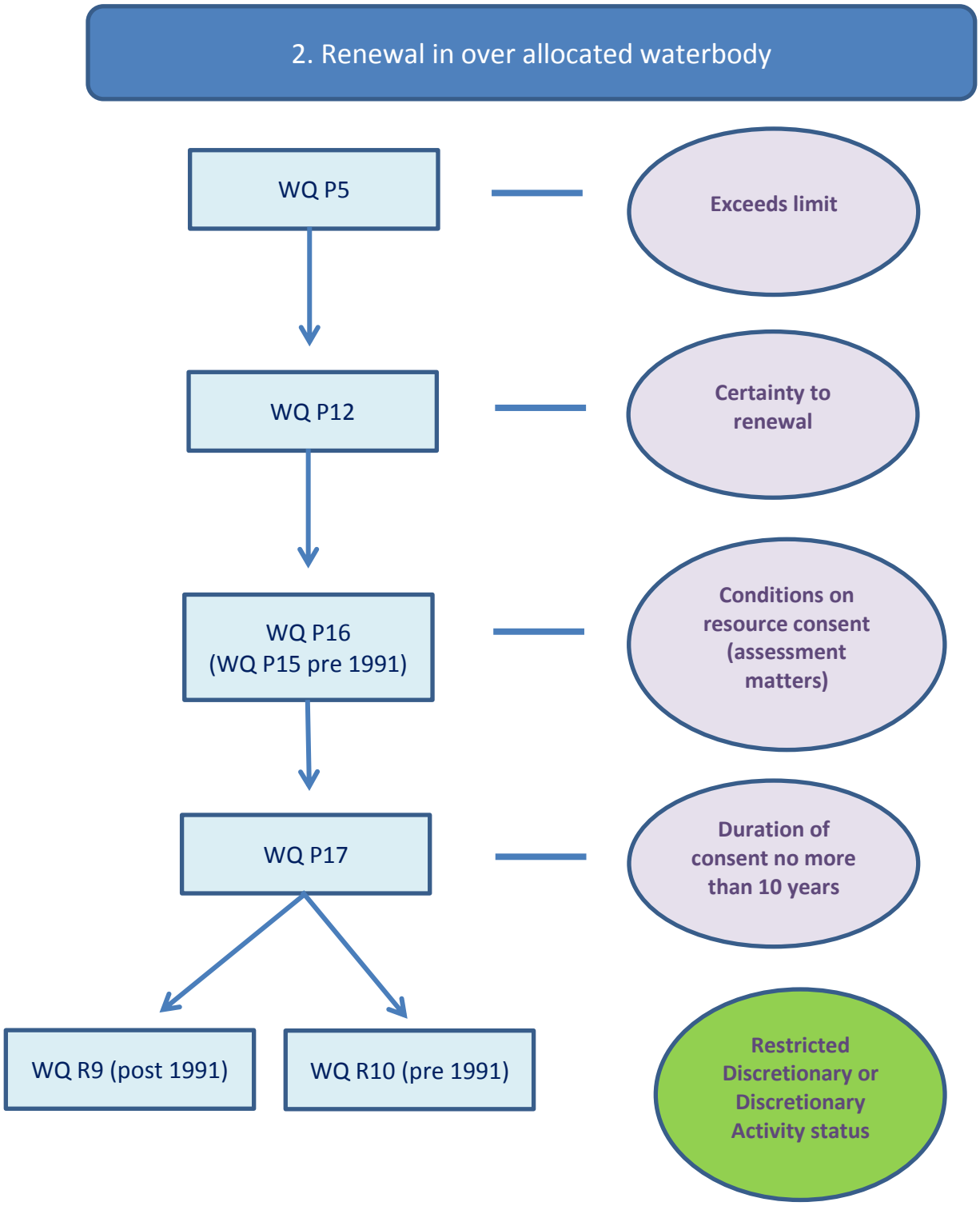
Effect of the Operation of this plan

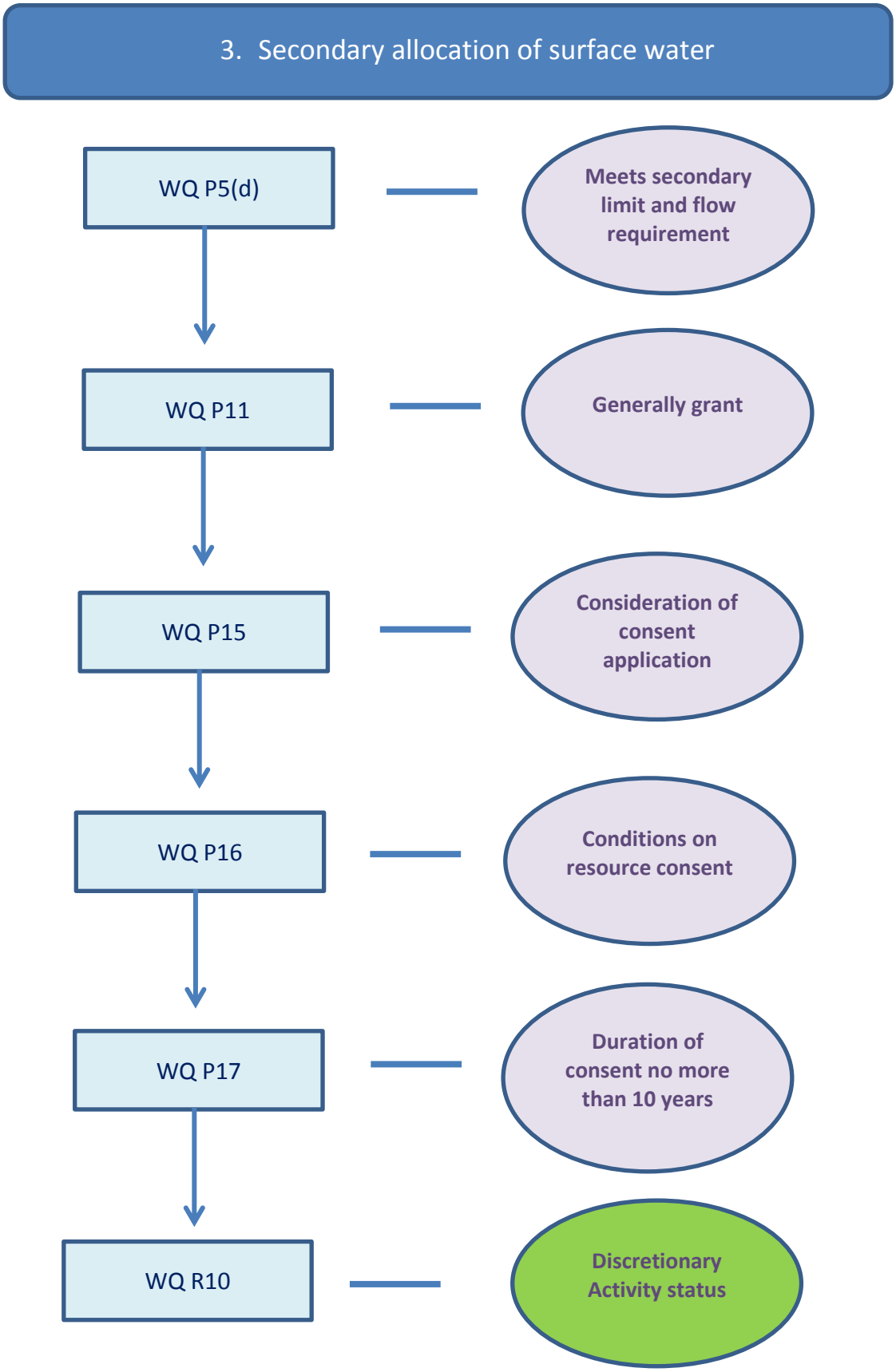
The panel has tested the operation of the revised Plan to satisfy itself that the Plan operates as intended, using as examples the following types of activities:

