IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2023] NZEnvC 051

IN THE MATTER	of the Resource Management Act 1991
AND	appeals under clause 14 of the First Schedule of the Act
BETWEEN	ARATIATIA LIVESTOCK LIMITED
	(ENV-2018-CHC-29)
	(and all other appellants listed in the Schedule attached)
	Appellants
AND	SOUTHLAND REGIONAL COUNCIL
	Respondent

Court:	Environment Judge J E Borthwick Deputy Environment Commissioner R M Dunlop
Hearing:	at Christchurch on 14-16 March 2022, 11-14 April 2022, 30 May-3 June 2022, 8-10 June 2022, 6-8 July 2022, 8-9 August 2022, 15-17 August 2022, 25 August 2022
Appearances:	P A C Maw and I F Edwards for Southland Regional Council M R Garbett for the Territorial Authorities M Exton for Ballance Agri-Nutrients Limited K E Forward and J M Ottowa for the Dairy Interests P D Williams for Director-General of Conservation Tumuaki Ahurei B S Carruthers for Federated Farmers of New Zealand Inc and Wilkins Farming Company Ltd S R Gepp for Royal Forest and Bird Protection Society of New Zealand Inc and The Southland Fish and Game Council

J G A Winchester and S K Lennon for Ngā Rūnanga
S W Christensen for Meridian Energy Limited
M R G Christensen for Ravensdown Limited
D A Allan for Aratiatia Livestock Limited
C P Thomsen and C H Luisetti for Beef+Lamb New Zealand Limited
K L Rusher for Mr English

Last case event: 8 December 2022

Date of Decision: 23 March 2023

Date of Issue: 23 March 2023

SIXTH INTERIM DECISION OF THE ENVIRONMENT COURT

Table of Contents

	Page
Introduction	4
The law	5
Policies 15A, 15B and 15C	7
Policy 16A	47
Policies 17, 17A and Rule 32B	55
Policy 18 and Rule 70/definition of 'stock unit'	61
Policy 20	72
Policy 30 and Rule 78	73
Rules 13, 15 and Appendix E	99
Other matters (Appendix A, Rules 9, 29, 32B, 32D, 32E, 33 and 33A)	126
Concluding directions	131

Annexures

Annexure 1: Minute – Avoid where reasonably practicable, or otherwise remedy or mitigate

Annexure 2: Summary of ecological and cultural evidence relevant to Rule 78

Annexure 2A: pSWLP Appendix M taonga freshwater fish and shellfish present in Council-maintained and private 'drains'

Annexure 3: Southland Water and Land Plan Part A, DV

Annexure 4: Appendix N – Farm Environmental Management Plan Requirements

Abbreviations used in the decision

CV:	Court Version – provisions approved or provisionally approved by the court with or without amendments
DFS:	Deposited fine sediment.
DV:	Decisions Version on plan provisions by the Regional Council under Schedule 1, RMA.
FEMP:	Farm Environmental Management Plan
IWG:	Intensive Winter Grazing
JWS:	Joint Witness Statement
Ngā Rūnanga:	Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu
NES-F:	Resource Management (National Environmental Standards for Freshwater) Regulations 2020
NOF:	National Objectives Framework
NPS-FM (2020):	National Policy Statement for Freshwater Management 2020
Plan Change Tuatahi:	a future plan change giving effect to the provisions of the NPS-FM (s 55(2B))
pSWLP or proposed plan/plan:	proposed Southland Water and Land Plan
RD:	Restricted Discretionary
RMA:	Resource Management Act 1991
SRC:	Southland Regional Council

REASONS

Introduction

[1] This is the court's Sixth Interim Decision on appeals on the proposed Southland Water and Land Plan. It is to be read in conjunction with the court's preceding decisions and more particularly:

(a) interim decision [2022] NZEnvC 265 issued 23 December 2022 which decided most of the disputed provisions of interest to the primary sector; and

(b) interim decision [2022] NZEnvC 266 issued 23 December 2022 ordering that appeals on the provisions of the plan allocated to Topics B1-B7 be allowed by consent to the extent set out in the attached annexure.

[2] This decision covers remaining matters subject to plan appeals including Policies 15A and 15B for discharges where water quality and sediment standards are met and not met; Policy 16A for industrial or trade process discharges; Policy 18 and Rule 70 for stock exclusion from water bodies, Policies 17 and 17A for agricultural effluent management and community sewerage schemes and onsite wastewater systems respectively; Policy 20 for the management of water resources; Policy 30 for drainage maintenance and Rule 78 for weed and sediment removal from modified watercourses and Rules 13 and 15 for discharges from sub-surface drainage systems and stormwater respectively.

[3] As with the decisions released in 2022, a hearing on the above provisions followed mediation and the conferencing of expert witnesses where differences as between the parties had not resolved or, secondly, where consent orders seeking the court's approval of agreed amendments had been filed the court held concerns with what was proposed.

The law

[4] The role of the court on plan appeals and secondly, the relevant instruments has been set out in the earlier decisions of the court.[1]

National Policy Statement – Freshwater Management (2023)

[5] We note that since the Fifth Interim Decision,[2] amendments to the National Policy Statement – Freshwater Management have been gazetted and have since taken effect. No party has requested National Policy Statement – Freshwater Management (February 2023) be considered by the court and we have not had regard to its provisions.

Other instruments

[6] Resource Management (National Environmental Standards for Freshwater) Regulations 2020 and Resource Management (Stock Regulation) 2020 are not under consideration in this decision.

Section 32AA

[7] In contrast with the Fifth Interim Decision,[3] the court's assessment of the provisions pursuant to s 32AA is not set out separately. As will become clear, we have considered whether provisions advanced by individual parties are the most appropriate way to achieve the relevant objectives when compared to the decision version provisions. In doing so we have examined their practicality and efficiency and effectiveness under s 32(b).

[8] We have found several amended provisions are incapable of being

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[1] *Aratiatia Livestock Ltd v Southland Regional Council* [2019] NZEnvC 208 at [12]-[14] and *Aratiatia Livestock Ltd v Southland Regional Council* [2022] NZEnvC 208 at 265 at [11]-[17].
[2] [2022] NZEnvC 265.
[3] [2022] NZEnvC 265.

implemented and we have declined to approve the same.[4] In those cases, conditions were proposed for rules permitting discharge of contaminants into water or into or onto land in circumstances which may result in that contaminant entering water. Mindful of the degraded state of many of Southland's water bodies, in deciding to decline the relief the court is not waiting for *perfect science* to come along. Rather, science has not informed (or adequately informed) the relevant provision.

[9] Finally, if we have not commented on a provision it is usually because the parties support the draft wording and, the court having considered the drafting, is satisfied with the relief sought.

Court's Consolidated Plan

[10] All provisions approved by the court in this Sixth Interim Decision are set out in the Court's Consolidated Plan attached and labelled Annexure 3. Where the court has suggested amendments, the amended provisions can be found both in the decision and Annexure 3.[5]

[11] With that said, we turn to Policy 15A.

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[4] Rules 13, 15 and 78.

[5] Annexure 3 labels decisions as 'Sixth Interim Decision'. For ease of reference, those provisions decided in the Fifth Interim Decision and labelled 'CV' in the relevant attachment to that decision have been relabelled 'CV – Fifth Interim Decision.

Policies 15A, 15B and 15C

Policy 15A – approach where Appendix E or Appendix C standards are met

[12] Policy 15A is a key provision as it directs that where water and sediment quality presently meet specified standards, discharges are to maintain those standards. As such, it implements a number of important higher order plan provisions.

[13] Issues arose on appeal concerning the strength of the policy direction, how the policy should be framed including with regards to qualifying terms, and whether the policy should apply to both diffuse and point source discharges.

[14] The policy was appealed by Forest & Bird/Fish & Game and Ngā Rūnanga. Twelve parties joined the appeals by way of s 274 notices. We set out next the Decisions Version and proposed consent order versions of the policy.

Policy 15A Decisions Version (DV)

[15] The DV policy reads as follows:

> **Policy 15A – Maintain water quality where standards are met**
> Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by:
> 1. avoiding, remedying or mitigating the adverse effects of new discharges, so that beyond the zone of reasonable mixing, those standards or sediment guidelines will continue to be met; and
> 2. requiring any application for replacement of an expiring discharge permit to demonstrate how the adverse effects of the discharge are avoided, remedied or mitigated, so that beyond the zone of reasonable mixing those standards or sediment guidelines will continue to be met.

[16] Notable points being that 'avoid, remedy or mitigate' are not prioritised as directions, new and replacement consents are differentiated albeit with the same

outcome required and finally, the direction that the standards/guidelines are to be achieved beyond the zone of reasonable mixing.

Policy 15A proposed consent order wording

[17] Following court-facilitated mediation, the parties applied for orders seeking the proposed plan be amended to read:[6]

> Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by avoiding, where reasonably practicable, or otherwise remedying or mitigating any adverse effects of discharges, so that those standards or sediment guidelines will continue to be met (beyond the zone or reasonable mixing for point source discharges).

[18] Relative to the decisions version of the policy, the notable points are prioritising the avoidance of adverse effects where reasonably practicable, deleting the differentiation between new and replacement consents, and finally the specification of point source discharges with respect to the zone of reasonable mixing.

Appendices C and E

[19] Referred to in Policy 15A, Appendices C and E set minimum standards for the footnoted contaminants in sediment and receiving water quality respectively.[7]

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[6] Joint Memorandum in Support of Consent Orders, 3 February 2022 Appendix 1, Annexure A at 5. Attachment A at 36.

[7] Appendices C and E set minimum standards respectively for contaminants in sediments (metals, metalloids, organometallics and organics) and receiving water standards (temperature, fine sediment bed cover, dissolved oxygen, bacterial or fungal slime growths, visual clarity, total ammonia, faecal coliforms, MCI and suitability of fish for human consumption).

Objectives implemented by Policy 15A

[20] Policy 15A directly implements the first clause of settled Objective 6 which provides:

> Water quality in each freshwater body, coastal lagoon and estuary will be:
>
> (a) maintained where the water quality is not degraded; and
>
> (b) improved where the water quality is degraded by human activities.

[21] The policy also implements Objective 1 which requires that land and water and associated ecosystems are sustainably managed; Objective 2 which requires that the mauri of water provides for te hauora o te taiao, te hauora o te wai and te hauora o te tangata;[8] Objective 3 that water and land are recognised as enablers of economic, social and cultural wellbeing, plus a number of other related objectives.[9]

[22] Policy 15A is implemented (in part) by Rule 5 which summarised, provides that except where dealt with elsewhere in the plan, the discharge of contaminants to water is a discretionary activity provided water quality upstream of the discharge that meets Appendix E standards is maintained.[10] Rules 13 and 15 for discharges from sub-surface drainage systems and stormwater respectively, are further examples of point source discharges managed through the appendices and Policy 15A.

The court's questions of the parties on proposed consent order wording

[23] The court explained that it was unable to evaluate amendments proposed to Policies 15A, 15B, 16A, 17, 17A, 20, 28 and 30 without a clear understanding

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[8] Health and mauri of the environment, health and mauri of the water body and health and mauri of the people.

[9] Objective 15 that taonga species as set out in Appendix M and related habitats are recognised and provided for; and Objective 18 that all persons implement environmental practices that optimise efficient resource use … and maintain or improve the quality … of the region's water resources.

[10] Joint Memorandum in Support of Consent Orders, 3 February 2022 Appendix 1, Annexure A at 7-8.

of whether the wording proposed obliges applicants to avoid adverse effects where reasonably practicable, leaving any (residual) effect that is not avoided to be remedied or mitigated (the proposed consent order wording).[11]

[24] By way of example, in relation to Policy 15A the court questioned whether the proposed amendments to the policy could be interpreted such that where existing standards/guidelines are exceeded, the policy may enable, through the mitigating route, a diminution in quality to the minimum standards, and whether the proposed wording was the most appropriate way to achieve Objective 6.[12]

[25] The court sets out its interpretation of 'reasonably practicable' in the Minute with reference to applying a wider focus to what can reasonably be done in a particular circumstance; adopting a purposive approach that imports the notions of reasonableness and proportionality; and engagement in a case-specific context, with the risk and impact of adverse effects if not avoided – including the implementation of relevant objectives. Counsel, having a different view, were directed to address the court's interpretation, and any alternative wording required to secure the policies' intended effect, in opening submissions at the disputed provisions hearing.[13]

[26] Attached to and forming part of this decision as 'Annexure 1' is a copy of the court's Minute dated 31 March 2022. No counsel took the opportunity afforded to express a different view from the court's interpretation in opening submissions.

[27] Given the late filing of the application for consent orders relative to the commencement of the substantive hearing, and being concerned with aspects of

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[11] Court Minute 31 March 2022 at [5]-[9].
[12] Court Minute, 10 March 2022 at [38] and [39].
[13] Court Minute 31 March 2022 at [22] with particular reference to [5]-[21].

the consent orders sought, the court directed the application be set down for a hearing.

The Regional Council's preferred wording

[28] Mr M McCallum-Clark, giving planning evidence on behalf of the Regional Council, responded to the issues raised by the court, proposing a revised version of Policy 15A from that contained in the application for consent order, as follows:[14]

> Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by avoiding where reasonably practicable or otherwise minimising any adverse effects of discharges, so that those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges).

[29] Mr Maw, for the Regional Council, confirmed the Council's support for the above wording, i.e. the replacement of 'remedying or mitigating' with 'minimising' because it reduces the risk of the mitigation route leading to a reduction in water quality contrary to Objective 6.[15] It is the Council's view that Appendices C and E address point source discharges and not diffuse discharges.

[30] The parties each proffered different wording and so we turn next to issues raised in respect of the same.

Issues for determination

[31] The issues for determination follow:

(a) which of two phrases is more appropriate?:

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[14] McCallum-Clark, supplementary evidence dated 6 April 2022 at [21] and October Consolidated Plan (Final SRC Changes) at 38.
[15] SRC, opening submissions dated 11 April 2022 at [13] and Transcript (Maw) at 2506.

(i) 'avoiding where reasonably practicable or otherwise minimising any adverse effects'; or

(ii) 'avoiding, where reasonably practicable or otherwise remedying and/or mitigating any adverse effects'.

(b) whether to include the phrase 'beyond the zone of reasonable mixing for point source discharges';

(c) whether to include the term 'reasonably';

(d) whether to include the term 'residual'; and

(e) whether to insert advice notes or alternatively to retain Policy 16(1)(b)(iii); and

(f) retention of 'including' in the policy.

Issue: which of two phrases is more appropriate?

(i) *'avoiding where reasonably practicable or otherwise minimising any adverse effects'; or*

(ii) *'avoiding, where reasonably practicable or otherwise remedying and/or mitigating any adverse effects'.*

[32] The Dairy Interests seek that Policy 15A be worded:[16]

> … avoiding, where ***reasonably practicable, or otherwise mitigating*** any adverse effects of discharges, so that those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges).
>
> [our emphasis]

[33] While counsel for Dairy Interests accepts the court's interpretation of 'reasonably practicable',[17] Dairy Interests continue to support the proposed consent order wording for the reasons given by its planner, Mr G Willis, but with

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[16] August Consolidated Plan at 39.

[17] Dairy Interests, opening submissions dated 11 April 2022 at [25].

the word 'remedying' now omitted from its preferred version.[18]

[34] Dairy Interests consider 'otherwise mitigating' a better formulation to 'minimising' in catchments where water quality outcomes are met, as it provides the opportunity for both innovative solutions and more conventional actions, whereas minimising may not.[19] Dairy Interests also found it problematical that there was no threshold of when the requirement to 'minimise' might cease.[20]

[35] Ballance seeks that Policy 15A be worded as follows:[21]

> … avoiding, where **reasonably practicable, or otherwise remedying or mitigating** any adverse effects of discharges, so that those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges).
>
> [our emphasis]

[36] Ballance does not have a different view on the meaning of 'avoid where reasonably practicable, or otherwise remedy or mitigate' from that given in the court's 31 March 2022 Minute.[22] In closing submissions on Policy 15A, counsel submitted that:[23]

(a) minimising adverse effects is an option when meeting an obligation to 'remedy or mitigate';
(b) because Policies 15A and 15B are not limited to farming, including 'remedy or mitigate' in them is not inconsistent with the use of 'minimise' in Policy 16 for farm activities that affect water quality;

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[18] Dairy Interests, closing submissions dated 16 August 2022 at [25] and opening submissions dated 11 April 2022 at [26].
[19] Dairy Interests, closing submissions dated 16 August 2022 at [26].
[20] Dairy Interests, opening submissions dated 11 April 2022 at [27].
[21] August Consolidated Plan at 39.
[22] Ballance, opening submissions dated 11 April 2022 at [29].
[23] Ballance, closing submissions dated 16 August 2022 at [13]-[16], Ruston, supplementary statement dated 20 May 2022 at [7], Transcript (Ruston) at 1446-1449, and Transcript (McCallum-Clark) at 301.

(c) providing for 'mitigation' in Policy 15A would not allow water quality to decline to the minimum standard because of the direction in the chapeau to maintain water quality. Applicants would need to demonstrate that the mitigation measures they proposed would secure this outcome; and

(d) there is a risk that including 'minimising' could go beyond the policy's maintenance requirement.

Consideration

[37] Overall, it is the court's finding that the relief sought by Dairy Interests and Ballance is less likely to deliver the outcome required by Objective 6. Because of the extent of degraded water in Southland, it is imperative that the quality of what is not degraded be maintained to not exacerbate contamination downstream.

[38] There is a risk, which is better avoided, in the wording preferred by the Dairy Interests and Ballance. The risk arises because of the interpretational flexibility inherent in the words 'or otherwise (remedying) or mitigating'. While insertion of 'or otherwise' *arguably* makes 'remedying or mitigating' subservient to 'avoiding, where reasonably practicable', it leaves open the interpretation that 'avoiding' and 'remedying or mitigating' can apply in the alternative, particularly when read by persons intent on mitigation as opposed to avoiding adverse effects.

[39] The phrase 'or otherwise minimising any adverse effects' clarifies the requirement that, if not avoided, adverse effects are to be reduced to the smallest amount reasonably practicable. Working together we find that the phrasing is likely to better implement the relevant objectives than the competing formulation(s).

[40] Ballance has a conceptual concern[24] that where the standards/guidelines are exceeded in the particular receiving waters, a requirement to 'minimise' may

[24] Not backed by specific examples. Refer Transcript (Ruston) at 1448.

result in the quality of discharges exceeding the standards/guidelines. This however is to overlook the previously described need to maintain quality so as to avoid cumulative adverse effects downstream.

[41] Giving planning evidence on behalf of Ballance, Ms S Ruston, together with some other planning witnesses, contrasted Policies 15A and B – which apply generally to discharge activities – with policies that apply to specific activities. Under policies for specific activities (such as farming) 'minimise' might be appropriate where a *stringent* approach is required.[25] For activities generally, less directive language ('remedy/mitigate') is proposed.

[42] We find discharges of contaminants by activities outside the farming sector have contributed to the degraded state of Southland's water. Ballance has not established an evidential basis for justifying a less *stringent* approach is warranted for activities outside of the farming sector.

[43] The plan's architecture may be less than explicit on how Policy 15A (and Policy 15B) interface with subsequent, activity-specific ones, but we find it better that all related policies be read together and, where appropriate, have the same policy direction.

Outcome

[44] For the foregoing reasons the phrasing 'avoiding, where reasonably practicable or otherwise minimising any adverse effects of discharges' is approved.

Issue: inclusion of 'reasonably'

[45] While addressed in the foregoing section, we note that by the end of the hearing no parties other than Forest & Bird/Fish & Game sought 'reasonably' be excluded from the phrase 'reasonably practicable'. We find its inclusion

[25] Ruston, supplementary evidence dated 20 May 2022 at [7].

appropriately guides plan users to a wider focus of what is 'practicable' and in doing so reinforces the notions/concepts that underpin the term as properly understood.

Outcome

[46] We confirm the term 'reasonably' in Policy 15A.

Issue: inclusion of the phrase 'beyond the zone of reasonable mixing for point source discharges'

[47] The Director-General and Ngā Rūnanga support the Regional Council's wording but with 'beyond the zone of reasonable mixing for point source discharges' deleted.[26] While Ms L Kirk, giving planning evidence for the Director-General, queried whether it was necessary to include these words,[27] the Director-General was ultimately neutral on the basis that inclusion of the phrase makes no material difference to the intention and implementation of either Policy 15A or 15B.[28]

[48] Counsel for the Territorial Authorities, Mr Garbett, contended the deletion of this phrase would have the consequence of essentially requiring compliance within a pipe network prior to discharge, which he submitted would be unrealistic and potentially unworkable.[29] The submission is well made and applies equally to point source discharges from private sector infrastructure. We find the disputed words are better retained because their inclusion reinforces the intended link to point source discharges as submitted by Mr Maw and for the reasons given by Mr Garbett.

Outcome

[49] The phrase 'beyond the zone of reasonable mixing for point source

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[26] August Consolidated Plan at 39.
[27] Kirk, supplementary evidence dated 20 May 2022 at [12].
[28] Director-General, closing submissions dated 16 August 2022 at [23].
[29] Territorial Authorities, closing submissions dated 15 August 2022 at [7].

discharges' is approved.