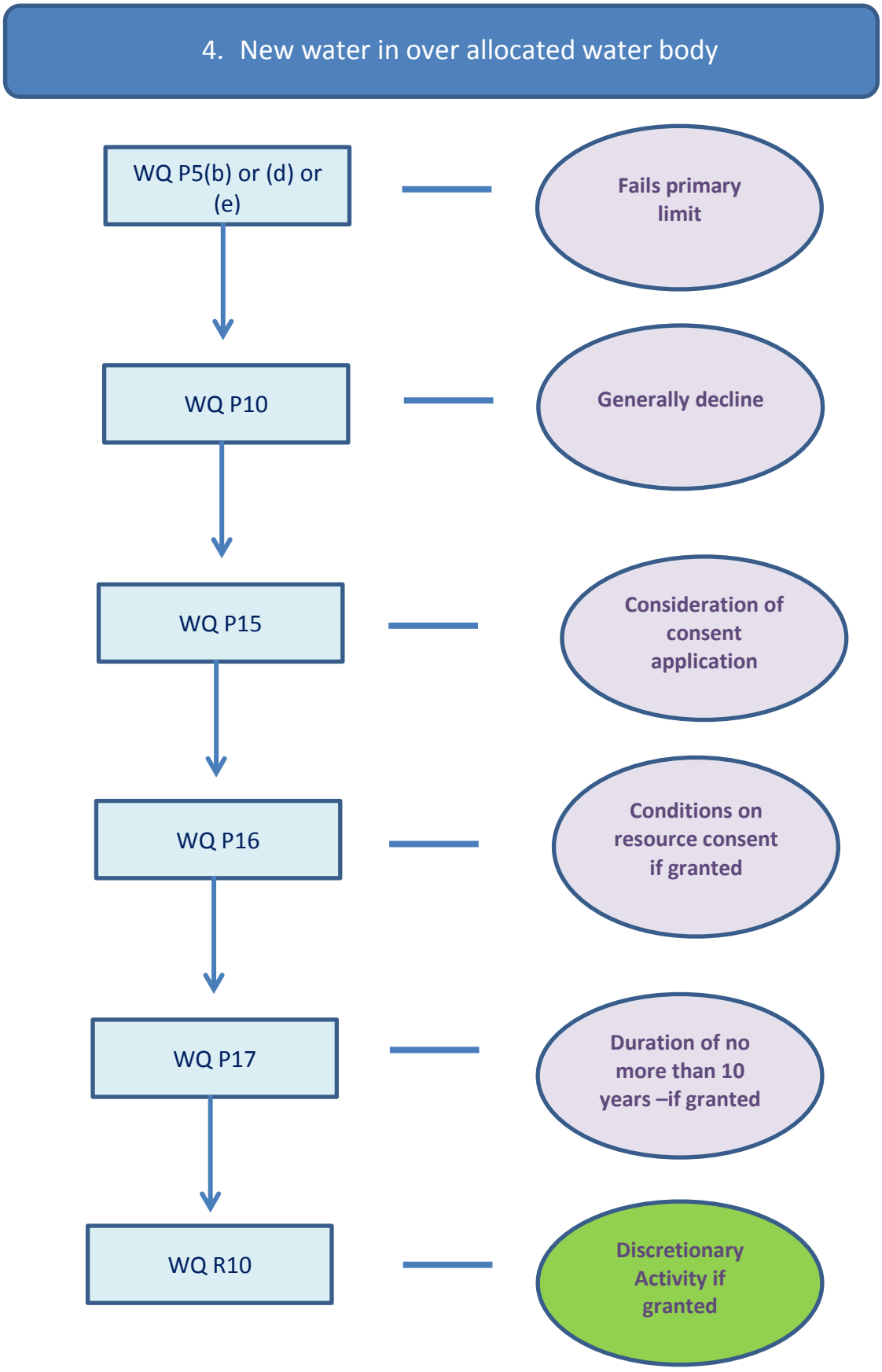
1. Water take in an under-allocated water body
2. Renewal of water take in an over-allocated water body
3. Secondary allocation of surface water
4. New water take in an over-allocated water body
5. Flood harvesting of surface water
6. Water take for currently unauthorised dairy shed wash down and milk cooling

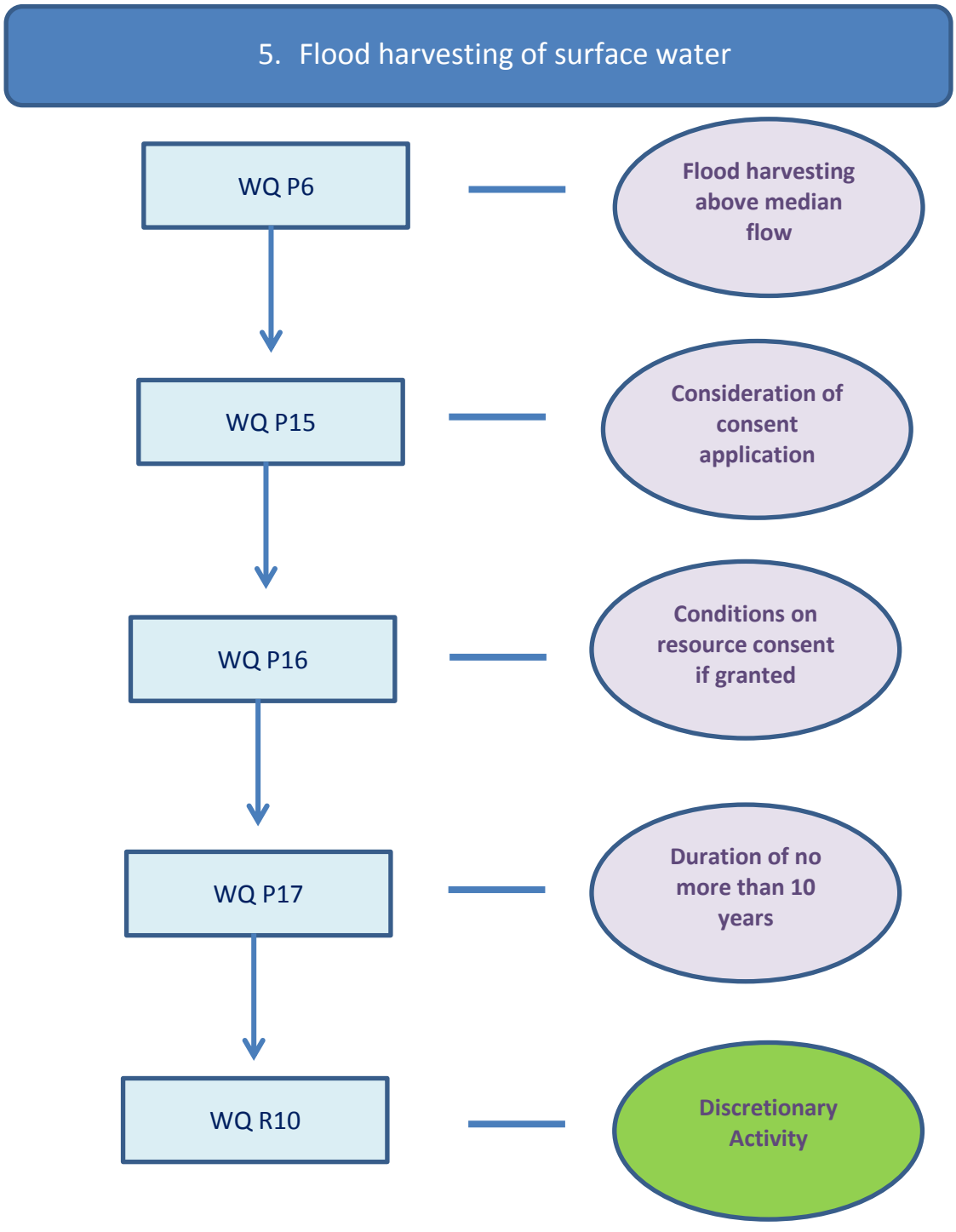
The diagrams are a summary only - plan provisions apply universally to all applications, special pathways for WQ R4, and WQ R6 are not shown.