Issue: inclusion of the term 'residual'

[50] Forest & Bird/Fish & Game seek the inclusion of 'residual' in the text of the policy. The policy would read '… or otherwise minimising any **residual** adverse effects…'.[30]

[51] The term 'residual' was first mooted by the Regional Council's planner, Mr McCallum-Clark. That said, by the end of the hearing neither the Council nor Mr McCallum-Clark supported its inclusion. It was Mr McCallum-Clark's opinion that inclusion of 'residual' has some attraction as it points more strongly to avoidance as a first option, but he foresaw a potential interpretation difficulty if there are effects which cannot be avoided.[31] The Dairy Interests accepted Mr McCallum-Clark's evidence,[32] submitting the term 'residual':[33]

> …. implies that there will always be some level of effect that must be avoided. The reality is that this may not always be the case and provision should be made for all adverse effects to be minimised (or remedied or mitigated as the case may be).

[52] As the matter arose after Forest & Bird/Fish & Game's planner, Mr B Farrell filed his last brief, he did not assist the court with related evidence, including through questioning. Counsel for Forest & Bird/Fish & Game did not revisit the topic in closing submissions.

[53] While the August Consolidated Plan does not record Ngā Rūnanga as seeking the inclusion of 'residual', in earlier submissions on behalf of Ngā Rūnanga, Mr Winchester supported inclusion of 'residual' because the word indicates that avoidance is to be preferred and will ensure that all effects that are

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[30] August Consolidated Plan at 39.
[31] McCallum-Clark, supplementary evidence dated 6 April 2022 at [20].
[32] Dairy Interests, opening submissions dated 11 April 2022 at [27].
[33] Dairy Interests, closing submissions dated 24 March 2022 at [19].

not avoided (i.e. all residual effects) are minimised.[34]

[54] Overall, we were not greatly assisted with submissions or evidence by the parties who engaged on this point.

[55] Like Mr Winchester, we consider such situations to be somewhat hypothetical and note that no examples were provided to the court.[35] Mr McCallum-Clark acknowledged that he was unable to clarify this aspect of his evidence when responding to questions from the court having proffered, by way of example, in the context of Policy 16 and cumulative effects, situations where some – but not all adverse effects – might be avoided.[36]

[56] Nevertheless, we will approve the inclusion of 'residual' because the word supports the policy direction of avoidance and will ensure that all effects that are not avoided (i.e. all residual effects) are minimised.[37] We also find that the policy better implements Objective 6 with 'residual' included.

[57] To address the concerns of the Regional Council and the Dairy Interests we have suggested an amendment to the policy.

Outcome

[58] Policies 15A and 15B(1a) is to include the term 'residual' and we suggest the provisions be amended to read 'or otherwise minimising any adverse effects, including residual adverse effects'.

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[34] Ngā Rūnanga, opening submissions dated 11 April 2022 at [14].
[35] Ngā Rūnanga, opening submissions dated 11 April 2022 at [15].
[36] Transcript (McCallum-Clark) at 305.
[37] Ngā Rūnanga, opening submissions dated 11 April 2022 at [14].

Directions

[59] Having conferred with the parties, the Regional Council will respond to the court's suggested amendment to Policies 15A and 15B as regards residual effects, tracking any changes suggested (as may be required).

Issue: inclusion of an advice note or alternatively retention of Policy 16(1)(b)(iii) (DV)

[60] To clarify the relationship between Policies 15A/15B and 16, Forest & Bird/Fish & Game seek the addition of an advice note to 15A/15B which reads:[38]

> Advice Note: Where Policy 16 requires improvement of water quality in a Schedule X catchment, that requirement to improve water quality applies in addition to this policy.

[61] Alternatively, Forest & Bird/Fish & Game seek the retention of Policy 16(b)(iii) (DV).[39] As parties are aware, in its Fifth Interim Decision[40] the court did not retain this sub-clause.

[62] Given the same relief is sought for both Policies 15A and 15B, and because of the overlapping nature of the subject matter, it is efficient to deal with the relief sought for both policies in this section. By way of context, it suffices to say that Policy 15A applies where existing water quality meets Appendices E and Appendix C's standards/guidelines, while Policy 15B applies where the standards/guidelines are not met.

[63] By the close of the hearing, it was apparent the Regional Council and Forest & Bird/Fish & Game had diverging views on the matters that Policies 15A/15B apply to, or should apply to, and their relationship with Policy 16 for farming

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[38] August Consolidated Plan at 39 and 43.
[39] Forest & Bird/Fish & Game, closing submissions dated 16 August 2022 at [7] and [8].
[40] [2022] NZEnvC 265.

activities that affect water quality.

Insert advice notes

[64] By the insertion of advice notes, Forest & Bird/Fish & Game's relief would make Policy 16's farm discharge provisions for improved water quality applicable in addition to the Policy 15A/15B standards and guidelines. Relevantly, farm discharges may comprise both diffuse and point source discharges.

[65] The Regional Council's position on whether Policies 15A/15B apply to both was uncertain. Mr Maw submitted that while it may be possible at a technical level for both appendices to apply in respect of diffuse discharges, that is not how they are intended to be applied in the proposed plan. Instead, Policy 16 together with Schedule X, provides a more targeted or bespoke response to farming activities resulting in diffuse discharges.[41]

[66] However, that could imply Policies 15A/15B are confined to point source discharges, which would be incorrect. Policy 15A is not confined to point source discharges and Policy 15B(1a) is expressly for new diffuse discharges to water as well as 'new discharges to land [and] new discharges to groundwater' which may be diffuse.[42]

[67] In evidence for the Regional Council, Mr McCallum-Clark stated:[43]

> In my opinion, Policy 16 stands alone and has its reference point of Schedule X catchments …
>
> In my opinion Policy 16 is far more specific in relation to farming activities. There may be some situations where Polic[ies] 15A and 15B apply but in a general sense, I would consider Policy 16 being the specific policy in relation to farming, is the

[41] SRC, closing submissions dated 25 August 2022 at [57].
[42] October Consolidated Plan (Final SRC Changes) at 38-39.
[43] Transcript (McCallum-Clark) at 2165.

> policy that would have application in most circumstances and provides a context for farming activities.

[68] Counsel for Forest & Bird/Fish & Game and the court spent some time eliciting the situations where the policies were relevant to diffuse farm discharges without complete success, but in summary Mr McCallum-Clark considers:

(a) Policies 15A/15B apply to an 'extent' to some kinds of diffuse farming discharges, namely where there are specific discharges such as farm dairy effluent or a discharge that is being consented, e.g. for increased dairying or IWG, but not so much in terms of managing permitted activity discharges;[44]

(b) Policies 15A/15B (DV) apply to farming discharges that require resource consent, but this interpretation has not been tested for plan versions produced subsequently;[45]

(c) it is difficult to apply Appendix E: Receiving Water Quality Standards to diffuse discharges because the appendix was imported from the operative Regional Water Plan, where it operated differently. This was done to fill a vacuum pending adoption of a more contemporary water quality management framework that implements the NPS-FM (2020) National Objectives Framework;[46]

(d) Policies 15A/15B do not work that well for diffuse discharges where the water quality standards for Appendix E are not met, but work better for point source discharges;[47]

(e) it is not clear to a plan user which standards in Appendix E are more or less applicable to different types of discharge. Greater clarity would be helpful;[48] and

(f) Policies 15A/15B and 16 would be read together when processing

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[44] Transcript at 1182 and 1183.
[45] Transcript at 1183.
[46] Transcript at 1183.
[47] Transcript at 1184.
[48] Transcript at 1185.

consent applications but Policy 16 would be the primary policy to be used for managing water quality effects from farming.[49]

Consideration

[69] Forest & Bird/Fish & Game are concerned about the relationship between Policies 15A/15B and 16, and the potential perception of two parallel tracks, namely a Policy 16 track for farming associated discharges and a Policy 15A/15B track for other discharges.[50] They submit that Policies 15A/15B are relevant to discharges associated with farming activities that are also covered by Policy 16 and that this should be clarified because:[51]

(a) not all contaminants covered by Appendices C and E are included in Policy 16's Schedule X. Consequently, there is a potential gap in water quality standards if Policies 15A/15B do not apply to farming related discharges;[52] and

(b) there is no scope to remove reference in the decision version of Policy 16 to compliance with Appendices C and E, at least in relation to applications to establish new, or further intensify existing dairy farming of cows or IWG activities. Policy 16(1)(b)(iii) (DV) expressly provides that where the appendices' standards are not met, applications for the preceding activities will generally not be granted.

[70] As stated, we understand the intended effect of the appellants' proposed advice note to be that where Policy 16 requires improved water quality in a Schedule X catchment, that requirement should apply in addition to the provisions

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[49] Transcript at 1187.

[50] Forest & Bird/Fish & Game, closing submissions dated 16 August 2022 at [5]-[6], and Transcript (Gepp) at 2319-2320.

[51] Forest & Bird/Fish & Game, closing submissions dated 16 August 2022 at [7].

[52] Note: Schedule X is limited to N, P, sediment and microbial contaminants. Appendices C and E include contaminants not covered by Schedule X as confirmed by Mr McCallum-Clark at p 2165 of the transcript.

of Policies 15A/15B for the contaminants covered by Appendices E and C.

[71] What practical effect would the advice note have? Regrettably, we were not assisted with an analysis of how many or what contaminants would be caught by the advice note. Forest & Bird/Fish & Game called no planning or science evidence on this aspect.

[72] Schedule X to the proposed plan is based on four contaminants (nitrogen ('N'), phosphorus ('P'), sediment and microbial contaminants). On the court's reading, sediment and microbial contaminants (albeit in different forms) are subject to Appendices C and E for each relevant class of water body. Appendix E includes total ammonia and N is listed in a table to the appendix.[53] P does not appear to be in Appendix E. We are mindful, however, that sediment is listed in both Appendices C and E and sediment is a primary vector for the discharge of P to water bodies.

[73] On the evidence before us, we have determined that little would be gained by adding the advice notes to Policies 15A/15B. This finding is reinforced by the uncertainty around the circumstances in which Policy 15A applies to diffuse farming discharges; potentially significant issues arising in relation to plan architecture and the implementation of Appendices C and E which we comment on when addressing Policy 15B; the significant spatial extent of Schedule X catchments subject to Policy 16; the revised wording of Policy 15B for both categories of discharges (point source/diffuse) in different circumstances; and the limited life of the subject provisions given the upcoming Tuatahi Plan Change.

[74] Finally, we record our assistance from Mr M Christensen's submission for Ravensdown, that the 'advice notes' proposed by Forest & Bird/Fish & Game are unnecessary (there is no need for a policy to say that if other policies apply then they are relevant – that is a given) and potentially confusing if they are retained

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[53] August Consolidated Plan, Appendix E: Table 1 at 233-234.

(because if they are included it would be expected they must mean something more than if they are not included).[54]

Outcome

[75] The advice notes that Forest & Bird/Fish & Game seek to be added to Policies 15A and 15B are not approved.

Retain Policy 16(1)(b)(iii)

[76] Forest & Bird/Fish & Game sought by way of alternative relief that the decision version of Policy 16(1)(b)(iii) be reinstated. That provision in context reads:

> **Policy 16 – farming activities that affect water quality**
>
> (1) Minimising the adverse environmental effects (including on the quality of water in [named waterbody types] from farming activities by:
>
> …
>
> (b) ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or IWG activities will **generally not be granted where**:
>
> …
>
> (iii) water quality **does not meet** the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines; and
>
> [our emphasis]

[77] As previously noted, the approach to be taken where Appendix C or E standards/guidelines are not met is strictly a Policy 15B matter, but we deal with the appeal point here for efficiency of drafting purposes. As parties are aware,

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[54] Ravensdown, closing submissions dated 15 August 2022 at [11].

Policy 16 was approved in the Fifth Interim Decision[55] without this clause.

Consideration

[78] We do not approve the inclusion of Policy 16(1)(b)(iii) (DV) for the following reasons.

[79] Firstly, Policy 16(1)(b)(iii) (DV) applies when resource consent is required for certain activities. Those same activities are now permitted by Rules 20, 20A and 20B subject to compliance with conditions. Where the conditions are not met, the activities are classified restricted discretionary activities. For restricted discretionary activities, the Regional Council could restrict its discretion under the rules to compliance with the standards in Appendices C and E. However, this was not pursued in amended relief.

[80] Secondly, broadly in line with the alternative relief, the court considered amending Policy 16(2) to say 'generally not grant' resource consent applications where the relevant standards are exceeded. Aside from the ambiguity inherent in the words 'generally not grant', we decided against this given the provenance of the standards,[56] and given also the incompatibility of some metrics with the NPS-FM (2020) water quality attributes. In the latter respect, the court's observations on plan architecture made in respect of Policy 15B are pertinent.

Outcome

[81] The reinstatement of the decision version Policy 16(1)(b)(iii) as sought by Forest & Bird/Fish & Game is <u>not approved</u>.

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[55] [2022] NZEnvC 265.

[56] The standards are copied from the operative Regional Plan.

Issue: retention of 'including' in the policy

[82] Finally, in its preferred wording the Regional Council has inserted 'including' in Policy 15A. While the Regional Council's planner, Mr McCallum-Clark supported this drafting, he could not contemplate what other methods or means to achieve the policy outcome might entail.[57] We have concluded the retention of 'including' would cause the policy implementation to become quite uncertain.

Outcome

[83] The word 'including' in Policy 15A is not approved.

Outcome overall

[84] Subject to the two amendments identified in the preceding paragraphs,[58] Policy 15A as set out in the October Consolidated Plan (Final SRC Changes) is approved.

Directions

[85] Having conferred with the parties, the Regional Council is to respond to the court's suggested amendments, tracking changes (as may be required).

Policy 15B – approach where Appendix E or Appendix C standards are not met

[86] Policy 15B is another key policy as it provides direction for the management of discharges where specified water quality and sediment standards are not met in

[57] Transcript (McCallum-Clark) at 1243-1244, and 2078.
[58] Concerning residual effects and the word 'including'.

receiving waters. Like Policy 15A, it implements a number of related higher order plan provisions.

[87] Policy 15B was appealed by Forest & Bird/Fish & Game with 12 parties joining the appeals under s 274.

Policy 15B (DV)

[88] Policy 15B (DV) reads as follows:

> **Policy 15B – improve water quality where standards are not met**
> Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:
> 1. avoiding where practicable and otherwise remedying or mitigating any adverse effects of new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and
> 2. requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where practicable and otherwise remedied or mitigated, so that beyond the zone of reasonable mixing water quality will be improved to assist with meeting those standards or sediment guidelines.

[89] Notable aspects being that the policy differentiates between new and replacement discharges, with the latter directed to effect quality improvements and use of remedy or mitigate in the alternative to avoid.

Policy 15B proposed consent order wording

[90] Following court-facilitated mediation, the parties proposed that the wording be amended to read:[59]

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[59] Joint Memorandum in Support of Consent Orders, 3 February 2022 Appendix 1, Annexure A, at 6.

> Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:
>
> 1. avoiding any adverse effects of new point source discharges to surface water on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and
> 1a. avoiding where reasonably practicable and otherwise remedying or mitigating any adverse effects of other new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines; and
> 2. requiring any application for replacement of an expiring discharge permit to demonstrate how and when adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated so that water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

Objectives implemented by Policy 15B

[91] Policy 15B directly implements the second clause of Objective 6, namely that water quality in each freshwater body, coastal lagoon and estuary will be improved where the water quality is degraded by human activities. It also contributes to the implementation of other related objectives listed above for Policy 15A.

Plan architecture

[92] Tangentially, because it is not in issue in the current proceedings, we note from a plan architecture perspective that although Policy 15B is concerned with improving water quality where it is degraded, there is only a modest overlap between the 13 or so attributes contained in Appendices C and E and those accepted by the court in its Fifth Interim Decision[60] for identifying degraded water

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[60] [2022] NZEnvC 265.

bodies in Schedule X.

[93] As background to the current proceedings:

(a) absent mapping or similar, it is unclear how plan users will know where existing water quality does not meet the Appendix E standards and Appendix C guidelines and, in turn, the applicability of Policy 15B and the rules which implement it;

(b) other activity-specific policies and rules are also concerned with improving degraded water quality. For example, Policy 16: farming activities that affect water quality and Rule 20 that implements it, do not rely on the appendices. A number of such farming related policies/rules are implemented instead through the Appendix N: FEMP provisions, including where water bodies are identified in Schedule X;[61]

(c) the plan's default position in Rule 5 is that 'except as provided for elsewhere in [the] plan' it is a discretionary activity to discharge any contaminant into water or onto land in circumstances where it may enter water provided:

(i) where the receiving water upstream meets Appendix E standards the discharge does not reduce water quality downstream after reasonable mixing; and

(ii) where the receiving water upstream does not meet Appendix E standards the discharge must not further reduce downstream water quality below those standards after reasonable mixing.

[94] Rule 5 does not implement the *improve* component of Policy 15B. Nor does it incorporate Appendix C which is included in Policy 15B.

[95] In response to questions put in cross-examination and by the court,

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[61] For example, Rules 20, 24 and 35B.

including in its 10 and 25 March 2022 Minutes, Mr McCallum-Clark amended the wording for Policy 15B that he had earlier supported to better reflect the different circumstances and types of discharges to which the policy needs to apply.[62] The witness was also mindful that:

(a) the improvement of water quality will fall to existing activities because it is unrealistic to expect a new discharge to result in improvement to overall water quality;[63] and

(b) there is the potential for contaminants to be discharged to water by new activities resulting in an improvement to degraded water quality elsewhere, but not necessarily involving the same water body.[64]

[96] A number of examples were given for the above, including where a settlement's poorly performing onsite effluent treatment facilities are proposed to be replaced by a reticulated, community treatment system or secondly, where intensive winter grazing is to be replaced by a wintering barn with an agriculture effluent system that contains and treats contaminants prior to discharge, resulting in an overall improvement in water quality. A policy construct that prevented such activities occurring would, in Mr McCallum-Clark's opinion, be problematical for Southland and potentially hinder water quality improvements sought by the plan.[65]

[97] We accept both of these propositions and agree that the policy needs to be sufficiently nuanced to respond positively to different circumstances of the type identified by Mr McCallum-Clark.

The Regional Council's preferred wording

[98] In its final iteration of the policy, the Regional Council proposed that the policy provide separately for three different situations (new point source

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[62] McCallum-Clark, supplementary statement dated 6 April 2022 at [22]-[26].
[63] McCallum-Clark, supplementary statement dated 6 April 2022 at [15].
[64] McCallum-Clark, supplementary statement dated 6 April 2022 at [16]-[17].
[65] McCallum-Clark, supplementary statement dated 6 April 2022 at [17].

discharges to surface water, a range of other new discharges, and replacing/modifying permits for existing discharges) as follows:[66]

> **Policy 15B – Approach where Appendix E or Appendix C standards are not met**
> Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, water quality will be:
> 1. Maintained, including by avoiding any adverse effects of new point source discharges to surface water on water quality or sediment quality so that the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated beyond the zone of reasonable mixing; and
> 1a. Maintained, including by avoiding, where reasonably practicable, or otherwise minimising any adverse effects on water quality or sediment quality from new discharges to land, new discharges to groundwater or new diffuse discharges to water so that the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated; and
> 2. Improved, including by requiring any application for the replacement of an expiring discharge permit, seeking a discharge permit for an existing but previously unconsented discharge, or seeking a different discharge permit for an existing activity to demonstrate how adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated, so that water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

[99] It is fair to say that the other interested parties held a diverse range of views on the wording of the policy, from which we have identified the principal issues for determination.

Issues for determination

[100] The following broad issues arise:

(a) retention of 'improve' in the Policy 15B heading and in the policy

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[66] October Consolidated Plan (Final SRC Changes) at 39.

chapeau;

(b) retention of 'including' either in the chapeau to the policy or its clauses;

(c) drafting of clause (1);

(d) drafting of clause (1a);

(e) drafting of clause (2).

[101] We note where there are differences in drafting that are not substantive, we have not commented on the same.

Issue: retention of 'improve' in Policy 15B heading

[102] A primary function of Policy 15B is to implement Objective 6 and provide direction for deciding applications for new and existing discharges, where the plan's water quality standards and sediment guidelines are not met.

[103] The court accepts that it will fall to clause (2) to do the 'heavy lifting' in terms of effecting quality improvements.[67] Consents for new discharges cannot realistically be expected to do any more than is reasonably practicable to minimise contaminant loads and not exacerbate limit exceedances. In this situation, inclusion of 'improve' in the heading of Policy 15B is misleading and may, potentially, misdirect related decision-making.

Outcome

[104] The word 'improve' is not to be retained in Policy 15B's heading. The heading set out in the October Consolidated Plan (Final SRC Changes) is approved.

Issue: retention of 'improve' in the Policy 15B chapeau

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[67] Namely replacement of expiring discharge permits, discharge permits for existing but unconsented discharges, and different discharge permits for existing activities.

[105] The question then arises whether 'improve' should be retained in the chapeau of Policy 15B, recognising that it is only existing (on replacement or in the other clause (2) circumstances) and not new discharges that will contribute to an improvement in water quality. The Regional Council, Territorial Authorities and Ngā Rūnanga do not retain 'improve' in the chapeau as it would be inconsistent with their clauses (1) and (1a) that commence with (or include) 'maintain'. Forest & Bird/Fish & Game as well as Ballance, the Dairy Interests and Ravensdown propose that 'improve' be retained.[68]

[106] Guided by our reasoning for the policy heading, we look to the outcome of the latter parties' clauses (1) and (1a) to see if their relief requires an outcome of improved water quality. Forest & Bird/Fish & Game seek that the adverse effects of all new discharges to surface water, which would exacerbate exceedance of the standards/guidelines, be avoided. This direction would avoid worsened water quality but would not necessarily result in improvement. Irrespective of Forest & Bird/Fish & Game's preferred formulation of clause (1a), we find this potential inconsistency militates against inclusion of 'improve' in the chapeau. Analysis of the Ravensdown, Dairy Interests and Ballance's preferred clause (1) results in the same conclusion.

Outcome

[107] For the foregoing reasons, 'improve' is not to be retained in the chapeau of Policy 15B. The chapeau set out in the October Consolidated Plan (Final SRC Changes) is approved.

Issue: retention of 'including' either in the chapeau to the policy or its clauses

[108] In its preferred wording the Regional Council has inserted 'including' in clause (1), (1a) and (2) of Policy 15B.[69] We decline to make this amendment or to

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[68] August Consolidated Plan at 40-41.

[69] October Consolidated Plan (Final SRC Changes) at 39.

retain 'including' in the chapeau to Policy 15B as per DV policy. Our reasoning is straightforward. First, the policy outcomes are stated in each clause. The phrase 'including' admits to the possibility of other outcomes, but these would not be policy outcomes. Second, the chapeau *per se* gives no direction as to the outcome of policy. If the term 'including' is retained in the chapeau the approach where Appendix E or Appendix C standards are not met is entirely uncertain.

Outcome

[109] We do not approve the word 'including' either in the policy chapeau or clauses. Our following decisions are to be read subject to this finding.

Issue: drafting of clause (1)

[110] We come now to clause (1). All parties would limit the clause to 'new point source discharges to surface water' except Forest & Bird/Fish & Game, which propose it apply to all new discharges, thereby capturing diffuse discharges. Secondly, except for the Director-General, all parties are agreed the clause should require the (unqualified) avoidance of any adverse effects that would exacerbate exceedance of the standards in Appendices C and E. The Director-General's amended relief does not refer to exacerbating the degree of exceedance of those standards.[70] Thirdly, some parties (the Regional Council, Territorial Authorities, Director-General and Ngā Rūnanga) propose the chapeau and clause together read water quality 'will be maintained' or 'is maintained' while others (Ravensdown, Dairy Interests, Ballance, Forest & Bird/Fish & Game) would not include 'maintain'.[71]

[111] The most significant of the above differences is Forest & Bird/Fish & Game's proposal that clause (1) should apply to all new discharges to surface water

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[70] The Director-General's proposed deletion of reference to a reasonable mixing zone is addressed below.

[71] August Consolidated Plan at 40-41.

(being both new point source and diffuse discharges) in combination with the direction that any adverse effects be avoided that would exacerbate the extent of standard exceedance. There was no evidence that we recall that water quality could not be maintained by avoiding adverse effects of new point source discharges to surface water through suitably engineered discharges, designed to not exacerbate exceedance of the applicable standards/guidelines.

[112] We do not accept, however, that all adverse effects of new diffuse contaminant discharges to surface water are capable of being avoided. The evidence received in the context of farming does not support an outcome of avoiding adverse effects of the discharge of diffuse contaminants to surface water. For these reasons we find that clause (1) should deal only with new point source discharges to surface water.

[113] As for the other points of difference, this policy is concerned with water quality standards/guidelines in Appendix C and Appendix E. Where the standards/guidelines are exceeded, new point source discharges are unlikely to *improve* water quality but may *maintain* water quality. It is more appropriate for the policy to directly reference the standards/guidelines applicable than leave this to be inferred from the heading and secondly, for the policy to expressly state that new point source discharges are to maintain water quality.

Outcome

[114] For the foregoing reasons, we approve the Regional Council's drafting of Policy 15B(1) as set out in the October Consolidated Plan (Final SRC Changes).

Drafting of clause (1a)

[115] Turning to clause (1a), the following sub-issues for determination arise:

(a) should discharges not covered by clauses (1) and (2) be required to 'avoid any adverse effects' or 'avoid, where reasonably practicable, or

otherwise minimise any adverse effects'?

(b) the merits of including more specific provisions for situations where there is an overall improvement in water quality (the net effect consideration); and

(c) referencing of the Appendices C and E standards/guidelines in the policy.

Issue: should discharges that are not covered by clauses (1) and (2) be required to 'avoid any adverse effects' or 'avoid, where reasonably practicable, or otherwise minimise any adverse effects'?

[116] It will be recalled that clause (1a) concerns new discharges except point source discharges to surface water.

[117] We received evidence that there are circumstances in which adverse effects from the discharge of contaminants by rural activities cannot be avoided – in the sense of 'not allowing' or 'preventing the occurrence of' them.[72] In the context of agriculture effluent management, Otago/Southland sustainable dairying manager for the Dairy Interests, Mr C Duncan, stated that notwithstanding the adoption of best practice, it is not possible to totally avoid some contaminant loss through the soil profile and potentially into ground water. While potentially small, over time not all nutrients will be taken up by plants, or some may bypass plant root structure. For these reasons, he was unable to say that all adverse effects would be *avoided*.[73]

[118] Other farm system experts gave similar evidence in respect of the discharge of contaminants from IWG and pasture-based wintering.[74] With one qualification, which we come to next, we find that the Regional Council's 'avoiding, where reasonably practicable, or otherwise minimising any adverse effects' phrasing is a better formulation at the beginning of clause (1a) than Forest & Bird/Fish &

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[72] *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [96].
[73] Duncan, Affidavit dated 25 February 2022 at [15] and 'All of Parties' Transcript at 184-185.
[74] For example, Farm Systems JWS, dated 20 July 2022 at [7].

Game's unqualified use of 'avoid'.[75]

Outcome

[119] The Regional Council's use of 'avoiding, where reasonably practicable, or otherwise minimising any adverse effects' in Policy 15B(1) is approved.

Issue: the merits of including more specific provisions for situations where there is an overall improvement in water quality (the net effect consideration)

[120] Forest & Bird/Fish & Game's relief differs from the approach generally supported by other parties. The Regional Council and some others[76] propose that the clause specify 'other' types of new discharge subject to (1a). Namely, new discharges to land, new discharges to groundwater, and new diffuse discharges to water. We find this appropriate as it affords certainty on the subject discharge categories. The Council does not propose that clause (1a) expressly provide for situations where discharges result in an *overall improvement* in degraded water/sediment quality. Mr Willis, giving planning evidence for Dairy Interests, accepted that Council's formulation was potentially able to achieve this outcome relying on the 'or otherwise minimising' path, but preferred the more explicit approach in the Dairy Interests, Ballance and Ravensdown wording 'or otherwise ensuring no net increase in any adverse effects'.[77] We note the differences in the expert opinion is subtle and important.

[121] The Forest & Bird/Fish & Game response is different again as they would expressly provide for situations where there was an overall improvement in new or upgraded discharges from 'nationally or regionally significant infrastructure' or from 'on-farm infrastructure' where there is a reduction in the discharge of contaminants. In these cases, residual effects are to be avoided where practicable

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[75] August Consolidated Plan at 40 and 42.
[76] Dairy Interests, Ngā Rūnanga and Director-General.
[77] Transcript (Willis) 1749.

and otherwise minimised. Counsel, Ms Gepp, considered this approach would provide a more encompassing policy (in terms of discharges covered), clearly require water quality improvement and redress perceived ambiguity in the Regional Council's wording.[78] We were not assisted by evidence from Forest & Bird/Fish & Game's planning witness on these matters and note potential drafting challenges which could frustrate the policy.[79]

[122] The succinctness of the Dairy Interests and others 'no net increase in any adverse effects' has an attraction. However, we anticipate incipient difficulties with the interpretation of 'no net increases' given the multiple factors that determine water quality and potential for some adverse effects to increase while others decrease.

[123] The fuller Forest & Bird/Fish & Game formulation, while endeavouring to make explicit situations in which an *overall improvement* may result, carries the risk of not identifying all potentially relevant situations and has drafting issues. On balance, we find the Regional Council's formulation 'or otherwise minimising discharges' while subtly nuanced is a better alternative and able to deliver the outcome sought.

Outcome

[124] The court approves both the initial part of the Regional Council's preferred wording for Policy 15B(1a) that reads 'maintained, ~~including by~~ avoiding, where reasonably practicable, or otherwise minimising any adverse effects …' and the

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[78] Forest & Bird/Fish & Game, closing submissions dated 16 August 2022 at [9].

[79] For example, Forest & Bird/Fish & Game clause (1a) chapeau commences 'Where (1) does not apply …'. Forest & Bird/Fish & Game clause (1) is dealing with 'new point source discharges to water'. Clause (1a) is not, therefore, concerned with new point source discharges to water. Clause (1a) goes on to say 'avoid … effects of new discharges … except for (a) and (b)'. Clause (1a)(a) and (b) are expressly dealing with both point source and diffuse discharges from two activities. It is unclear whether it is intended that (1a) apply or does not apply to point source discharges.

three discharge categories provided for in the clause.

Issue: referencing of the Appendices C and E standards/guidelines within policy 15B

[125] The Director-General proposes to exclude from both clauses (1) and (1a) the phrase 'so that the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated'. In the preferred wording of the Regional Council and others, the phrase qualifies the extent to which 'water quality will be maintained'.[80] It might be argued that 'maintained' means maintained in all regards and no further elaboration is required. But that would be to overlook that water quality is a multi-faceted matter and by its heading, Policy 15B is concerned specifically with the matters subject to Appendices E and C. No party sought to change this aspect.

[126] We find inclusion of 'so that the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated' preferable as it explicitly directs consideration of the standards/guidelines and, importantly, their constituent provisions. In doing so it lends certainty to the aspects of water quality to be maintained. The phrase is to be retained in both clauses accordingly.

Outcome

[127] Retention in Policy 15B(1) and (1a) of the words 'so that the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated' is approved.

Drafting of clause (2)

[128] The principal issues that arise for determination follow:

(a) which of two phrases is more appropriate:

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[80] August Consolidated Plan at 40-43.

(i) 'avoiding where reasonably practicable and otherwise minimising any adverse effects'; or

(ii) 'avoiding, where reasonably practicable and otherwise remedying or mitigating any adverse effects'.

(b) whether reference to 'when' an action must occur undermines the effectiveness of the policy;

(c) whether to include the phrase 'beyond the zone of reasonable mixing for point source discharges';

(d) whether to include the term 'reasonably';

(e) whether to include the term 'residual'; and

(f) whether the meaning of 'replacement' and 'new consents' is certain.

Issue: which of two phrases is more appropriate:

(i) *'avoiding where reasonably practicable and otherwise minimising any adverse effects'; or*

(ii) *'avoiding, where reasonably practicable and otherwise remedying or mitigating any adverse effects'?*

[129] Although proposing different sentence structures, all parties are agreed that under clause (2), subject applications should be required to demonstrate how water quality will be improved and adverse effects avoided.

[130] The Regional Council, Ballance, Dairy Interests, and Ravensdown propose adverse effects 'be avoided where reasonably practicable and otherwise remedied or mitigated'[81] so that water quality will be improved to assist with meeting the standards and guidelines. Forest & Bird/Fish & Game propose 'avoided where practicable and otherwise remedied or mitigated'. The Director-General proposes 'adverse effects will be avoided where reasonably practicable and otherwise

[81] For completeness we note Ngā Rūnanga sought different wording again, prosing 'avoiding adverse effects where reasonably practicable **or** otherwise remedying or mitigation to assist with meeting those standards or guidelines'. Refer to August Consolidated Plan at 44. While we understood them to be supporting policy with similar effect to that of the Regional Council, this would not be achieved as under their formulation there is a choice to either avoid or remedy/mitigate.

minimised'.[82]

[131] While the Director-General supports the use of 'minimising' in Policy 15B(2), she gives cogent reasons for employing 'remedying or mitigating' when considering replacement of an existing resource consent.[83] Given that replacement of existing resource consents are likely to be doing the 'heavy lifting' to improve water quality in the region, the policy to take remedial action may, in the circumstances, be the most appropriate way to secure the outcomes under the objectives. By way of example, the Director-General refers to where a policy for restoration of the environment is required.[84] We accept this submission.

[132] While the court approved 'minimisation' instead of 'remedy and mitigate' in Policy 15A, 'remedy and mitigate' is appropriate in circumstances where water quality standards are met or where the activity is a new activity.

Outcome

[133] Retention of the words 'and otherwise remedied or mitigated' in Policy 15B(2) as proposed by the Regional Council is approved.

Issue: whether a reference to 'when' an action must occur undermines the effectiveness of the policy

[134] The Regional Council's description of clause (2) discharge categories evolved through the course of the hearing. The parties are in general agreement on the categories, albeit with some supporting earlier Regional Council versions. The court endorses the Regional Council's finally preferred categories in its October Consolidated Plan (Final SRC Changes), subject to satisfactory resolution of the relationship between new consents and two of the categories, which we

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[82] August Consolidated Plan at 40, 43-44.
[83] Director-General, closing submissions dated 16 August 2022 at [25]-[28].
[84] Director-General, closing submissions dated 16 August 2022 at [45]-[54].

return to below.

[135] The Regional Council's version of clause (2) deletes 'and by when'. Most other parties would retain the phrase because they consider its inclusion requires express consideration of 'when' improvements will be made.[85] They are concerned that its deletion would negatively deflect attention from the timing of improvements and remove a positive policy direction. Unlike the court, they did not view the phrase as potentially opening the door to *kicking the can down the road*.

[136] Mr J Dunning, giving planning evidence for the Territorial Authorities, expressed overall agreement with the Regional Council's version of the policy,[86] including the requirement to 'demonstrate **how** and by **when** adverse effects will be avoided …',[87] which he said address 'methods and programmes'.[88] In response to questions from the court, he explained that 'when' allows for situations where a territorial authority plans to improve an infrastructure discharge in the future but not necessarily when a replacement consent is first exercised. He accepted that as worded, the policy is not limited to Territorial Authorities' discharges; that there is no good reason why 'methods and programmes' cannot be included in a consent application and decision without express plan provisions; and most importantly, we think, it would be inappropriate given the overall state of Southland's water if the words he supported were to result in delayed improvements to water quality.[89] Although Mr Dunning accepted that the policy would achieve its intended purpose without the words 'how and when' this was not, as noted, the preference of either the Territorial Authorities or some other parties.[90]

[137] We find it better that the policy not be open to interpretation in a way that

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[85] Ngā Rūnanga, Ballance/Dairy Interests/Ravensdown, Forest & Bird and Fish and Game, Director-General and Territorial Authorities. Refer to August Consolidated Plan at 40, 43-44.
[86] At the time he prepared evidence.
[87] Dunning, supplementary evidence dated 10 June 2022, Attachment A at 6.
[88] Dunning, supplementary evidence dated 10 June 2022 at [16].
[89] Transcript at 1799-1802.
[90] Ngā Rūnanga, Ballance/Dairy Interests/Ravensdown, Forest & Bird/Fish & Game, Director-General and Territorial Authorities.

could facilitate delayed improvements in degraded water quality. Should there be compelling reasons for delays, these are capable of management through the consent process.

Outcome

[138] For the reasons given, the Regional Council's preferred wording '… to demonstrate how adverse effects will be avoided where reasonably practicable and otherwise …' is approved.

Issue: the zone of reasonable mixing (clauses (1) and (2))

[139] The Director-General and Ngā Rūnanga propose that the words 'beyond the zone of reasonable mixing' not be included in clauses (1) and (2).[91]

[140] Ms Davidson, Ngā Rūnanga's planning witness, opined that as both Appendices C and E state their provisions apply after the zone of reasonable mixing, the words are superfluous.[92] Ms Kirk, the Director-General's planning witness, was of the same opinion,[93] although the Director-General was ultimately neutral on the issue.[94]

[141] We agree that the appendices contain the statements referred to and that good plan drafting generally avoids repetition.[95] In this case, however, the mixing zone provisions are central to the policies in an important regard and well removed from the appendices. For these reasons we find that plan users would be assisted by having the mixing zone provision expressly included in the two clauses, and

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[91] August Consolidated Plan at 43-44.

[92] Davidson, supplementary evidence dated 20 May 2022 at [19].

[93] Kirk, supplementary statement dated 20 May 2022 at [12].

[94] Director-General, closing submissions dated 16 August 2022 at [23].

[95] Appendix C states the guidelines apply to sediment 'after reasonable mixing'. Appendix E states the standards apply to the effects of discharges 'following reasonable mixing with the receiving waters, unless otherwise stated'. Refer to October Consolidated Plan (Final SRC Changes) at 186 and 188.

direct the Regional Council's wording be retained accordingly.

Outcome

[142] The phrases 'beyond the zone of reasonable mixing' and 'beyond the zone of reasonable mixing for point sources discharges' as proposed by the Council in Policies 15B(1) and (2) respectively are approved.

Issue: replacement and new consents in clause (2)

[143] The court acknowledges Mr Winchester's submission that there is potentially an issue in clause (2) with how 'the replacement of an expiring discharge permit' and, possibly, 'a different discharge permit for an existing activity' are to be interpreted and managed vis-a-vis the new discharges provided for in the other two clauses. In short, the activities identified in clause (2) also may be new permits.[96,97]

[144] We apprehend the Regional Council has recognised this with the wording of each of the three consent categories in Policy 15B(2) and find it has sufficiently differentiated them from newly established discharges provided for in Policy 15B(1) and (1a). Relevantly, clauses (1) and (1a) are concerned with new discharges and clause (2) with applications/permits.

[145] If it is intended that a 'different discharge permit' include RMA ss 127-129 reviews, as the Director-General may seek by her proposed inclusion of 'variations', this would usefully be made explicit.[98] The court finds that, as a minimum, the architecture of the plan requires new discharges provided for in clauses (1) and (1a) and other categories of consents that require improved water

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[96] Ngā Rūnanga, closing submissions dated 15 August 2022 at [31].

[97] It strikes the court that a 'different discharge permit' is potentially a replacement permit and therefore also 'new'.

[98] The Director-General proposes 'the variation of an existing discharge permit' be provided for in cl (2) which the court interprets as the change or cancellation of a condition. See August Consolidated Plan at 43.

quality in clause (2) be clearly differentiated, and for this reason proposes the following amendment to clause (2):

> (2) improved, ~~including by~~ requiring any application for the replacement of an expiring discharge permit, seeking a discharge permit for an existing but previously unconsented discharge, or seeking a different or amended discharge permit for an existing activity, <u>including a variation under ss 127-129 RMA which do not involve a new discharge</u>, to demonstrate how ~~and by when~~ adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated, so that ~~beyond the zone of reasonable mixing,~~ water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

[146] We wish to hear further from the Regional Council and parties on whether this change is sufficient to address the points raised by Mr Winchester and the Director-General.

Direction

[147] The Regional Council and parties are directed to file memoranda responding to the court's suggested amendment.

Policy 15C – maintaining and improving water quality after Freshwater Management Unit process

[148] For completeness, we record that after expert witness conferencing by their planners, the parties agreed that Policy 15C should be deleted from the plan. Summarised, the DV policy provided for water quality to be improved and/or maintained after completion of the NPS-FM (2020) Freshwater Management Unit process which is to be done as part of the Tuatahi plan change.

[149] The policy became redundant following the incorporation of Policies 15A and 15B into the plan. Its deletion was accepted by Ngā Rūnanga in its 'relief sought' advice to the court and is supported in the evidence of both the Ngā

Rūnanga's planning witness Ms Davidson and Mr McCallum-Clark for the Council.[99]

Outcome

[150] For the foregoing reasons the court approves the deletion of Policy 15C.

Overall outcome

[151] Subject to the two amendments identified in the preceding paragraphs,[100] Policy 15B as set out in the October Consolidated Plan (Final SRC Changes) is approved.

Directions

[152] Having conferred with the parties, the Regional Council is to respond to the court's suggested amendments tracking changes (as may be required).

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[99] Ngā Rūnanga Tracked Change Relief, dated 22 February 2022, Appendix A at 1 refer Row 4 of Table; Davidson, EiC dated 20 December 2021 at [10]; McCallum-Clark, EiC dated 11 February 2022 at [27] and supplementary evidence dated 6 April 2022 at [9].

[100] Concerning residual effects, the word 'including' and the reference to ss 127-129 in clause (2).

Policy 16A – industrial and trade processes that may affect water quality

[153] Policy 16A resulted from the first instance Hearing Panel's recommendation for a 'higher level' suite of discharge policies (being Policies 15A-15C) complemented by more specific policies for the most common types of Southland discharges. Policy 16A for industrial or trade premise discharges is one of the latter.[101]

[154] Policy 16A is notable in that it is one of only two plan policies (which we see) that requires adoption of the best practical option ('BPO') to manage adverse effects. By definition, this requires adoption of the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to the various matters specified in the Act.[102] BPO is a potentially demanding requirement, especially when subject to Policies 15A and 15B.

The Regional Council's preferred wording

[155] In response to the court's questions/observations on proposed consent order documentation, Mr McCallum-Clark proposed a re-drafted version of the policy that closely aligns with that proffered by the court in an earlier Minute.[103] The Regional Council retained this wording as its finally preferred version of the policy:[104]

> **Policy 16A – Industrial and trade processes that may affect water quality**
>
> Subject to Policies 15A and 15B, require the adoption of the best practicable option to manage the treatment and discharge of contaminants derived from industrial trade processes.