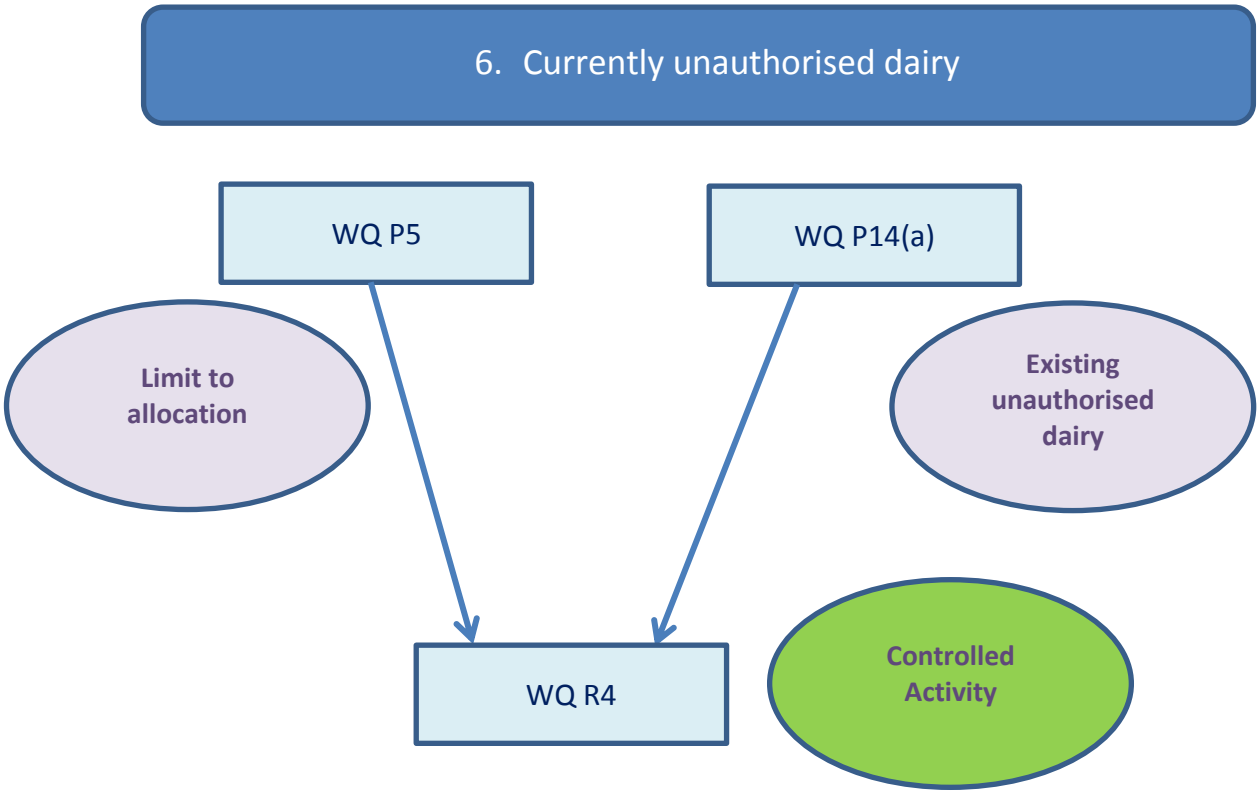

1. Allocation does not exceed primary limit (10% Q5, 35% RAAR)
WQ P5(b) or (e)
Meets primary limit
WQ P11
Generally grant
WQ P16
Conditions on resource consent
WQ P17
Duration of consent no more than 15 years
WQ R9
Restricted Discretionary Activity status


2. Renewal in over allocated waterbody
WQ P5
Exceeds limit
WQ P12
Certainty to renewal
WQ P16
(WQ P15 pre 1991)
Conditions on resource consent (assessment matters)
WQ P17
Duration of consent no more than 10 years
WQ R9 (post 1991)
WQ R10 (pre 1991)
Restricted Discretionary or Discretionary Activity status


3. Secondary allocation of surface water
WQ P5(d)
Meets secondary limit and flow requirement
WQ P11
Generally grant
WQ P15
Consideration of consent application
WQ P16
Conditions on resource consent
WQ P17
Duration of consent no more than 10 years
WQ R10
Discretionary Activity status


4. New water in over allocated water body
WQ P5(b) or (d) or (e)
Fails primary limit
WQ P10
Generally decline
WQ P15
Consideration of consent application
WQ P16
Conditions on resource consent if granted
WQ P17
Duration of no more than 10 years –if granted
WQ R10
Discretionary Activity if granted


5. Flood harvesting of surface water
WQ P6
Flood harvesting above median flow
WQ P15
Consideration of consent application
WQ P16
Conditions on resource consent if granted
WQ P17
Duration of no more than 10 years
WQ R10
Discretionary Activity



Additional matters for control if proposed take is from waterbody that is allocated above the limit in WQ P5(b) or WQ P5(e)

Recommendation

The panel recommends that the changes shown in PC9 appended to this report be adopted by the Bay of Plenty Regional Council, and that submitters be advised of the reasons for those decisions as detailed herein.