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[101] McCallum-Clark, supplementary evidence dated 6 April 2022 at [10].
[102] Namely the nature of the discharge and the sensitivity of the receiving environment, financial implications, effects on the environment relative to other options, the current state of technical knowledge and likelihood that the option can be successfully applied:–s 2 Interpretation, RMA.
[103] Court Minute 10 March 2022 at [48] and McCallum-Clark, supplementary evidence, dated 6 April 2022 at [31]. The court suggested changes to the rule to overcome drafting which had the potential to render the rule ineffective.
[104] October Consolidated Plan (Final SRC Changes) at 42.

> The adverse effects to be managed include effects on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries, salt marshes and groundwater.

[156] It occurs to the court that the policy has a terminology challenge amenable to ready correction. The plan does not define either 'industrial and trade processes' used in the policy's heading or 'industrial trade processes' used in the body of the text. Presumably the plan relies on the definition of 'industrial or trade processes' in the Act? If this is correct, and subject to scope, the Regional Council is directed to change both of the terms used in the policy to read 'industrial or trade processes' to align them with the Act.

[157] For our following analysis we have assumed the term 'industrial trade processes' in the policy has the same meaning as 'industrial or trade processes' in the Act.

[158] We agree with the Regional Council's interpretation that 'Subject to Policies 15A and 15B', means those policies need to be complied with or met as a first step and then the additional requirements set out in 16A apply.[105] Prefaced with those words, the Regional Council's version of Policy 16A engages effectively with the different receiving environments dealt with by Policies 15A/15B, namely where water and sediment quality standards/guidelines are met and not met. As Mr Maw submitted, the outcomes required by the two policies are to be secured when Policy 16A is implemented.

[159] We also accept that, prefaced with the words 'subject to', Policy 16A implements Objective 6 where receiving water quality either needs to be maintained or improved.

[160] Mr McCallum-Clark supported the Regional Council's preferred wording because it has 'a clear linkage and inherent consistency with Policies 15A and 15B,

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[105] Transcript (Maw) at 49.

clearly sets out expectations with respect to the application of best practice option[s] and retains the wider range of water bodies that it applies to'.[106]

[161] We note the policy actually includes more water body types than Appendix E, which is referenced in Policies 15A and 15B – for example tidal estuaries and groundwater. Like Mr McCallum-Clark, however, we do not consider this problematical as it widens the application of Policy 16A to good effect. However, given both Policies 15A/15B are concerned with Appendix C – ANZECC Sediment Guidelines – it would be appropriate in the interests of certainty to expressly include 'sediment' in the second sentence of Policy 16A alongside 'the quality of water', as different sediment attributes are covered by Appendix E for receiving water quality from those in Appendix C.

Other parties' amended relief

[162] The Regional Council's preferred wording is supported by the Director-General, Ballance and the Dairy Interests.[107]

[163] Giving planning evidence, Ms Ruston for Ballance, Ms Kirk for the Director-General, Mr P Wilson for FFNZ and Ms Davidson for Ngā Rūnanga, support the Regional Council's option on the basis that it is significantly clearer than the Planning JWS version and sits appropriately within the policy framework of Policies 15A/15B for maintaining and improving water/sediment quality. None of the planning witnesses took issue with the range of water bodies to which it is proposed the policy apply.[108] Mr Willis, for the Dairy Interests, also supported the Regional Council's option, noting that the adoption of BPO 'must be done in such a way as to ensure the discharge complies with the general direction on adverse effects set out in Policies 15A and 15B'. And referring to Policy 15B,

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[106] McCallum-Clark, supplementary evidence dated 6 April 2022 at [30].

[107] August Consolidated Plan at 51.

[108] Ruston, supplementary evidence dated 20 May 2022 at [16], Kirk, supplementary evidence dated 20 May 2022 at [20], Wilson, supplementary evidence dated 20 May 2022 at [6(c)] and Davidson, supplementary evidence dated 20 May 2022 at [22].

'BPO must improve water quality where the standards and guidelines of Appendices E and C are exceeded'.[109]

[164] Forest & Bird/Fish & Game propose an alternative and substantially more comprehensive wording for Policy 16A which we summarise as follows:[110]

(a) deletion of the initial chapeau words 'Subject to Policies 15A and 15B'; retention of the requirement that BPO apply to industrial or trade process discharges; retention of the same list of subject water bodies as the Regional Council; and the adoption of three new clauses for situations where water quality either meets the standards/guidelines in Appendices C and E or does not meet them as described in (c) and (d) below;

(b) inclusion of an overarching requirement to maintain water quality or improve it where it is degraded;

(c) where water quality meets the standards/guidelines, and they will continue to be met, new discharges from existing premises and replacement discharges from existing premises are to avoid where practicable or otherwise minimise adverse effects so that the relevant standards/guidelines continue to be met;

(d) where water/sediment quality do not meet the standards/guidelines:[111]

    (i) avoid where practicable or otherwise minimise any residual [adverse] effects of discharges from **existing premises** when considering any **replacement discharges** that would exacerbate exceedance of the standards/guidelines; and

    (ii) avoid adverse effects of discharges from **new premises** where

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[109] Willis, supplementary evidence dated 20 May 2022 at [5.2].

[110] August Consolidated Plan at 51.

[111] The August Consolidated Plan at 51, records Forest & Bird and Fish & Game's Policy 16A(c) chapeau reads 'or bed sediments **meet** the Appendix C ANZECC sediment guidelines'. The same wording occurs in clause (c)(2). The architecture of the policy suggests the chapeau and (c)(2) should read 'does **not meet**'. The court has proceeded on this basis.

> existing water/sediment quality do not meet the standards/guidelines and the new discharge would exacerbate the exceedance.

[165] In all cases the required assessment is to be made beyond the zone of reasonable mixing for point source discharges.

[166] Forest & Bird/Fish & Game support managing 'industrial [or] trade process' discharges in accordance with the BPO option, as long as the requirement to maintain/improve water quality by reference to Appendices C and E standards is incorporated. Ms Gepp, counsel for Forest & Bird/Fish & Game, alluded to 'uncertainty' regarding the final wording of Policies 15A/15B and whether they will enable exacerbation or exceedance of standards. Forest & Bird/Fish & Game propose to directly reference the Appendices in Policy 16A and to require that adverse effects of discharges that would exacerbate exceedance of those standards be avoided.[112]

[167] Forest & Bird/Fish & Game planning witness, Mr Farrell, did not give evidence-in-chief, s 274 or supplementary planning evidence on Policy 16A.[113]

Issue: which is the better alternative wording?

[168] With the construct of Policies 15A/15B now largely settled by our preceding decisions, we find the extensive provisions in Forest & Bird/Fish & Game's (b) and (c)(1) and (2) are unnecessary for effective implementation of Policy 16A.

[169] Forest & Bird/Fish & Game's proposed clause (a) is problematical as the broad direction to 'maintain water quality or improve it where degraded' is not

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[112] Forest & Bird/Fish & Game, closing submissions dated 16 August 2022 at [30].

[113] Farrell, EiC edited 22 February 2022, Farrell s 274 evidence edited 22 February 2022 and Farrell rebuttal dated 22 February 2022.

linked to the specific circumstances covered by their (b) and (c). For instance, and we return to it below, there is no clear direction in clause (c)(1) that replacement consents for existing processes do 'the heavy lifting' of improving water quality where it is degraded by reducing the extent to which the relevant standards/guidelines are exceeded.

[170] The Regional Council's Policy 15A applies to all categories of discharges without separately listing them as Forest & Bird/Fish & Game propose (new discharges from existing premises, replacement consents presumably from existing premises). Aside from adding text unnecessarily, listing them brings the potential problem of inadvertently omitting a category such as new discharges from new premises. Importantly, the policy direction in both the Regional Council's Policy 15A and Forest & Bird/Fish & Game's Policy 16A(b) is the same, namely that the standards/guidelines continue to be met beyond the zone of reasonable mixing for point source discharges.

[171] On our analysis, both the Regional Council's Policy 15B(1a) and Forest & Bird/Fish & Game's Policy 16A(c)(2) cover new discharges and both direct that exceedance of the relevant standards/guidelines not be exacerbated. The Regional Council's Policy 15B(1) separately deals with new point source discharges to surface water but requires, as a minimum, the same outcome.

[172] Finally, we turn to the Regional Council's Policy 15B(2) and Forest & Bird/Fish and Game's Policy 16A(c)(1). The Regional Council's Policy 15B(2) for replacement permits (and other categories of discharges) applies an 'avoid where reasonably practicable or otherwise remedy or mitigate' test so that water quality will be improved to assist with meeting the standards/guidelines. Forest & Bird/Fish & Game's Policy 16A(c)(1) for replacement discharges, has an 'avoid where practicable or otherwise minimise any residual effects' when the replacement discharge would exacerbate exceedance of the standards/guidelines. Both formulations direct avoidance of adverse effects in the first instance. Although the Regional Council's subsequent wording 'and otherwise remedy or

mitigate' is arguably less prescriptive than Forest & Bird/Fish & Game's 'or otherwise minimise' it is used in conjunction with the direction that water quality be improved, which is absent from the Forest & Bird/Fish & Game provision.[114] We find that the Regional Council's Policy 16A implemented subject to Policy 15B(2) will suitably manage the effects of replacement discharges from industrial or trade processes with sufficient certainty, so that exceedances of receiving water standards/guidelines are not exacerbated and water quality is improved.

Outcome

[173] For the preceding reasons, the Regional Council's version of Policy 16A is provisionally approved with the words 'and sediment' inserted after 'water' in the second paragraph and with the standardising of the activity description.

[174] Subject to scope, we would approve the Regional Council's drafting of Policy 16A[115] with the above amendments as follows:

> **Policy 16A – Industrial or trade processes that may affect water quality**
>
> Subject to Policies 15A and 15B, require the adoption of best practicable option to manage the treatment and discharge of contaminants derived from industrial or trade processes.
>
> The adverse effects to be managed include effects on the quality of water and sediment in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries, salt marshes and groundwater.

Directions

[175] Having conferred with the parties, the Regional Council is to report back on scope:

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[114] Other than in Forest & Bird/Fish & Game's Policy 16A(a) where it essentially replicates Objective 6.
[115] October Consolidated Plan (Final SRC Changes) at 42.

(a) advising whether the Act's definition of 'industrial or trade processes' applies to this policy; and

(b) confirming scope to make the changes noted above.

Policies 17, 17A and Rule 32B

Policy 17 – agriculture effluent management

[176] Policy 17 is for the management of agriculture effluent discharges and implements Objectives 1-3, 5-6, 8 and 14.[116] For reasons that we come to, that part of Objective 1 concerned with 'recognising the connectivity between surface water and groundwater' is particularly important to the primary matter in dispute, as are Objective 6 for the maintenance of water quality where not degraded and its improvement where it is degraded, and Policies 15A/15B which are set out and determined above.

[177] The policy is relatively succinct and for ease of reference we set out the Council's finally preferred construction as follows:[117]

> **Policy 17 – Agricultural effluent management**
>
> 1. Avoid ~~significant~~ where reasonably practicable, or otherwise minimise, any adverse effects on water quality, and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, agricultural effluent management systems~~.~~ including by:
>
> ~~2. Manage agricultural effluent systems and discharges from them by:~~
>
> (a) designing, constructing and locating systems appropriately and in accordance with best practice.
>
> (b) maintaining and operating effluent systems in accordance with best practice guidelines;
>
> (c) avoiding any surface run-off or overland flow~~,~~ or ponding ~~or contamination of water, including via sub-surface drainage,~~ resulting from the ~~application~~ discharge of agricultural effluent to pasture; and
>
> (ca) minimising contamination of water by agricultural effluent via sub-surface drainage.
>
> (d) avoiding the discharge of untreated agricultural effluent to water.

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[116] McCallum-Clark, supplementary evidence dated 3 August 2022, Appendix 2: s 32AA evaluation at [19].

[117] October Consolidated Plan (Final SRC Changes) at 43.

> ***Note:*** *Examples of best practice referred to in Policy 17(1)(a) for agricultural effluent include IPENZ Practice Note 21: Farm Dairy Effluent Pond Design and Construction and IPENZ Practice Note 27: Dairy Farm Infrastructure (although these will not be applicable to all above ground tanks).*

[178] The Council's wording, which is supported by the Dairy Interests, proposes that any surface run-off, overland flow or ponding resulting from effluent discharges to pasture be avoided, and that the contamination of water by effluent via sub-surface drainage be minimised.[118]

The parties

[179] Forest & Bird/Fish & Game, the Director-General and Dairy Interests are the interested parties.

The issues for determination

[180] The principal disputed matters concern:

(a) the chapeau wording; and whether
(b) contaminants are to be avoided or minimised?

Issue: the chapeau

[181] The Regional Council and the Director-General propose the construct '[a]void where reasonably practicable[119]'; whereas in the final wording proffered by Forest & Bird/Fish & Game and the Dairy Interests omits 'reasonably'.[120]

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[118] We understand 'sub-surface drainage' in this context to mean 'subterranean', that is through soil as distinct from 'sub-surface drainage systems' used in Rule 13 and defined in the Glossary to mean, inter alia, an artificial permeable sub-surface conduit.
[119] October Consolidated Plan (Final SRC Changes) at 43 and the Director-General, closing submissions dated 16 August 2022 at [25].
[120] August Consolidated Plan at 53.

Outcome

[182] For the reasons given when determining Policy 15A we find 'reasonably practicable' the appropriate option.

Issue: are contaminants to be avoided or minimised?

[183] In February 2022 Dairy Interests, together with the other parties, sought orders by consent confirming contamination from discharges via sub-surface drains be avoided. Subsequently, Mr Duncan for the Dairy Interests, provided evidence on what agricultural effluent discharge effects on water quality can be avoided and what remains to be minimised. He deposed that:[121]

> there are … well established practices for ensuring agricultural effluent is applied to land at an appropriate depth, rate, and time to minimise losses to water. On this basis, it is appropriate that Policy 17 requires the adoption of best practice guidelines that have been well established and proven to minimise overland flow, ponding and contamination of water.

[184] When questioned about his use of 'minimise' vis-à-vis 'avoid', Mr Duncan explained that the use of best practice discharge methods enables farmers to "avoid ponding, overland flow and contamination of sub-surface drainage",[122] but it is not possible to "totally avoid some losses of contaminants through [the] soil profile … into underlying groundwater, and while those [losses] maybe extremely small … if things are done in accordance with best practice, it will not be nil".[123] He explained that this is because not all nutrients in the effluent will be taken up by plants or some may bypass the root zone and "there will always be a small amount that [passes] through".[124] For these reasons he was unable to say that all

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[121] Duncan Affidavit, dated 25 February 2022 at [15] as amended at the 'All of Parties' hearing. See also 'All of Parties' Transcript at 184 where Mr Duncan deleted 'avoid' and substituted 'minimise'.

[122] 'All of Parties' Transcript at 184.

[123] 'All of Parties' Transcript at 185.

[124] 'All of Parties' Transcript at 185.

adverse effects could be avoided.

[185] Having heard Mr Duncan's evidence, Mr McCallum-Clark subsequently deposed that it would be appropriate to draft clause (c) so that surface run-off or overland flow or ponding are to be avoided and, secondly, the effects on groundwater minimised.[125] This reflects in the Regional Council's and the Dairy Interests' finally preferred construct of clauses (c) and (ca) which when read together require that surface run-off, overland flow or ponding be avoided and contamination of water via sub-surface drainage be minimised.[126,127]

[186] Forest & Bird/Fish & Game and the Director-General seek a single clause (c) not greatly dissimilar in its intent from the Regional Council's/Dairy Interests' clause (c) and (ca). The point of difference being that the former proposes minimising the contamination of water to not be limited to 'via sub-surface drainage'. Instead, they propose it be an example of a route/vector. Hence their construct "… and minimise contamination of water, including via sub-surface drainage, …".[128]

Consideration

[187] When the competing versions of clauses (c) and (c)/(ca) are read in conjunction with the Policy 17 chapeau's direction 'to avoid where reasonably practicable or otherwise minimise any adverse effects on water quality',[129] the Forest & Bird/Fish & Game and Director-General's reformulation of the Council's clause (c) adds little to the Policy's direction. Clearly, having avoided the three matters in clause (c), the contamination of water by agricultural effluent is to

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[125] 'All of Parties' Transcript at 200.

[126] August Consolidated Plan at 53.

[127] We understand 'sub-surface drainage' in this context to mean 'subterranean' as distinct from 'on-farm sub-surface drainage systems' used in Rule 13.

[128] August Consolidated Plan at 53.

[129] October Consolidated Plan (Final SRC Changes) at 44.

be minimised irrespective of the route that contaminants might take.

[188] We find the Regional Council's version of the policy appropriately implements that part of Objective 1 for 'recognising the connectivity between surface water and groundwater'. The alternative wording proffered by Forest & Bird/Fish & Game and the Director-General would not add anything of sufficient significance to cause the court to alter the Regional Council's preferred formulation, and we find accordingly.

Outcome

[189] The court approves Policy 17 as set out in the October Consolidated Plan (Final SRC Changes).

Rule 32B – construction, maintenance and use of new agricultural effluent storage facilities

[190] Finally, Policy 17 is implemented in part by Rule 32B for the construction, maintenance and use of new agricultural effluent storage facilities. In reply to a question from the court, Mr Duncan accepted that the operational management plan required by Rule 32B(b)(ii) should be prepared by a suitably qualified person.[130]

[191] The consent orders sought in relation to this rule do not reflect this evidence.

Outcome

[192] The consent orders sought will be made subject to the amendment of Rule 32B(b)(ii) to the effect that the relevant management plan be prepared by a suitably qualified and experienced person.

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[130] 'All of Parties' Transcript at 189.

Policy 17A – community sewerage schemes and onsite wastewater systems

[193] The disputed issue is confined to the chapeau. It concerns the recurring issue of whether the policy should read '[a]void where reasonably practicable or otherwise minimise any adverse effects on water quality', which the Council prefers[131] or '[a]void where practicable, or otherwise minimise …' which Forest & Bird/Fish & Game seek.[132]

Outcome

[194] For the reasons previously given for Policy 15A, the court approves the Regional Council's wording of 'Avoid where reasonably practicable, or otherwise minimise …' and approves also the drafting of Policy 17A in the October Consolidated Plan (Final SRC Changes).

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[131] October Consolidated Plan (Final SRC Changes) at 44.

[132] August Consolidated Plan at 54. This version of the plan indicates the Director-General seeks the same relief. However, as previously noted Ms Williams accepted inclusion of 'reasonably' in the Director-General, closing submissions dated 16 August 2022 at [25].

Policy 18 and Rule 70 – definition of 'stock unit'

Policy 18 – stock exclusion from water bodies

[195] Policy 18 deals with the exclusion of stock from water bodies and implements multiple objectives concerned, in summary, with the sustainable management of land, water and associated ecosystems recognising their interconnectedness, cultural significance, contribution to economic, social, and cultural wellbeing; and need for environmental practices that optimise efficient resource use, safeguard the life-supporting capacity of land/soils, and maintain/improve the quality/quantity of the region's water resources.[133]

[196] Methods for implementing Policy 18[134] are contained in Rule 70 for stock exclusion from water bodies and Rule 74 for wetlands.[135]

[197] At the conclusion of the hearing, the Regional Council and all interested parties[136] were agreed on the wording of Policy 18, save for one aspect of the chapeau and an inconsequential numbering difference.

[198] For ease of reference, the Regional Council's preferred wording follows:[137]

> **Policy 18 – Stock exclusion from water bodies**
>
> ~~Reduce~~ Avoid where reasonably practicable, or otherwise remedy or mitigate, any adverse effects from the discharge of sediment~~ation and~~ or microbial ~~contamination of~~ contaminants to water bodies and improve river ~~(excluding ephemeral rivers)~~ and riparian ecosystems and habitats by:

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[133] More specifically, McCallum-Clark, supplementary evidence dated 3 August 2022 Appendix 2: s 32AA evaluation at [140], identifies Objectives 1-3, 4, 6-7, 13-15, 17 and 18.

[134] More particularly, clauses 1 and 4.

[135] Court's Minute dated 21 March 2022 Attachment A at [2(dd)] records Rule 74 in the list of provisions for which the proposed consent order documentation resolves all appeals, unless otherwise advised by the parties.

[136] Forest & Bird/Fish & Game, Ngā Rūnanga, Director-General, Dairy Interests and Beef & Lamb.

[137] October Consolidated Plan (Final SRC Changes) at 45.

1. requiring progressive exclusion of all stock, except sheep, from lakes, rivers ~~(excluding ephemeral rivers)~~, natural wetlands, artificial watercourses, and modified watercourses on land with a slope of less than 15 degrees by 2030;

2~~a~~. requiring the management of sheep in critical source areas and in those catchments where E.coli levels could preclude contact recreation;

3. encouraging the establishment, maintenance and enhancement of healthy vegetative cover in riparian areas, particularly through use of indigenous vegetation; and

4. ensuring that stock access to lakes, rivers ~~(excluding ephemeral rivers)~~, natural wetlands, artificial watercourses and modified watercourses is managed in a manner that avoids ~~significant~~ adverse effects on water quality, bed and bank integrity and stability, mahinga kai, and ~~river~~ aquatic and riparian ecosystems and habitats~~.~~; and

5. showing, in a Farm Environmental Management Plan prepared, certified, implemented and audited with Appendix N, how 1-4 will be achieved and by when.

[199] The following changes generally improve the policy's directions and drafting:

(a) aligning the chapeau with other policies to emphasise that avoidance (as opposed to reduction) of adverse effects is the preferred approach;

(b) deletion of the reference to 'excluding ephemeral rivers';[138]

(c) providing in new clause (5), an implementation linkage to the FEMP process prepared in accordance with Appendix N. Without such a link it was unclear what method would implement clauses (2) and (3); and

(d) for reasons given elsewhere, the word 'reasonably' is to be included in the phrase '[a]void where reasonably practicable'.

[138] Note, the Fifth Interim Decision [2022] NZEnvC 265, decided the appeals concerning ephemeral streams.

Issue: minimise or mitigate?

[200] The court was not assisted by counsel as to why the Policy 18 chapeau directs '[a]void where reasonably practicable or otherwise **remedy or mitigate**' as opposed to '[a]void where reasonably practicable or **otherwise minimising** any adverse effects'[139] other than Mr McCallum-Clark's evidence that:[140]

> In the mediation of Policy 18, the use of "minimise", rather than "remedy [or] mitigate" was not specifically considered, and therefore has not been included in the agreed version of the Policy.

[201] This is not a compelling reason for not adopting 'minimise'. The same issue has been determined in favour of including 'minimise' in Policies 15A/15B and, all things being equal, a consistent approach might be expected for other policies concerned with water quality. That said, being mindful of an imminent plan change (Plan Change Tuatahi – to be notified), we have decided to take the matter no further. However, in doing so the court is not indicating a finding that the term 'mitigate' is more appropriate where it appears in the policies. As always, the relevant policies are to implement the settled objectives.

Outcome

[202] Policy 18 set out in the October Consolidated Plan (Final SRC Changes) is approved.

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[139] As confirmed for example in Policies 15A/15B.

[140] McCallum-Clark, supplementary evidence dated 3 August 2022 Appendix 2: s 32AA evaluation at [145].

Rule 70 – stock exclusion from water bodies

[203] Rule 70 directly implements Policy 18 which is concerned with the same subject and numerous other policies including Policies 4-12: physiographic zones; Policy 16: farming; Policy 28: structures and bed disturbance; Policy 32: protection of significant indigenous vegetation and habitat; Policy 33: adverse effects on wetlands; and Policy 39A: integrated management.

[204] The rule has eight interrelated parts that place restrictions on both land use (s 9 RMA) and specified uses of the beds of lakes and streams (s 13 RMA). The Regional Council's preferred wording for five of the clauses is disputed to varying degrees and in various ways by the Dairy Interests, the Director-General, Beef & Lamb, and Forest & Bird/Fish & Game. Federated Famers ultimately did not pursue the relief it sought with regards sheep access to natural wetlands.[141] We return to this below in the context of Rule 70 not implementing a related aspect of Policy 18(1) and the Council's proposed response.

[205] Although lengthy, we set out the Regional Council's finally preferred version of the rule below for context and ease of reference:[142]

> **Rule 70 – Stock exclusion from water bodies**
>
> (a) ~~From 1 July 2020,~~ The disturbance of roosting and nesting areas of the black fronted tern, black billed gull, banded dotterel or black fronted dotterel located in the bed of a lake, river, (including an ephemeral river), or modified watercourse~~, or natural wetland~~ by stock including cattle, deer, pigs or sheep is a prohibited activity.
>
> (b) ~~From 1 July 2020,~~ The disturbance of the bed of a Regionally Significant Wetland or Sensitive Water Body listed in Appendix A by stock including cattle, deer, pigs or sheep is a prohibited activity.
>
> (c) The disturbance of the bed of a river ~~(excluding ephemeral rivers where stock access is permitted under Rule 20(aa))~~ or modified watercourse for the purposes of moving stock including cattle, deer, pigs or sheep (but

[141] Federated Farmers, closing submissions dated 15 August 2022 at [34]-[35].
[142] October Consolidated Plan (Final SRC Changes).

excluding dairy cattle on a dairy platform or on land used for dairy support) is a permitted activity provided the stock are being supervised and are actively driven across the water body in one continuous movement.

(ca) The disturbance of the bed of a lake, river or modified watercourse by sheep, other than as regulated by Rule 70(a), 70(b) and 70(cb), is a permitted activity, provided the following conditions are met:

(i) the waterbody is not already fenced to prevent sheep access;

(ii) the sheep are not being break fed or intensively winter grazed;

(iii) there is no significant de-vegetation leading to exposure of soil of the bed and banks, pugging or alteration to the profile of the bed and banks, other than at fords or stock crossings; and

(iv) A Farm Environmental Management Plan that includes identification of how access by sheep will be managed is:

(A) prepared, and certified, and implemented compliance with it is audited, in accordance with Appendix N; and

(B) implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan; and

(ca1) The disturbance of the bed of a waterbody within a natural wetland for grazing by sheep is a discretionary activity.

(cb) Other than as provided for in Rule 70(ca1), ~~T~~the use of land within a natural wetland or the disturbance of the bed of a water body within a natural wetland for access or grazing stock is a non-complying activity.

(d) Bed disturbance activities that do not comply with Rule 70(c) are a non-complying activity.

(e) Other than as provided for by Rules 70(c), 70(ca), 70(cb) and 70(d), the disturbance of the bed of a lake, river ~~(excluding ephemeral rivers where stock access is permitted under Rule 20(aa)),~~ modified watercourse, open drain, or ~~natural wetland~~ by cattle, deer or pigs is a permitted activity prior to the dates set out in Table 1 for the listed land slopes after which time it is respectively a discretionary activity on that land.

Table 1: Timetable for stock exclusion from water bodies (other than wetlands)

	Land slope (as classified by the LRI slope dataset)		
Farm/stock type	**Plains (0-3°)**	**Undulating/rolling land (>3-15°)**	**Steeper land (>15° and over)**
Dairy cattle (on dairy platforms) and pigs	All water bodies (including open drains) that are: - over 1 metre wide from 1 July 2017 on all slopes - less than 1 metre wide from 1 July 2020 on the plains and undulating/rolling land		
Dairy support ~~(on either land owned/leased by the dairy farmer or third party land)~~	All water bodies, and open drains from 1 July 2022	All water bodies, and open drains over 1 metre wide from 1 July 2022	All water bodies, and open drains where break feeding occurs from 1 July 2022
Beef cattle and deer	All water bodies (including open drains) from 1 July 2025	All water bodies (including open drains) over 1 metre wide from 1 July 2030, unless the average stocking rate on the land directly adjacent to the water body is less than 6 stock units per hectare	
	All water bodies (including open drains) where break feeding or supplementary feeding occurs from 1 July 2022.		

Interface with the Resource Management (Stock Exclusion) Regulations 2020

[206] There is a crossover between the Stock Exclusion Regulations and Rule 70. That said, it is the Regional Council's view that while there are some differences in content, the outcomes of the rules and regulations are likely to be similar. Where differences arise in the timing of the provisions' implementation, the court is not required to resolve them.[143]

The disputed matters

Rule 70(a) – bird disturbance in ephemeral river

[207] Rule 70(a) provides that stock disturbance of roosting and nesting areas of named bird species located in specified water bodies is a prohibited activity. The Dairy Interests sought to delete 'ephemeral rivers' from the listed water bodies. This issue was decided against Dairy Interests in the Fifth Interim Decision.[144]

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[143] McCallum-Clark, supplementary evidence dated 13 May 2022 at [62]-[64].
[144] [2022] NZEnvC 265 at [420]-[421].

Rules 70(ca) and (ca1) – disturbance of the bed of water bodies and natural wetlands by sheep

[208] Rule 70(ca) provides for disturbance by sheep of the beds of water bodies other than natural wetlands, as a permitted activity subject to four qualifying standards. Management of sheep in natural wetlands is addressed by Rules 70(cb) and (ca1) which we come to below.

[209] Federated Farmers no longer seeks the inclusion of natural wetlands in Rule 70(ca) because a permitted activity status would be inconsistent with land use Rule 74(c) wetlands, which makes the activity non-complying (Rule 74(c) is beyond challenge).[145] As Ms Carruthers submitted, if no provision is made for sheep this would have the consequence of Rule 70 not implementing that part of Policy 18(1), which requires, by 2030, the progressive exclusion of all stock, except sheep, from water bodies and natural wetlands on land with a slope of less than 15 degrees.

[210] Mr Maw accepted the court's assessment that Beef & Lamb's appeal[146] provides scope to make the disturbance of the bed of a water body within a wetland by sheep, a discretionary activity.[147] He noted that if Beef & Lamb's appeal was rejected in its entirety, the activity would in any event default to being discretionary by virtue of Rule 4.[148] Even so, we agree with Mr Maw that plan users will be better assisted by making express provision for the activity in Rule 70. The Regional Council proposes this be done by a new rule, Rule 70(ca1), which provides:[149]

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[145] Federated Farmers, closing submissions dated 15 August 2022 at [34]. Rule 74 implements, amongst others, Policy 33 – Adverse effects on natural wetlands, which reads 'Prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal'.

[146] Beef & Lamb's appeal sought permitted activity status for sheep access. See Transcript (Maw) at 2581.

[147] Transcript (Maw) at 2576.

[148] Rule 4 provides that any activity that would otherwise contravene ss 13(1), 14(2), 14(3) or 15(1) and is not classified as any other class of activity in s 87A, RMA, is a discretionary activity.

[149] Transcript (Maw) at 2577 and October Consolidated Plan (Final SRC Changes) at 131.

> **Rule 70(ca1)** – The disturbance of the bed of a waterbody within a natural wetland for grazing by **sheep** is a discretionary activity.
>
> [our emphasis]

[211] We apprehend the Regional Council envisages Rule 70(ca1) as a combined s 9 and s 13 provision.[150] The Council proposes Rule 70(ca1) operates in combination with Rule 70(cb).[151] Through these amendments Policy 18(1) be implemented and conflict with land use Rule 74(c) be avoided.

Outcome

[212] Rule 70 (ca1) as set out in the October Consolidated Plan (Final SRC Changes) is approved.

Issue: Rule 70(ca) – disturbance of the bed of a lake, river or modified watercourse by sheep

[213] The Dairy Interests, Director-General, and Forest & Bird/Fish & Game propose that the rule apply 'other than as regulated by Rules 70(a) and 70(b)'. To these the Regional Council would add Rule 70(cb). We apprehend that the purpose of the Regional Council's drafting is to clearly differentiate the conditioned (ca) permitted activity provision for the disturbance of a lake/river/modified watercourse beds (but not a wetland) by sheep from the non-complying (cb) activity that is concerned with disturbing the bed of a water body within a natural wetland for 'access or grazing stock'. Beef & Lamb supports the Council's relief.

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[150] Being both the disturbance of the bed of a water body within a natural wetland and grazing by sheep.

[151] Rule 70(cb) provides for the use of land within a natural wetland or disturbance of the bed of a water body in a natural wetland for access or grazing stock (as distinct from sheep) as a non-complying activity.

Outcome

[214] We find the Council's and Beef & Lamb's wording should be adopted as it lends efficiency to and aids plan implementation by making the limits of (ca) clear.

[215] Rule 70 (ca) set out in the October Consolidated Plan (Final SRC Changes) is approved.

Issue: Rule 70(ca)(iv) – regarding FEMP

[216] There are differences between the parties on how the permitted activity standard rule 70(ca)(iv) is framed, with the Regional Council's and Beef & Lamb's version having a more detailed prescription of what is required. While the Dairy Interests' and others drafting has the virtue of brevity, we expect the Council and Beef & Lamb's wording for sub-clauses A and B are likely to be more effective and find in their favour.

Outcome

[217] In the interests of certainty, we reproduce the Rule 70(ca)(iv)(A) and (B) approved by the court as follows:

> iv) A Farm Environmental Management Plan that includes identification of how access by sheep will be managed is:
>
> (A) Prepared and certified and compliance with it is audited in accordance with Appendix N; and
>
> (B) Implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan.

Issue: Rule 70(cb) – use of land within a natural wetland or disturbance of the bed of a water body within a natural wetland for access or grazing stock

[218] Both the Regional Council and Dairy Interests' *et al* versions are the same, except that the Council's includes the introductory, qualifying words 'Other than

as provided for in Rule 70(ca1)'.

[219] We accept Mr McCallum-Clark's evidence that the agreed changes to Rule 70(cb) are more efficient than those in the DV rule as they ensure there is a consistent activity status for stock within natural wetlands regardless of whether the part of the wetland is land or the bed of a water body.[152]

Outcome

[220] Rule 70(cb) set out in the October Consolidated Plan (Final SRC Changes) is approved.

Issue: Rule 70(e) and Table 1 – disturbance of water body beds by cattle/deer/pigs prior to dates and on land with a specified slope

[221] The only matter arising in Rule 70(e) is that the Dairy Interests and Director-General omit Rule 70(cb) from the referenced rules, whereas the Regional Council and Beef & Lamb, Forest & Bird/Fish & Game include it.[153]

[222] We find it appropriate that Rule 70(cb) be included as the non-complying activity concerned is not time limited. The Table 1 heading includes the words '(other than wetlands)' which is consistent with the deletion of 'natural wetland' from the text in clause (e) and provision made for natural wetlands elsewhere in Rule 70. The heading change to Table 1 is also approved.

Outcome

[223] Rule 70(e) and Table 1 set out in the October Consolidated Plan (Final SRC Changes) are approved.

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[152] McCallum-Clark, supplementary evidence dated 3 August 2022 Appendix 2: s 32AA evaluation at [56].
[153] Court notes there appears to be a mislocated "or" on the third line of (e).

Definition of stock unit

[224] There is no dispute about the definition of 'stock unit' to be included in the plan's Glossary.[154] As Mr Thomsen explained, the definition has its genesis in the Planning JWS and provides a nationally consistent approach to the term as used in Rule 70 Table 1.[155] Plan implementation will be assisted by the enhanced certainty afforded by the definition and its inclusion will, in Mr Thomsen's words, "future-proof" any variations or plan changes that introduce new rules using the term.[156]

Outcome

[225] We approve the definition of 'stock unit':

> The equivalent of one 55 kilogram breeding ewe, bearing a single lamb, consuming 550 kilograms DM average quality feed over a year.

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[154] Contained in the August Consolidated Plan at 187.
[155] Transcript (Thomsen) at 274.
[156] Transcript (Thomsen) at 274.

Policy 20: management of water resources

[226] Policy 20 concerns management of the taking, abstraction, use, damming or diversion of surface water and groundwater. It implements Objectives 1-10, Objective 12, Objective 14 and Objectives 17-18.[157]

[227] Following court-facilitated mediation, parties to the two appeals filed proposed consent order documentation.[158] The court subsequently indicated it would approve Policy 20(1A) but reserved its decision on Policy 20(1) and (2) for further submissions.[159] The latter clauses (as proposed to be amended by consent) require the subject resources to be managed (in summary) to 'avoid, where reasonably practicable, or otherwise remedy or mitigate adverse effects' from the use and development of surface water and groundwater resources respectively.

Outcome

[228] For the reasons previously given in respect of Policy 18, the court approves the 'avoid, where reasonably practicable' phrasing.

[229] The court approves Policy 20(1) with the relatively minor amendment proposed to add 'historic heritage values', and Policy 20(2) amendment 'including temperature and oxygen content' to groundwater.

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[157] Maciaszek, Affidavit – Topic B1 dated 2 February 2022 at [18].
[158] Consent memorandum – Topic B1, 3 February 2022.
[159] Court Minute, 21 March 2022 at [1] and Attachment A[2(c)].

Policy 30 and Rule 78

Policy 30 – drainage maintenance

[230] The viability of farming in parts of Southland relies on land drainage provided by modified and artificial watercourses that require maintenance. The watercourses are extensive and often derive from natural drainage features associated with streams/wetlands. Historically the focus has been on their functioning as drains. There is now heightened appreciation of their natural habitat and cultural values.

[231] To the extent practicable, the removal of sediment and weeds needs to be cognisant of and make provision for these matters. Summarised, the policy provides the maintenance be done in ways that manage adverse effects on the watercourses and their riparian margins, and in particular, on affected aquatic environment and habitat values, while minimising sedimentation.

Relevant objectives

[232] On the court's assessment, the policy implements a wider range of objectives than Mr McCallum-Clark acknowledged, namely Objectives 1-3, Objective 6, Objective 9B, Objectives 14-15, and Objectives 17-18.[160] Of these, Objectives 1-2 are fundamental to the plan and Objective 3 is important as the policy implements matters of economic, social and cultural consequence. Objective 6 is also important as it requires water quality in each freshwater body to be maintained where not degraded and improved where it is degraded by human activities. We expect, by definition, the watercourses concerned are part of the region's significant infrastructure, the operation/maintenance of which is provided for by Objective 9B. As modified watercourses are rivers,[161] Objective 14 applies

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[160] McCallum-Clark, Affidavit – Topic B4 dated 2 February 2022 at [39]. McCallum-Clark, supplementary evidence dated 3 August 2022, Appendix 2: s 32AA evaluation at [63].
[161] The Resource Management Act 1991, s 2 Interpretation of river.

and requires the range and diversity of indigenous ecosystems and habitats be maintained or enhanced. Objective 15 applies as taonga species, which are to be recognised and provided for, inhabit the watercourses.

[233] Policy 30, in turn, is implemented in large part by Rule 78 – weed and sediment removal from modified watercourses.

Parties and their positions

[234] Fish & Game's appeal on Policy 30 was joined under s 274 by four parties, namely the Director-General, Forest & Bird, Federated Farmers; and Meridian.[162]

Agreed amended relief

[235] Amendments to Policy 30 (DV) were agreed in mediation. While the parties filed an application for consent orders to resolve this aspect of the appeal, the orders sought were not granted.[163] The policy was considered in the disputed provisions hearing resulting in further proposed amendments shown in the August Consolidated Plan. No party is recorded as seeking alternative relief. The final wording of Policy 30 follows:[164]

> **Policy 30 – Drainage maintenance**
>
> In recognition of the community benefits of maintaining flood conveyance capacity and land drainage, ensure that drainage maintenance activities within artificial watercourses[165] and the beds of modified watercourses[166] and their margins are managed in a way that:

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[162] McCallum-Clark, Affidavit – Topic B4 dated 2 February 2022 at [37].

[163] Court Minute 23 March 2022 Attachment A(i).

[164] October Consolidated Plan (Final SRC Changes) at 51.

[165] By plan definition an 'artificial watercourse' relevantly comprises a watercourse that is created by human action. It includes a farm drainage channel. It does not include natural or modified natural watercourses.

[166] By plan definition a 'modified watercourse' means a water-carrying channel that was existing in some form prior to land development, but has been modified or straightened for drainage or other purposes and excludes ephemeral rivers.

1. avoids, where reasonably practicable, or otherwise remedies or mitigates, adverse effects on the aquatic environment and riparian habitat in modified watercourses and significant adverse effects on aquatic and riparian habitat in artificial watercourses; or
2. maintains or enhances habitat value, including fish passage, gravel spawning habitat and bank stability;
3. in addition to 1 or 2, minimises the quantity of sediment released from drainage maintenance activities; and
4. recognises the need to reduce the extent and frequency of disturbance, including through changes to land management so that sediment does not enter these watercourses, by improving practices and providing guidance, and improvement of riparian areas and habitat.

[court's footnoting]

[236] Addition of clause 4 is a notable amendment to the proposed consent order wording.

Scope to consider sub-clause (4)

[237] Scope for the changes proposed is said to derive from Fish & Game's appeal.[167] Mr Maw acknowledged that no party specifically sought the addition of clause 4, but submitted its provisions are consistent with Fish & Game's submission on Rule 78(a)(iia) for weed and sediment removal as part of drainage maintenance. Those amendments seek that the removal of riverbed material, including gravel – other than aquatic weeds, mud or silt – be kept to the absolute minimum by authorising only the extent necessary to undertake the activity. In Mr Maw's submission, strengthening Policy 30 through the addition of clause (4) reflects reasons given in Fish & Game's appeal to ensure drainage maintenance activities only occur where necessary.[168] When pursuing specific relief on Rule 78, the appeal cites a number of broad or generic reasons supporting relief pertaining to maintained and/or improved water quality. Finally, while the Council's approach on sub-clause (4) is not "orthodox", Mr Maw submitted *Albany North*

[167] SRC, closing submissions dated 25 August 2022 at [122].
[168] SRC, closing submissions dated 25 August 2022 at [124]-[125].

Landowners v Auckland Council[169] provides authority for it being within the scheme of the RMA to draw on specific submissions to resolve issues raised by generic submissions on higher order objectives/policies.[170]

[238] Having considered the foregoing we find there is scope to consider the new sub-clause.

Consideration

[239] Proposed clause (4) explicitly recognises the need to reduce the extent and frequency of disturbance by drainage maintenance activities through a number of methods, including land management changes, improved practice and guidance, and improvement of riparian areas and habitat.[171] Mr Maw submitted the clause will contribute to these outcomes by reducing the extent and frequency of watercourse disturbance from drainage maintenance activities. For completeness, he also noted that clause (4) is consistent with the greater protection Ngā Rūnanga seek for taonga species, which we revert to in the context of Rule 78 below.[172]

[240] In supporting the agreed amendments to Policy 30, and clause (4) in particular, Mr McCallum-Clark deposed that the acknowledged benefits of watercourse drainage maintenance are second and third order priority matters under the single NPS-FM (2020) objective, which prioritises the health and well-being of the water bodies and freshwater ecosystems.[173] As we have noted, the other proposed plan objectives, which Policy 30 implements, provide the same or similar direction, albeit with greater particularity.

[241] Mr McCallum-Clark also identified that aspects of clause (4)[174] are

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[169] *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [114], [135] & [149].
[170] At [149].
[171] SRC, closing submissions dated 25 August 2022 at [124].
[172] SRC, closing submissions dated 25 August 2022 at [127]-[128].
[173] NPS-FM (2020) at 2.1 Objective
[174] We expect Mr McCallum-Clark was referring to that part of proposed clause 4 which reads 'reduce the extent and frequency of disturbance, including through changes to land management

consistent with the Ecology JWS evidence that 'reducing the extent and frequency of disturbance [by] maintenance activities is the ultimate outcome', and this should be achieved primarily by changing the rate at which sediment enters the watercourses and creating shade to reduce macrophyte growth, thereby reducing the need for spraying or mechanical removal of weed and sediment.[175] The importance of changing the rate at which sediment enters the watercourses is corroborated by the Sediment JWS.[176] We accept this evidence.

[242] The Director-General supports the inclusion of clause (4) for the same or very similar reasons given by the Regional Council and accepts that it is within scope of the Fish & Game appeal.[177] Notwithstanding their s 274 status, Forest & Bird and Federated Farmers did not address Policy 30 in closing submissions, although clause (4) was included in the August Consolidated plan.[178] Meridian did not take an active part in the Policy 30 proceedings beyond signing the proposed consent order.[179]

Outcome

[243] For the reasons given, we find that Policy 30 in the form set out in the October Consolidated Plan (Final SRC Changes) is approved.

[244] The broadened scope provided in those parts of clause (4) concerned with reducing the extent/frequency of watercourse disturbances through land management changes that address sedimentation, is especially positive. As is the reference to 'providing guidance' in conjunction with 'improving practices'

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so that sediment does not enter these watercourses … and improvement of riparian areas and habitat'.

[175] McCallum-Clark, supplementary evidence dated 3 August 2022, Appendix 2: s 32AA evaluation at [64] and Ecology JWS, dated 1 December 2021 at 4-5.

[176] Sediment JWS dated 27 May 2022 at [10].

[177] Director-General, closing submissions dated 16 August 2022 at [31].

[178] Forest & Bird/Fish & Game , closing submissions dated 16 August 2022. Federated Farmers, closing submissions dated 15 August 2022.

[179] Meridian, opening submissions dated 11 April 2022 and Meridian, closing submissions dated 15 August 2022.

because it implies non-regulatory support for farmers/contractors by public and possibly non-government organisations.

Direction

[245] Finally, the parties are directed to confer on whether the policy heading is to be amended to better align it with the Rule 78 heading and reflect Mr McCallum-Clark's evidence about a change in approach and perception from 'drains' to 'watercourses'.[180]

Rule 78 – weed and sediment removal from modified watercourses

[246] Rule 78 provides for the removal of aquatic weeds/plants/sediments from modified watercourses as a permitted activity for the purposes of 'maintaining or restoring drainage outfall, and any associated bed disturbance and discharge resulting from carrying out the activity' subject to standards. It is primarily a s 13 RMA bed disturbance rule, but also has a s 15 discharge component.[181] Section 70(1)(g) RMA, is therefore a relevant consideration. Activities that do not meet the permitted activity conditions default to discretionary activity status.

[247] Unlike Policy 30, which Rule 78 implements, the rule does not apply to 'artificial watercourses' which are separately defined in the plan and expressly exclude 'modified natural watercourses'; namely artificial watercourses include watercourses created by 'human action' and farm drainage channels.

[248] As described for Policy 30, the viability of Southland farming is reliant on effective land drainage across extensive areas. Giving planning evidence for the Regional Council, Mr McCallum-Clark explained the drainage network in

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[180] McCallum-Clark, supplementary evidence dated 3 August 2022, Appendix 2, s 32AA evaluation at [60]. See also Transcript (Maw) p 2542 heading change potentially required to better align with Rule 78 that implements it. Supported by Forest & Bird/Fish & Game, closing submissions dated 16 August 2022 at [78].

[181] Transcript (McCallum-Clark) at 1230.

Southland is a substantial public infrastructure asset, as well as there being many kilometres of connected water bodies on private land.[182] For historical reasons many modified watercourses are maintained by the Council.[183] Consistent with the plan definition, the modified watercourses, or drains as they are more commonly referred to, are fundamentally modified streams and the residue of wetland habitats, which are themselves a critically threatened habitat.[184] The modified watercourses include the habitats of most of Southland's freshwater indigenous species, including threatened species.[185]

Objectives and policies implemented

[249] In addition to various higher order provisions,[186] Rule 78 directly implements Policy 30 for 'drainage maintenance'. Of particular note it also implements:

(a) Policy 28 – structures and bed disturbance activities of rivers (including modified water courses) and lakes. Policy 28 is concerned, amongst other things, with managing adverse effects of bed disturbance and associated discharges on water quality, habitats, indigenous biological diversity, tangata whenua cultural values, river morphology, flood risk and infrastructure assets;
(b) potentially Policy 33[187] – which is concerned to prevent reduction in the area, functioning and quality of natural wetlands through drainage;

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[182] McCallum-Clark, EiC 11 February 2022 (amended 25 February 2022) at [69].

[183] The considerable extent of the combined public network and private drains is evident from Dr Dunn's 18 June 2021 maps attached to Ms Funnell's will say statement dated 29 October 2021, Appendices 1 and 2.

[184] Ecology JWS dated 1 December 2021, Section 3 at 5 and Transcript (McArthur) at 961.

[185] McArthur, EiC dated 20 December 2021 at [71].

[186] McCallum-Clark, supplementary evidence dated 3 August 2022, Appendix 2 at [63]: Objectives 1-2, 13-15 and 18. Also from pSWLP Objective-Policy-Rule Linkages dated September 2022 further applicable provisions include Objective 3 and Policies 13, 15A/15B , 28, 30, 39A and 40. Objectives 4-6, Objective 9B, Objective 17 and Policy 32.

[187] But not identified as such in the pSWLP Objective-Policy-Rule Linkages dated September 2022.

(c) Objective 15 and Policy 3 – which were identified as being especially important from a cultural perspective.[188] They direct, respectively, that taonga species listed in Appendix M and related habitats be recognised and provided for and that activities that adversely affect Ngāi Tahu ki Murihiku taonga species identified in Appendix M be 'managed'.

Parties' amended relief

[250] In 2022 the court made consent orders confirming the addition of a Note to Rule 78.[189] All other matters remained in dispute.

[251] Forest & Bird /Fish & Game, the Director-General and Ngā Rūnanga are appellants with their respective relief recorded in the August Consolidated Plan.

[252] By way of overview, Forest & Bird/Fish & Game's relief could be satisfied by either a permitted activity condition specifying that the modified watercourse 'is not a habitat of threatened fish' or by a consenting regime for drain maintenance activities.[190]

[253] The Director-General's appeal seeks protection of non-diadromous galaxias by adding a standard excluding their habitat from the permitted activity rule and including a new map series showing where habitats are located in relation to the identified mapped Southland drainage network.[191] Counsel, Ms Williams, acknowledged in closing that not all galaxiid habitat in modified watercourses are captured in the information currently available, meaning that 'not all of these habitats will be protected'.[192] The Director-General sought exclusion of lamprey/kanakana and tuna habitat as a further condition of the permitted

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[188] Forest & Bird/Fish & Game, opening submissions dated 11 April 2022 at [100].
[189] Minutes dated 21 & 25 May 2022 and [2022] NZEnvC 266.
[190] Forest & Bird/Fish & Game, opening submissions dated 11 April 2022 at [105].
[191] August Consolidated Plan at 166-167.
[192] Director-General, closing submissions dated 16 August 2022 at [13] and [17].

activity.[193] As for the balance of the rule, she proposes the rule only applies until 31 December 2023 when it is anticipated Plan Change Tuatahi will be notified.

[254] Finally, Ngā Rūnanga sought protection of both threatened native and taonga species through the inclusion of standards removing maintenance work in their habitats from the permitted activity rule.[194] Although not included in the relief sought,[195] Mr Winchester submitted the permitted activity rule should require that good management practice guidance be adhered to by contractors and that Ngā Rūnanga be consulted prior to works being undertaken, possibly including a prior ecological assessment.[196] Ngā Rūnanga also expressed concerns about a lack of certainty on how the rule would operate as a permitted activity – it 'may be difficult (if not impossible) for the Regional Council to enforce and ensure compliance' with the conditions and 'there is a considerable risk that the Regional Council will not become aware of breaches of the conditions at all, or at least until after weed/sediment has been removed and the habitats of species have potentially been irreparably damaged'.[197]

The Regional Council's preferred wording

[255] In closing, the Regional Council proposed the following changes to Rule 78:[198]

> **Rule 78 – Weed and sediment removal <u>from modified watercourses</u> ~~for drainage maintenance~~**
>
> (a) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall, and any associated bed disturbance and discharge resulting from carrying

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[193] August Consolidated Plan at 167.
[194] August Consolidated Plan at 168.
[195] As recorded in the August Consolidated Plan at 168.
[196] Transcript (Winchester) at 211.
[197] Ngā Rūnanga, closing submissions dated 15 August 2022 at [51]–[54].
[198] October Consolidated Plan (Final SRC Changes) at 137-138.

out the activity, is a permitted activity provided the following conditions are met:

(ai) general conditions (e), (f), (g), (h) and (l) set out in Rule 55A;

(i) the activity is undertaken solely to maintain or restore the drainage capacity of a modified watercourse that has previously been modified or maintained for drainage maintenance or restoration purposes at that location;

(ii) the activity is restricted to the removal of aquatic weeds and plants or sediment deposits, provided that at least 95% of the sediment removed shall have a grain size of less than 2mm;

(iia) the removal of river bed material other than aquatic weeds, plants, mud or silt is avoided as far as practicable;

(iii) any incidental bed disturbance is only to the extent necessary to undertake the activity and must not result in lowering of the bed below previously modified levels;

(iv) upon completion of the activity, fish passage is not impeded as a result of the activity;

(v) the operator takes all reasonable steps to return any fish captured or stranded by the activity to water immediately preferably to a location upstream of the activity;

(vi) between the beginning of June and the end of October, there is no disturbance of the spawning habitat of trout; and

(xiii) where the modified watercourse is spring-fed, removal of aquatic weeds and plants is only to the extent that is necessary to undertake the activity and is kept to the absolute minimum; and

(xiv) the modified watercourse is not shown in Map Series 8 as a habitat of threatened non-diadromous galaxias.

(b) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall and any associated bed disturbance and discharge resulting from the carrying out of the activity that cannot meet one or more of the conditions of Rule 78(a) is a discretionary activity.

Issues for determination

[256] The following issues arise for determination:

(a) is the permitted activity rule supported by the Regional Council likely to be efficient and effective?

(b) would the permitted activity rule, as proposed to be amended by the other parties, be efficient and effective?

(c) what consent alternatives are there and what are their merits?

[257] Before turning to the issues, we set out next our findings on the evidence.

Ecology evidence

[258] As the preceding discussion indicates, the parties are concerned about the effects of watercourse maintenance on aquatic biota and, in particular, on threatened and taonga species. Our understanding of these matters was materially assisted by the Ecology JWS and related evidence on ecological and cultural matters, which is summarised in Annexure 2.

[259] We take from this evidence that the expert witnesses have significant reservations about the likely efficacy of Rule 78 in terms of implementing relevant plan objectives and policies; that the activities enabled have the potential to adversely affect threatened and other valued species; that planning should enable restoration of the modified watercourses towards their natural state in accordance with the concept of Te Mana o te Wai; that in the first instance enhanced land management practices are required over a wide area to prevent contaminants, which create the need for maintenance, entering modified watercourses; that mitigation measures of the type provided for in the rule's conditions, even if based on best management practices, should be viewed as secondary measures which cannot avoid significant residual adverse effects on indigenous and taonga species; that mapping known locations of threatened and valued species and excluding these from the rule has a place, but the habitat of all relevant species is not known;[199] that there is sufficient confidence in Waituna catchment survey data for

[199] For example, the Regional Council and Director-General's proposed clause (xiv) based on mapped habitat of non-diadromous galaxias (whitebait species that do not migrate to the sea in

them to provide a robust basis for mapped plan provisions; and that there is a recognised role for the application of mātauranga in identifying locations which require different management practices.

[260] Other relevant ecological evidence was entered through Ms E Funnell's production of habitat survey data and maps provided to her by Dr N Dunn, a scientist employed by the Department of Conservation.[200] He carried out an analysis of the coincidence of native freshwater fish habitat with modified watercourses potentially affected by Rule 78. Two approaches were taken:[201]

(a) Approach 1: investigated the coincidence of freshwater fish and freshwater invertebrate taonga species identified in pSWLP Appendix M (data from NZ Freshwater Fish Database) with water courses managed by the Council as drains and water courses identified on LINZ Topo50 maps as drains; and
(b) Approach 2: investigated the coincidence of threatened non-diadromous galaxias for which known distributions have been created in GIS with water courses managed by the Council as drains and water courses identified on LINZ Topo50 maps as drains.

[261] For Approach 1, assessments were made by visually comparing known fish distributions and mapped drains. Lamprey/kanakana (Threatened, Nationally Vulnerable) was identified as a threatened species with a high coincidence with managed drains.[202]

[262] The Approach 2 assessment found a total of 43 (30%) of the Regional Council's managed drains coincide with mapped non-diadromous freshwater fish habitats. In addition, 9% of the LINZ Topo50's identified drains were found to

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their life cycle). Refer to August Consolidated Plan at 166–167.
[200] Funnell, will-say statement dated 20 December 2021 Attachment 1.
[201] Funnell, will-say statement dated 20 December 2021 Attachment 1 at 8.
[202] Funnell, will-say statement dated 20 December 2021 Attachment 1.

coincide with mapped non-diadromous freshwater fish habitats. Importantly, it is likely that the LINZ Topo50 drain data layer is an under-representation of the watercourses subject to weed and sediment removal, as overlaying the LINZ Topo50 drain layer with topographic maps reveals additional straightened water courses. We note Dr Dunn's caveat that "[t]he assessment undertaken in Approach 2 should be considered as interim until the scope of which watercourses and species are included in the rule are resolved".[203]

[263] Summarised, Dr Dunn mapped habitat location data relative to the Regional Council's drainage network and other Southland 'drains' for 23 aquatic species, most of which have te reo Māori names and are listed in the plan's Appendix M – Taonga Species List. A summary table of the data is attached as Annexure 2A.

[264] The totality of evidence from the ecologists added further helpful detail to our understanding of their concerns. We have taken all those matters into account in our evaluation, including Dr J Kitson's following evidence which leant a cultural lens:

(a) although described as drains, the modified watercourses are essentially streams and rivers for which mana whenua have names. Maps attached to Ms Funnell's evidence illustrate that they are within the mainstems of four Ngā Rūnanga statutory acknowledgement areas. They comprise culturally significant mātaitai and nohoanga sites that provide habitat for taonga species and are expressly included in the Ngāi Tahu Claim Settlement Act 1998;[204]

(b) that whānau kōrero addresses the long-term trend of declining species abundance, which impacts inter-generational and mahinga kai practices that go to cultural identity;[205]

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[203] Funnell, will-say statement dated 20 December 2021 Attachment 1. p 13.
[204] Transcript at 966.
[205] Transcript at 967.

(c) that while Dr Kitson saw benefit in the Director-General's proposed clause (xv) for kanakana and tuna in the Waituna catchment, she is concerned that adverse maintenance effects impact a wider range of species in modified watercourses/awa habitats across the region.[206] The limited species covered by the Director-General's proposed clauses (xiv) and (xv) would not, in her opinion, adequately protect taonga species in Southland.[207]

Planning evidence

[265] We were also materially assisted by all the planning evidence, including that of Mr McCallum-Clark which provided a balanced consideration of competing considerations.[208] Whilst mindful of the policy direction that flood conveyance and land drainage are to be maintained, he recognised, like his colleagues, that a 'system change' is required to implement higher order NPS-FM (2020) and plan provisions concerned with implementing Te Mana o Te Wai, and protecting threatened and taonga species.

[266] Mr McCallum-Clark acknowledged that in its present form Rule 78 will not bring about necessary changes in the immediate future.[209] He was unsure if it was better to retain a permitted activity rule or adopt a different activity status,[210] but ultimately supported a modified permitted activity rule in his s 32AA evaluation. Part of his reasoning for the latter was a concern that if a resource consent were required there may be insufficient ecology resources to support the process. We understood Mr McCallum-Clark to see reduced mechanical watercourse maintenance to be largely dependent on improved land management practices of the type described by Dr G Burrell and others. We have no issue with that

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[206] Transcript at 980.

[207] Transcript at 985.

[208] McCallum-Clark, EiC dated 11 February 2022 (amended 25 February 2022) at [58]-[78] and McCallum-Clark, supplementary evidence dated 3 August 2022 Appendix 2: s 32AA evaluation.

[209] Transcript at 1240.

[210] Transcript at 1140.

assessment, but it begs the question of whether more immediate measures are needed to meaningfully implement plan policies, so that they do not remain empty expressions of good intent.

[267] Positively, Mr McCallum-Clark recognised a place for:

(a) the Council to support maintenance operators by providing non-regulatory good practice guidelines as presently occurs, apparently, in other regions;[211]
(b) FEMPs to contain waterways management provisions where maintenance is accessory to farming activities;[212]
(c) the provision of publicly available information of the type provided by the Director-General's witnesses on where modified watercourses provide habitat for valued aquatic biota and taonga species; and
(d) such measures to be supported and complemented by mātauranga.

[268] Giving evidence on behalf of Forest & Bird/Fish & Game, Mr Farrell agreed there needs to be a change from the current regime for drainage maintenance and recognition of the significance of the habitat provided by drains.[213] He deposed that there is a lack of clarity around the current scale of maintenance work, but we apprehend from the evidence that the network of affected watercourses is extensive.[214] Mr Farrell accepted that a requirement for a discretionary activity consent would be a "blunt" instrument, preferring a restricted discretionary activity. He was not convinced that "just focusing on identified [habitat] areas and using maps" would be adequate or sufficient. While better than the status quo "it is not going to result in a fundamental shift or even a systems behaviour change".[215] He accepted that the Council's proposed (xiv)

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[211] Transcript at 1248.
[212] Transcript at 1248.
[213] Transcript (Farrell) at 1298.
[214] Transcript (Farrell) at 1299.
[215] Transcript (Farrell) at 1300.

standard would apply to 30% of the Regional Council's drainage network,[216] but in doing so did not:

(a) recognise that Dr Dunn's data, which the proposition relies on, is for 'non-diadromous freshwater fish' which do not necessarily correlate with the Council's proposed (xiv) standard for 'threatened non-diadromous galaxias';
(b) take account of other habitat in LINZ Topo50 identified drains; or
(c) acknowledge Dr Dunn's qualification about the interim nature of his reported data.

Issue: is the permitted activity rule supported by the Regional Council likely to be effective?

[269] Recognising that many of the conditions for the permitted activity rule are not subject matter of an appeal, the court received evidence that several conditions for this permitted activity rule are unclear, uncertain and unlikely to be enforceable so as to make the rule ineffective. For example:

(a) clause (a)(ii) states that 'at least 95% of the sediment removed shall have a grain size of less than 2mm'. We share Ms K McArthur's reservations about how this might be enforced in practice.[217] Its purpose is to ensure larger grain/gravel substrate remains in-situ in recognition of its ecological value. However, given likely deposition methods post removal, there is a high probability that effective enforcement after the event would prove ineffective. Also, absent thorough prior investigation, persons undertaking the work may not know the dimensions or proportion of materials being worked. Dr Burrell confirmed this when contrasting situations that he has observed where an operator starts and goes without pause to the end

[216] Transcript (Farrell) at 1300.
[217] McArthur, s 274 evidence 4 February 2022 at [14].

of a job with situations where prior information indicates it is necessary to "go easy or avoid a reach";[218]

(b) clause (a)(iii) requires the bed not be lowered beneath previously modified levels. Absent previously documented and verifiable data, we anticipate enforcement challenges;

(c) clause (a)(v) requires that the maintenance operator return any removed fish to water immediately 'preferably to a location upstream of the activity'. Mechanical plant is used for much of the work. Operators may, or may not, have support personnel. The standard assumes operator knowledge that fish have been removed and, absent support personnel standing by, that the operator is motivated to stop work to attend to them. Depending on how 'upstream' is interpreted, the direction of work and the species' behaviour, it is possible the process may be repeated. Also, although amenable to amendment, the evidence is that the aquatic species and taonga requiring protection go beyond fish;

(d) clause (a)(vi) relies on maintenance operators knowing where the spawning habitat of trout are located;[219] and

(e) clause (a)(xiii) relies on agreed understandings of 'only to the extent that is necessary' and 'absolute minimum'.[220]

[270] Despite being well intentioned, the court is not confident that the permitted activity standards identified would result in changed outcomes of the type that the evidence establishes are necessary to implement relevant policy provisions.

Issue: would the permitted activity rule supported by the Regional Council be efficacious if amended as proposed by other parties?

[271] Amendments sought by the parties do not redress the shortcomings identified in the permitted activity rule in the preceding section. Rather, in the

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[218] Transcript (Burrell) at 773-774.

[219] No party has appealed this clause.

[220] No party has appealed this clause.

court's evaluation, they would create further permitted activity rule implementation challenges.

[272] The Director-General's proposed 'sunset' provision in the chapeau of (a) may have the perverse effect, as some witnesses noted, of accelerating maintenance work programmes to beat a perceived deadline.[221] Also, there is no guarantee that Plan Change Tuatahi will be notified by 31 December 2023. Both Ms McArthur and Dr Kitson see a need for more urgent attention to adverse effects management in recognition of the wide-spread threat status of 74% of New Zealand's indigenous fish species.[222]

[273] Issues arise with regards the comprehensiveness of species covered by the Director-General's clauses (xiv) and (xv),[223] respectively, for threatened non-diadromous galaxias across the region and kanakana/tuna in one catchment.[224]

[274] Notably, Ms Funnell's evidence, relying on Dr Dunn's work, mapped the presence of a wider range of potentially impacted species coincident with modified watercourses maintained by the Regional Council and private drains. However, as Forest & Bird/Fish & Game ecologist, Ms McArthur explained, some species, such as kanakana[225] and wai kākahi,[226] are very difficult to map as they are rarely detected using standard freshwater survey methods. To these, Dr Kitson added kōura.[227]

[275] Compounding the uncertainty in mapping threatened species' habitats (where drain watercourse maintenance might be excluded from the permitted activity rule) is the patchy nature of monitoring data of indigenous freshwater

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[221] August Consolidated Plan at 167.
[222] Transcript (McArthur) at 938 and Transcript (Kitson) at 981.
[223] August Consolidated Plan at 167.
[224] Recognising that private drains are considered to be under-represented in Dr Dunn's work.
[225] Kanakana/lamprey are a threatened and nationally vulnerable species.
[226] Wai kākahi/freshwater mussels are an at risk and declining species.
[227] Kōura are an at risk and declining species.

species and the quality and quantity of data contained in the New Zealand Freshwater Fish Database. Dr Kitson noted, "reliance solely on the known distribution of species is inadequate as it does not protect areas where surveys have not occurred".[228] Ms McArthur deposed that mapping may reduce the spatial extent of permitted drain watercourse maintenance but will not avoid significant adverse effects on some habitats of threatened and taonga species.[229] Ms McArthur was of the view that no proposed changes, including the clause (xiv) exclusion from the rule for threatened non-diadromous galaxiid fish, would adequately address the significant adverse effects of maintenance activities on indigenous aquatic life, including other threatened and taonga species such as wai kākahi and kōura. She was particularly concerned that:[230]

> The mapped network of 'drains' in the DOC analyses may exclude other modified [watercourses] on private land outside of Environment Southland drainage schemes and still subject to Rule 78. Thus, the approach will not protect those habitats and also, therefore, likely underestimates the described degree of effect on non-diadromous galaxiids (and other taxa).

[276] The foregoing evidence was unchallenged and we accept the same. Consequently, the court is concerned that reliance on available mapping will not identify the location of all aquatic biota and taonga species that higher order plan provisions require be protected and/or effectively managed to avoid adverse effects. We are also mindful, as the Regional Council submitted, that the maps the Director-General relies on to support her clause (xv) were not put in evidence and have not been subjected to testing through the hearing process.[231] That is not to say the information lacks a potential role.

[277] Certainty and coverage issues also arise from aspects of the relief sought by

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[228] Kitson, supplementary evidence dated 20 December 2021 at [26] and Transcript (Winchester) at 211.
[229] McArthur, s 274 evidence dated 4 February 2022 at [13].
[230] McArthur, s 274 evidence dated 4 February 2022 at [12(c)].
[231] SRC, closing submissions dated 25 August 2022 at [208]

Forest & Bird/Fish & Game and Ngā Rūnanga. Both seek in their respective clauses (xiv) to exclude from the permitted activity rule, modified watercourses that are 'a habitat of threatened native fish' but do not identify either the subject fish species concerned or where, in Forest & Bird/Fish & Game's case, they are located.[232,233] How effective the provisions would prove in the field as permitted activity standards is a matter of conjecture.

[278] Also, as the evidence shows, aquatic biota, in addition to fish, require protection. The Ngā Rūnanga clause (xv) positively links species to be excluded to Appendix M, which has named taonga species not limited to fish.[234] The taonga species may include all threatened and other species requiring protection, but this assumption is not clear from evidence. The clause is flawed as a permitted activity rule for want of certainty, as the exclusion provision is based on maintenance activities not 'significantly adversely affect[ing]' taonga habitat or health. No guidance is provided on what might constitute a significant adverse effect.

Outcome – effectiveness of the proposed conditions of the permitted activity rule

[279] It is our judgement that higher order plan provisions would not be implemented by the Regional Council and the other parties' proposed amendments to Rule 78; put another way, the conditions of the permitted activity rule proposed by the parties are unclear and uncertain. Further, a permitted activity rule is not the most appropriate method to implement the objectives.

[280] Secondly, we have major reservations whether associated sediment discharged would satisfy the s 70(1)(g) RMA requirement that 'significant adverse effects on aquatic life' are unlikely to arise in receiving waters after reasonable

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[232] August Consolidated Plan at 167-168.

[233] The court is uncertain where in plan Map Series 8, which the Ngā Rūnanga formulation refers to, threatened native fish are shown.

[234] August Consolidated Plan at 168.

mixing, but we make no findings as we have not heard from parties on the application of s 70 to the rule.

Maintenance of public modified watercourses

[281] For modified watercourses maintained by the Regional Council, we are not satisfied that the permitted activity rule will be effective in implementing higher order policy provisions and have concluded the permitted activity status is not appropriate.

[282] Notwithstanding the implications for how modified water courses have been maintained in Southland in the past, we are drawn to the inevitable conclusion that the activity requires management by resource consent. This reflects our determination that the Regional Council needs to control the manner in which its maintenance works are conducted, including the formulation of case-specific consent conditions, so that the plan's higher order provisions are implemented.

[283] The court does not underestimate the challenges inherent in framing an appropriate, effective rule in the circumstances. If it were easy, the Regional Council and parties may have done so of their own volition.

[284] Scope for a consenting regime is provided by Forest & Bird's alternative relief of a discretionary activity.[235] Rather than all matters being open for determination through a discretionary activity with potentially little guidance provided to applicants, we have determined persons using the plan would be assisted by either a controlled or restricted discretionary activity rule that sets out

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[235] Forest & Bird notice of appeal dated 22 May 2018 at [8] '[w]here specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal'. Forest & Bird/Fish & Game memorandum of counsel – preferred relief dated 22 February 2022 at 21 which seeks in the alternative to a permitted activity standard amendment a discretionary activity rule. SRC's closing submissions dated 25 August 2022 at [205(e)] includes amongst the range of alternative relief for Rule 78 "[f]ull discretionary activity status" footnoted to the Forest & Bird/Fish & Game relief in the August Consolidated Plan at 168.

the matters to which control or discretion is limited. Caselaw indicates that the least stringent activity status should be adopted that satisfies the purpose of the Act and implements relevant objectives and policies. We are conscious that the court is setting a changed direction for modified watercourse management and that Plan Change Tuatahi is on the horizon. We revert to these considerations below and at this juncture indicate it is envisaged that a rule would:

(a) apply to maintenance work undertaken by mechanical equipment. Manual work can remain a permitted activity;

(b) require applications to satisfy specified entry conditions, including:

  (i) a management plan with the objective of avoiding, where reasonably practicable, or otherwise minimising residual adverse environmental effects on threatened or at-risk aquatic biota, taonga species, mahinga kai and including where located in Ngā Rūnanga Statutory Acknowledgement Areas;

  (ii) information gained from site investigations and published sources on the diversity and abundance of threatened and at-risk aquatic species, taonga species and mahinga kai present in the modified watercourse;

  (iii) information gained from site investigations and reliable published sources on bed materials, and any other relevant aspects of the natural environment where the work is proposed to be done. For instance, the presence of adjacent wetlands and the ecological status of riparian vegetation;

  (iv) the flood conveyance and land drainage outcomes to be achieved with reference to the watercourse's historically modified dimensions (level, bed depth and width) and extent and nature of material(s) proposed to be removed;

  (v) timing and methods to be adopted, and personnel deployed to undertake the work in a manner that achieves the management plan objective.

(c) set out matters to which the consent authority's discretion is restricted including, as appropriate, suitably framed matters from Rule 78(a).

[285] It may also be appropriate for the rule to provide for what might be termed network (or global) consents, that authorise maintenance work in more than one reach or more than one watercourse. Efficiency gains may be achieved in this way as well as leveraging good practice across maintenance projects.[236]

[286] We recognise that there will be economic costs incurred through the consenting process by those who have previously experienced a light or non-existent, regulatory touch. But, as we have indicated, if the policy directions we have identified are to be effectively implemented the evidence is that a 'systems change' is needed. Policy 30(4) speaks of 'improved practice and guidance'.

[287] We accept that the plan's architecture does not allow for non-regulatory methods to assist policy implementation and we are not seized of jurisdiction in that respect. That said we expect plan users would be materially assisted by:

(a) the Regional Council publishing good practice modified watercourse maintenance guidelines and exercising leadership by demonstrating good practice through its maintenance works;[237]
(b) the Regional Council and Director-General making their data bases on the habitats of threatened and at-risk aquatic biota and taonga species that coincide with modified watercourses, conveniently available online to applicants;
(c) Non-Government Organisations involved in the case lending support to applicants, as resources permit, if approached for related natural resource information, and/or assistance with management techniques; and

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[236] Farrell, s 274 evidence dated 4 February 2022 (edited 22 February 2022) at [21(a)].
[237] Transcript (McCallum-Clark) at 2085 and Kirk, rebuttal evidence 22 February 2022 at [44], citing Canterbury and Greater Wellington Regional Council examples.

(d) Ngā Rūnanga supporting the process with mātauranga in any way that their resources may permit and which they consider appropriate.

Maintenance of on-farm modified watercourses

[288] During the hearing the court explored with little traction, the role which FEMPs prepared under Rule 20 and Appendix N might potentially play in modified watercourse maintenance.

[289] It had occurred to us that if Appendix N: FEMP, clause 9(b) habitat management objectives were amended to expressly refer to 'modified watercourse', a permitted or controlled activity rule may be appropriate.[238] We have suggested an edit to Appendix N: FEMP (Annexure 4).[239] If this approach has attraction, other amendments may be required to bring an appropriate level of attention onto this activity.

[290] We have assumed modified watercourses on farms are less extensive than the modified watercourses maintained by the Regional Council, and are cleaned less frequently.[240] If these assumptions are correct, the restricted discretionary rule regime for Regional Council activities may not be appropriate (but we keep an open mind on both the assumptions and activity status). If a controlled activity rule, we suggest the matter of control would be the Farm Environmental Management Plan.

[291] If parties are seeking a permitted activity rule, a ruling on the application on s 70 RMA will be made.[241]

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[238] Relevantly, Appendix N: Farm Environmental Management Plan Requirements as shown in Annexure 4 includes the location of modified watercourses at [7(c)].

[239] The version of Appendix N:FEMP attached to this decision, is the version attached to the Minute dated 9 March 2023.

[240] As to how extensive, we refer parties to the 'Background' section to this rule above.

[241] RMA s 70 goes to the jurisdiction of the court to direct amendments permitting the discharge of contaminants in certain circumstances and does not need to be pleaded in order for the court

Outcome

[292] We have found that the permitted activity rule supported by the Regional Council is unlikely to be effective in implementing applicable higher order provisions. Amendments sought by other parties will not, in our judgement, adequately remedy the shortcomings identified in the Regional Council's rule and we decline to make the same. Absent effective permitted activity provisions, we have concluded that a consent regime is required.

[293] Of the options available, for reasons indicated, for modified watercourses maintained by the Regional Council we currently lean towards restricted discretionary activity status, but for modified watercourses maintained on-farm we may be persuaded that for farming activities a controlled activity regime operating in conjunction with amended Appendix N: FEMP provisions would, to the extent able to be achieved at this point in time, implement higher order provisions. We would consider a permitted activity rule, however this would be subject to satisfying the court that there is jurisdiction under s 70 RMA.

[294] To be clear, when proposing rules for the maintenance of modified watercourses maintained by the Regional Council or located on-farm, the conditions of Rule 78 (as proposed to be amended by the parties) would not apply. The rule and its conditions are unfit for purpose.

Directions

[295] The Regional Council and parties with standing are directed to:

(a) provide the court with available information on the relative lengths of public and on-farm modified watercourses (if held);
(b) propose a restricted discretionary activity rule for the maintenance of

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to consider the same. In the Fifth Interim Decision [2022] NZEnvC 265, the court held s 70 applies to point source and diffuse discharges. Rule 78 is concerned with diffuse discharges.

all modified watercourses that takes account, we suggest, matters to be included as set out above and accompanied by a supporting s 32AA evaluation;

(c) alternatively, the parties are to propose a rule regime where the maintenance of **public modified watercourses** is a restricted discretionary activity and the maintenance of **on-farm modified watercourses** is a controlled activity, or permitted activity when undertaken in conjunction with an Appendix N: FEMP;

(d) absent agreement, the parties may propose rules providing for their preferred approach to either (b) or (c) above. The proposed rules are to be accompanied by a supporting s 32AA evaluation;

(e) if any party seeks a permitted activity rule, then seek directions to be heard and call evidence in relation to s 70 RMA; and

(f) finally, regardless of the parties' position on the status of this rule, respond on whether clause 9(b) of Appendix N: FEMP should be modified to include 'modified watercourses' such that there is some consideration given to this activity.

Rules 13 & 15 and Appendix E

Rule 13: discharge from sub-surface drainage systems

[296] Southland farms are underlain by extensive artificial sub-surface drainage systems, often fundamental to their ongoing viability.[242] The systems discharge sediment to natural water bodies.[243] Outfalls are typically below ground or stream/river water level during high flow. It was estimated that sub-surface drainage systems contribute somewhere in the vicinity of 10%-25% of the total anthropogenic sediment load to receiving waters, with loads being context-specific depending on overlying land management practices.[244]

[297] Rule 13 provides for the circumstances in which discharges from sub-surface drainage systems may occur as permitted activities subject to eight conditions.

[298] The three appeals lodged on the rule raise two broad issues for determination. First, that Rule 13(a)(i)(1) be amended to provide certainty on what change in clarity/colour is permitted by requiring limits in Appendix E for different water body categories, that are not to be exceeded. This amendment is not disputed and is confirmed. The second and disputed change concerns the fine sediment discharge standard. Issues arise around the quantum of sediment that may be discharged, where and how it is to be measured, the potential for cumulative effects and probable efficacy of the rule.

Objectives and policies implemented by Rule 13

[299] The Regional Council identified a large number of objectives and policies

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[242] Hodson, supplementary evidence 20 May 2022 at [20(c)] reports an estimate of 75% of Southland's agricultural land.
[243] McCallum-Clark, supplementary evidence 3 August 2022 Appendix 2: s 32AA evaluation at [38].
[244] Transcript (Hodson) at 789.

implemented by Rule 13, which we footnote below.[245] Of these, Mr McCallum-Clark considered the following, which we summarise, to be most relevant:[246]

(a) Objective 1 – sustainably managing land, water and associated ecosystems as integrated natural resources, and recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast;
(b) Objective 2 – ensuring the mauri of water provides for te hauora o te taiao (environment), o te wai (water bodies) and o te tangata (people);
(c) Objective 3 – water and land are recognised as enablers of economic, social and cultural well-being;
(d) Objective 6 – water quality is maintained where not degraded, and improved where it is degraded by human activities;
(e) Objective 13 – provided that, inter alia, ecosystems (including indigenous biological diversity and integrity of habitats) are safeguarded, land may be used to enable the economic, social and cultural wellbeing of the region; and
(f) Objective 18 – all persons implement environmental practices that optimise efficient resource use, safeguard the life-supporting capacity of the region's land, and maintain and improve the quality and quantity of water resources.

[300] The objectives are implemented primarily by Policies 4-12A for physiographic zones, Policy 13 for the management of land use activities and discharges, Policies 15A and 15B for discharges, Policy 30 for drainage

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[245] SRC Linkages document filed 4 October 2022 identifies:
Objectives 1-7, Objectives 13-15, 17 and 18, and Policies 4-12A for physiographic zones, Policy 13 for the management of land use activities and discharges, Policies 15A/15B for discharges, Policy 30 for drainage maintenance, Policy 32 for protection of significant indigenous vegetation and habitat, Policy 33 for adverse effects on natural wetlands, Policy 39 for application of permitted baseline, Policy 39A for integrated management, Policy 40 for determining the term of resource consents and Policy 41 for matching monitoring to risk.
[246] McCallum-Clark, supplementary evidence dated 3 August 2022 Appendix 2: s 32AA evaluation at [37].

maintenance, Policy 32 for protection of significant indigenous vegetation and habitat, Policy 33 for adverse effects on natural wetlands and Policy 39A for integrated management.

The court's initial concerns

[301] Having reviewed the parties' proposed consent order documentation, the court inquired:[247]

(a) what practical implications arise for implementation of Rule 13 if sediment entrained in a discharge originates from a property, or properties, removed from the point of discharge?
(b) what baseline data exists to assess a percentage change in sediment bed cover against?
(c) whether the reference in Rule 13 to sediment should be to 'fine' sediment to align with the Appendix E wording?

Technical evidence

[302] The expert evidence of Mr R Hodson, Professor R Death and Dr C Depree served to highlight the issues around the rule's efficiency and effectiveness (s 32AA RMA) and the regulation of point source sediment discharges generally, including:[248]

(a) the transitory nature of sedimentation in many water bodies, as identified by Mr Hodson and Professor Death, and the implications this has for the functioning of a rule.[249] As an example, if a heavy load of sediment deposits in a particular part of a river due to a catchment-scale process after a discharge is established as a permitted

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[247] Court Minute dated 10 March 2022 at [52]-[54].
[248] McCallum-Clark, supplementary evidence dated 20 May 2022 at [18].
[249] Death, supplementary evidence dated 8 April 2022 at [4.5] and [5.1] and Hodson, supplementary evidence dated 20 May 2022 at [9].

activity, does the permitted discharge become non-compliant?

(b) the sediment source for many rivers is typically dominated by catchment-scale systems rather than individual point source discharges.[250] This has implications for a s 32AA effectiveness and efficiency assessment;

(c) whether an absolute limit on percentage bed cover would be effective or efficient in s 32AA terms to require resource consents for discharges, when the fine sediment component of many water body beds is naturally higher than the thresholds sought (but ultimately not pursued) by appeals.[251] For example, stream bed characteristics in soft bed streams is defined by 'the presence of greater than 50% DFS (deposited fine sediment) cover'[252] meaning that "consent [would] be required for (potentially) large numbers of existing sub-surface drain discharges";[253] and

(d) how any rules will apply practically to sub-surface drainage systems and stormwater systems, as there are many tens of thousands of sub-surface drain outlets in Southland.

[303] The technical witnesses subsequently conferenced to produce a JWS. Their following conclusion was notable, although possibly unsurprising in light of their individual technical briefs. The experts agree:[254]

> … that management of instream deposited fine sediment is best achieved by focusing on appropriate land management practices rather than subsurface drain discharges. This reflects experts agreeing that discharges of sediment via

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[250] Surface erosion is identified as the dominant source of suspended sediment in many catchments in the recent Landcare Research report *Modelling baseline suspended sediment loads and load reductions required to achieve draft Freshwater Objectives for Southland*, May 2021.

[251] For example, Fish & Game's 17 May 2018 appeal relief for Rule 5 at 30-31 seeking cross referencing to water quality limits set in Appendix E.

[252] Hodson, supplementary evidence dated 20 May 2022 at [16].

[253] Willis, supplementary evidence (Planning-Deposited Sediment) dated 20 May 2022 at [3.11].

[254] Sediment JWS, dated 27 May 2022 at [10].

> subsurface drains are a relatively minor source of total anthropogenic sediment loads delivered by receiving waters.

Issues for determination

[304] The appeals on Rule 13 are broadly aligned with similar provisions in Rule 15 and Appendix E. The issues for determination across the three provisions are:

(a) whether there should be a percentage change in deposited sediment standard in Rules 13, 15 and in Appendix E, and how that percentage change is measured; and
(b) whether there should be an absolute standard for deposited fine sediment in Appendix E.[255]

The Regional Council's preferred wording

[305] The Regional Council supports a rule permitting the discharge of land drainage water subject to a condition that fine sediment does not increase by more than 10 percentage points from that measured immediately upstream.

[306] Giving planning evidence for the Regional Council, Mr McCallum-Clark proposed that the discharge of land drainage water to water from a sub-surface drainage system should be permitted, subject to a condition that discharges not cause:[256]

> fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, increasing by more than 10 percentage points from that measured immediately upstream of the discharge

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[255] No party finally sought to link the fine sediment bed cover provision to Appendix E. Forest & Bird/Fish & Game and the Director-General's positions are given below.
[256] August Consolidated Plan at 71.

[307] While noting that the condition retains the 10% sediment cover increase agreed at mediation, Mr McCallum-Clark clarified that:[257]

(a) the applicable measurement points are (now) at the downstream edge of the reasonable mixing zone and immediately upstream of the discharge; and
(b) the permitted increase in sediment bed cover is (now) limited to no more than a 10 percentage points increase above the bed cover level immediately upstream of the discharge.[258]

[308] Mr McCallum-Clark supported the change at (b) above as a method to better manage the potential for cumulative increases in bed cover downstream of the discharge.[259] Mr McCallum-Clark acknowledges however that the formulation leaves potential for "some cumulative effects", presumably because bed cover below the discharge is linked to the level above the discharge, and if the latter were to increase so could the former.[260]

[309] As Mr McCallum-Clark deposed, it is impossible to separate the quality (sediment content) of what is discharged by the sub-surface drainage networks from the land use activities they support.[261] We accept that in practice, the plan's farming rules and FEMP provisions will be primary mechanisms for managing the sediment content in discharges. Mr McCallum-Clark further noted that:[262]

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[257] Transcript at 2087-2088.

[258] The same provision is now included in the Appendix E bed cover sediment standard for some, but not all surface water body classifications. The provision is different from that agreed at mediation as described by McCallum-Clark's supplementary evidence, dated 20 May 2022 at [10]-[12]. The Appendix E bed cover sediment provision is not within the Rule 13 topic as the rule's permitted activity sediment standard does not rely on Appendix E.

[259] By way of example, applying a '10 percentage point[s]' increase to, say, 30% sediment bed cover upstream of the discharge point, would enable 40% bed cover at the downstream edge of the reasonable mixing zone. See transcript (McCallum-Clark) at 2088.

[260] Transcript at 2088.

[261] We had no evidence on the feasibility of treatment prior to discharge.

[262] McCallum-Clark, supplementary evidence dated 3 August 2022 Appendix 2: s 32AA evaluation at [40].

(a) within a relatively short timeframe the Rule 13 conditions and Appendix E will be reviewed so as to fully give effect to the NPS-FM (2020);
(b) it is likely that some existing sub-surface drainage systems will be unable to meet Rule 13 conditions and will require improvement in the short to medium term; and
(c) cleaning of the systems using high-pressure water jetting is likely to need to be modified to prevent uncontrolled releases of significant sediment quantities.

[310] In its final form, he considered that Rule 13 provides an effective means of assessing compliance with the rule's conditions and achieving improved water quality outcomes. In combination with Policies 15A, 15B and 16, the Rule 13 provisions were expected to be effective at achieving relevant objectives.[263]

Dairy Interests amended relief

[311] Giving planning evidence on behalf of the Dairy Interests, Mr Willis deposed that while it may be possible to attribute some short-term increases in sediment bed cover to specific sub-surface drainage discharges, based on the technical evidence, he had reservations about the feasibility of assessing cumulative, long-term increases from a single discharge because:[264]

(a) where sediment deposits and where sediment is initially mobilised can be a great distance apart and bear no relationship (necessarily) to property boundaries or the location of a specific sub-surface drain discharge point. Similarly, sub-surface drains are only one source of sediment.[265] Hence, attributing responsibility for (i.e. who caused) an

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[263] McCallum-Clark, supplementary evidence dated 3 August 2022 Appendix 2: s 32AA evaluation at [45].
[264] Willis, supplementary evidence dated 20 May 2022 at [3.10].
[265] Depree, supplementary evidence dated 20 May 2022 at [6.9] in the context of IWG.

exceedance of an absolute standard is unlikely to be feasible;

(b) many sub-surface drains discharge to small streams for which the deposited sediment state will not be known. Implementing and enforcing Rule 13 would require significant monitoring.[266]

[312] His opinion is supported by the principal water quality scientist at DairyNZ Ltd, Dr Depree, whose evidence was that:[267]

(a) the feasibility of detecting a meaningful 10% change in deposited fine sediment at a downstream site relative to an upstream site is likely to be marginal. This is because a 10% change is within the error of the method supported by Forest & Bird/Fish & Game, but more importantly, "it will be impossible to determine whether any non-compliance with the standard is attributable to the discharge in question, or another upstream discharge … or an event unrelated to anthropogenic discharges";

(b) a change in downstream sediment cover relative to upstream is, in Dr Depree's opinion, the only way to assess compliance of individual discharges.

[313] For the preceding reasons, Mr Willis did not support having an absolute deposited fine sediment coverage standard in Rule 13, as had been initially suggested by two interested parties.[268] Of the three potential ways he identified for interpreting a '10% change in the sediment cover', the only workable approach is allowing for up to a further 10% of the bed being covered. For example, if a bed was already 20% covered, it would allow up to 30% coverage.[269] Although not explicit in the Dairy Interests amended relief, we interpret this as being the same approach as the Regional Council proposes with its 10 percentage point

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[266] Willis, supplementary evidence dated 20 May 2022 at [3.10].
[267] Depree, supplementary evidence dated 20 May 2022 [3.1] and footnote 4.
[268] Willis, supplementary evidence dated 20 May 2022 at [3.12].
[269] Willis, supplementary evidence dated 20 May 2022 at [3.14]-[315] and footnote 3.

wording and using bed cover upstream of the discharge point as the baseline against which the additional 10% allowance is assessed.

Forest & Bird/Fish & Game amended relief

[314] Forest & Bird/Fish & Game addressed Rules 13 and 15 (discharge of stormwater) together, with Ms Gepp, submitting that the main difference between their preferred wording and that of others is that they seek to manage cumulative effects *to some degree* by requiring that percentage change is addressed as the difference between the most upstream and downstream discharge points on a property, rather than upstream or downstream of any individual discharge point.[270]

[315] Forest & Bird/Fish & Game's amended wording being:[271]

> more than a 10% change in the fine sediment cover (< 2 mm particle size) of the bed of the receiving waters where measured 20 metres from the point of discharge, compared to the fine sediment cover immediately upstream of the discharge point (except that where there are multiple discharge points from a property, the change shall be assessed 20 m downstream of the discharge point that is furthest downstream compared to the bed cover immediately upstream of the discharge point on the same property that is furthest upstream).

[316] Although Forest & Bird/Fish & Game's wording above addresses the relative change question, it does not, on the court's reading, expressly preclude cumulative increases, as the Regional Council's version seeks to do. At best, in Ms Gepp's words, it would afford "some level of control over cumulative effects".[272]

[317] In reply to questions put in cross-examination, Mr Farrell deposed that the 10% relative change in bed cover he supported, allowed for up to a 10% increase

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[270] Fish & Game/Forest and Bird, closing submissions dated 16 August 2022 at [39].
[271] August Consolidated Plan at 71.
[272] Transcript (Gepp) at 2338.

between points upstream and 20m downstream of a permitted activity discharge.[273] He gave his understanding that any assessment difficulties in Rule 13 requiring compliance with an absolute standard[274] also existed for the 10% relative standard he supported. However, this was not a matter that he had prepared written evidence on and he conceded that there could be difficulties measuring against an absolute threshold, given the transient nature of sediment deposition throughout waterways.[275]

Ngā Rūnanga amended relief

[318] Finally, we note Ngā Rūnanga continued to support Rule 13, including the sediment bed cover provision filed in proposed consent order documentation, namely:[276]

> (2) more than a 10% change in the sediment cover of the receiving waters beyond 20 metres from the point of discharge.

Consideration

[319] The court was left with concerns about the wording and implementation of Rule 13 as it applies to the deposition of sediment in discharges from sub-surface drains. It is evident from the technical and planning evidence that:

(a) the extent of sediment bed cover is determined predominantly by land management in affected catchments and natural events, as opposed to individual sub-surface drainage discharges;
(b) the extent of bed cover is subject to change in response to these phenomena, potentially (or probably) obscuring or negating reliable

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[273] Transcript (Farrell) at 1278.
[274] The parties no longer pursue the inclusion of absolute standards in the rule.
[275] Transcript (Farrell) at 1280.
[276] August Consolidated Plan at 71.

calculation of percentage change(s) resulting from individual discharges;

(c) Mr Willis' valid concerns about how responsibility for deposits might be attributed between potential sources; the absence or paucity of baseline data for individual water bodies to assess percentage changes in cover against; related compliance challenges and efficiency/effectiveness questions relative to other alternative regulatory/non-regulatory methods for achieving relevant plan objectives; and find

(d) there are challenges in accurately measuring actual bed cover relative to the rule's 10% metric.

Section 70 RMA

[320] Before the court can direct a Regional Council to amend its plan by including a rule that allows as a permitted activity the discharge of contaminant into water,[277] we must be satisfied that certain effects are not likely to arise (s 70, RMA).

[321] Rule 13(a) is concerned with conditions around point source discharge of sediment from sub-surface drains, whereas under Rule 15(a) – addressed next – the discharge of sediment from an unreticulated stormwater system may be point source or diffuse.[278]

[322] The parties did not address whether the court has jurisdiction under s 70 RMA to direct the Regional Council to amend its plan by including new conditions to the permitted activity rules, Rules 13(a) and 15(a).

[323] The court has decided against seeking the parties' submissions on s 70

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[277] More particularly, the discharge may be either into water or onto or into land in circumstances which may result in that contaminant entering water.

[278] Note: Rule 15(ab) – the discharge of contaminants from reticulated stormwater systems – because this activity is a discretionary activity, the issue as to s 70 RMA does not arise.

because even if the court has jurisdiction under s 70, it is our assessment under s 32AA RMA, that the efficiency and effectiveness of Rule 13 is quite limited. This is so, notwithstanding the Regional Council's preferred wording goes a little way to addressing the court's concern around the management of cumulative effects.[279] That aside, for the reasons given above the rule will be difficult, if not incapable, of being implemented.

[324] The same issue does not arise in relation to the amendments proposed to sub-clause (a)(i)(1) of Rule 13. These amendments to an existing sub-clause clarify change to the colour and clarity of water by reference to the standards in Appendix E.

Outcome

[325] The court approves the wording of Rule 13(a)(i)(1) set out in the October Consolidated Plan (Final SRC Changes).

[326] The court does not allow, in part, the appeals by Forest & Bird and Fish & Game and declines Forest & Bird/Fish & Game's amended relief to include a new sub-clause, Rule 13(a)(i)(2).

Rule 15: discharges of stormwater

[327] The disputed permitted activity provision concerns a standard for stormwater discharges to water bodies.

[328] Three changes are proposed:

(a) Rule 15(a)(iv)(4) – a condition describing the permitted change in colour/visual clarity of receiving water;
(b) Rule 15(a)(iv)(5) – a condition limiting the percentage change in

[279] Court Minute dated 10 March 2022 [52]-[54].

sediment bed cover downstream of discharges;[280] and

(c) Rule 15(ab) – the conditions that attach to the discretionary activity provisions for the discharge of stormwater from reticulated systems.

Issue: Rule 15(a)(iv)(4) – a condition describing the permitted change in colour/visual clarity of receiving water

[329] The amendment proposed to Rule 15(a)(iv)(4) is uncontroversial.

[330] The court approves the wording of Rule 15(a)(iv)(4) set out in the October Consolidated Plan (Final SRC Changes).

Issue: Rule 15(a)(iv)(5) – a condition limiting the percentage change in sediment bed cover downstream of discharges

[331] Given the overlapping nature of the subject matter, we confirm without repetition that the same Rule 13 higher order plan provisions described above are relevant to Rule 15. The issues relevant to Rules 13(a)(i)(1) and 15(a)(iv)(5) are also very similar, albeit that the volume of sediment discharged from individual non-reticulated stormwater systems is likely to be markedly less than that from many sub-surface drainage systems. Finally, the court's findings under the heading 'Consideration' above apply in equal measure to Rule 15(a)(iv)(5).

Outcome

[332] For the reasons set out in relation to Rule 13, we will not seek party submissions on the application of s 70 RMA to Rule 15(a)(iv)(5). The court does not allow, in part, the appeals by Forest & Bird and Fish & Game and declines relief seeking to insert a new sub-clause, Rule 15 (a)(iv)(5).

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[280] The August Consolidated Plan at 75 shows the Director-General seeks a clause (2) amendment. From the wording of the relief and context, the court expects this is a typographical error and (5) is the intended reference.

Issue: Rule 15(ab) – the conditions that attach to the discretionary activity provisions for the discharge of stormwater from reticulated systems.

[333] The issue that arises in relation to Rules 15(ab)(v) and (vi) for discharges from reticulated systems is whether these implement Policies 15A and 15B.

[334] By Rule 15(ab), the discharge of stormwater and entrained contaminants from reticulated systems is a discretionary activity. Clause (v) applies where the receiving water quality upstream of a point source discharge meets Appendix E standards and (vi) where the standards are not met. Unlike Policies 15A/15B, there is no reference in either clause to the Appendix C sediment guidelines.[281]

Rule 15(ab)(v)

[335] Where the Appendix E standards are met in receiving waters, the discharge is 'not to reduce' water quality below those standards downstream after mixing. Paraphrased, Policy 15A requires that water quality be 'maintained' so that the applicable standards/guidelines will continue to be met. There will be situations where receiving water quality exceeds the standards/guidelines. On the court's reading, in these situations Rule 15(ab)(v) does not require water quality to be 'maintained', rather it allows for a diminution in quality to the point where the standards/guidelines are met. We suggest the following amendment to the condition for the purpose of better implementing Policy 15A and Objective 6.

> (v) where the water quality upstream of a point source discharge meets the standards set for the relevant water body in Appendix E "Water Quality Standards", water quality shall be maintained ~~the discharge does not reduce the water quality below those standards~~ at the downstream edge of the reasonable mixing zone; or

[281] The Appendix C guidelines apply "after reasonable mixing" which strongly suggests they are intended for point source discharges.

Rule 15(ab)(vi)

[336] Where the Appendix E standards are not met in receiving waters, the discharge must not further reduce water quality below those standards downstream after mixing. Summarised, Policy 15B directs that where receiving water does not meet the relevant standards/guidelines water quality be 'maintained' or 'improved' depending on the nature/circumstances of the discharge. The clause (vi) requirement that there be no further reduction in water quality is consistent with the Policy 15B(1) and (1a) direction that water quality be 'maintained' in specified circumstances, so exceedance of the standards/guidelines is not exacerbated. Clause (vi), however, does not implement Policy 15B(2) where the latter directs that in specified circumstances water quality is to be 'improved' to assist with meeting the standards/guidelines.

[337] Again, the court has suggested the following amendment to implement Policy 15B(2) and Objective 6.

> (vi) where the water quality upstream of a point source discharge does not meet the standards set for the relevant water body in Appendix E "Water Quality Standards", the discharge must maintain water quality where Policies 15B(1) and (1a) apply and improve water quality where Policy 15B(2) applies ~~not further reduce the water quality below those standards~~ (at the downstream edge of the reasonable mixing zone).

Outcome

[338] Subject to better aligning the proposed new rules with the relevant policies, the court will approve the amended relief.

Directions

[339] Having conferred with the parties, the Regional Council will respond to the court's suggested amendment to Rule 15(ab), tracking changes (as may be required). The amendments follow:

> (v) where the water quality upstream of a point source discharge meets the standards set for the relevant water body in Appendix E "Water Quality Standards", water quality shall be maintained at the downstream edge of the reasonable mixing zone; or
>
> (vi) where the water quality upstream of a point source discharge does not meet the standards set for the relevant water body in Appendix E "Water Quality Standards", the discharge must maintain water quality where Policies 15B(1) and (1a) apply and improve water quality where Policy 15B(2) applies (at the downstream edge of the reasonable mixing zone).

Appendix E: Receiving Water Quality Standards

[340] The court had considerable evidence on the relatively confined point of whether Appendix E should contain absolute limits for the extent of sediment bed cover for different water body categories.

[341] Appendix E contains standards (in the form of limits) for a range of parameters that apply to the effects of discharges on natural receiving waters following reasonable mixing.[282] The parameters vary for each of the 13 water body classes in terms of both quantified limits and applicability. The different classes are identified in the plan's Part B Map Series 1: Water Quality. The standard for a given parameter does not apply where, due to natural causes, the parameter cannot

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[282] Parameters include, for example, temperature, pH, fine sediment bed cover, dissolved oxygen, bacterial/fungal slime growth, visual clarity, total ammonia concentration, faecal coliforms, MCI and edible fish.

meet the standard. This is a confounding factor for the implementation of related plan provisions in the sense of differentiating natural and anthropogenic causes/effects.

[342] Appendix E has an important part in giving effect to objectives and policies for maintaining and/improving water quality including, in particular, Objective 6 and Policies 15A/15B. The latter direct required outcomes where receiving waters respectively meet some, but not all, of the Appendix E standards.

[343] Rules which implement the policies typically concern non-farm discharges including Rule 5, which is the discretionary activity default rule for discharges not provided for elsewhere in the plan; Rule 13 for sub-surface drainage systems; Rule 15 for stormwater; Rule 19 for discharge of water associated with water treatment processes and Rule 33A for community sewerage schemes.

[344] The only disputed Appendix E matter concerns the change in fine sediment bed cover standard for water body classes other than Natural State waters where the standard reads 'The natural quality of the water shall not be altered'.[283,284]

The Regional Council's preferred wording

[345] The Regional Council proposes to amend an existing standard for water body classes except Natural State Waters, Lowland/coastal lakes and wetlands, Hill lakes and wetlands, and Mountain lakes and wetlands:[285]

> The fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone must not increase by more than 10 percentage points from that measured immediately upstream of the discharge.

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[283] Natural state waters by plan definition include those within National Parks and public conservation land.
[284] October Consolidated Plan (Final SRC Changes) at 188.
[285] October Consolidated Plan (Final SRC Changes) at 188-194, 197-199.

[346] The Regional Council does not propose an absolute limit for these water bodies.

[347] For Lowland/coastal lakes and wetlands, Hill lakes and wetlands, and Mountain lakes and wetlands, the Regional Council proposes to amend the existing standard to read:[286]

> The fine sediment (<2mm diameter) bed cover must not increase.

[348] The court understands that the reason for the different lakes/wetlands standard is because these water bodies are not subject to flushing like rivers and streams.[287] There is no change to the standard for Natural State Waters.

Forest & Bird/Fish & Game's amended relief

[349] Forest & Bird / Fish & Game seek the inclusion of both a relative change limit and an absolute limit for nine of the water body classes.[288] For all nine classes the *relative* limit sought is a 10% maximum change in bed cover. The *absolute* bed cover limits sought vary by class.[289] For three lake and wetland classes the appellant proposes no discernible change in sediment cover.[290] By way of example, Forest & Bird/Fish & Game seek:[291]

> **Lowland soft bed**
>
> The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.
>
> The receiving waterbody must not exceed 30% fine sediment (<2mm diameter) bed cover.

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[286] October Consolidated Plan (Final SRC Changes) at 195-196.

[287] Transcript (Gepp) at 182 and Forest & Bird/Fish & Game, opening submissions 11 April 2022 at [117].

[288] Lowland soft bed, Lowland hard bed, Hill, Mountain, Lake fed, Spring fed, Mataura 1, Mataura 2 and Mataura 3.

[289] In the case of the Mataura 1-3 classes between mountain (10%), hill (15%) and lowland hard bed (20%) reaches.

[290] Lowland/coastal lakes and wetlands, Hill lakes and wetlands, and Mountain lakes and wetlands.

[291] August Consolidated Plan at 219 and 228.

Hill Lakes and Wetlands

There must be no discernible change in sediment cover.

The Director-General's amended relief

[350] The Director-General seeks, in respect of all water body classes except Natural State and Lowland soft bottom, a relative or percentage change standard that reads:[292]

> The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.

Issues for determination

[351] Three issues that arise for determination follow:

(a) which is the most appropriate *relative* (percentage) change provision?
(b) should there be an *absolute* percentage bed cover standard for different water body classes?
(c) What deposited fine sediment standards should apply to the Lowland/Coastal Lakes and Wetlands, Hill Lakes and Wetlands, and Mountain Lakes and Wetlands water body classes?

Issue: which is the most appropriate relative (percentage) change provision?

[352] We commence this section observing that the 13 water body classes adopted in the plan differ from the four in the NPS-FM (2020) at Table 16: deposited fine sediment.[293] Mr Hodson deposed that the Regional Council's monitoring data shows the "worst condition site" in Southland as rating NPS-FM (2020) Band C, but this assessment is uncertain because it does not meet the NPS's minimum monitoring data requirements.[294] While none of the Southland sites

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[292] August Consolidated Plan at 221-224 and 226-232.
[293] Transcript (Hodson) at 795.
[294] Transcript (Hodson) at 794.

monitored for deposited fine sediment ('DFS') are below national bottom lines prescribed for DFS classes 2, 3 and 4 of the NPS-FM (2020),[295] uncertainty attaches to assessments where less than 60 observations are available as required by the NPS-FM (2020).

[353] Mr Hodson[296] and Dr Depree[297] disagree about whether the current state of Southland's information indicates minimal issues with deposited sediment. Furthermore, Mr Hodson, Dr Depree and Professor Death disagree on assessment methodology to establish relative (and absolute) change in DFS. We observe that these proceedings are not an appropriate venue for parties/witnesses to advance complex assessment methodologies, and even if they were, the methodologies have not been robustly defined, defended or assessed under ss 32 and 32AA RMA.

[354] The Regional Council proposes the percentage change in sediment bed cover limit is worded the same as its preferred Rule 13 permitted activity standard. While the same efficacy concerns arise as we expressed for Rule 13, we find the Council formulation better as it contains more certain assessment provisions than the Forest & Bird/Fish & Game alternative.

[355] In determining this issue, we are mindful of the previously reviewed technical evidence on Rules 13 and 15 concerning the dynamic nature of deposited fine sediment in water bodies, and how the extent of bed cover changes over time/space in response to natural events external to a river reach where a discharge may be occurring.[298] The standard assumes that the extent of cover is known when a discharge commences, so that the percentage change caused by a discharge can be assessed. This information will not be available in all cases, is prone to change over time and we were told technically robust initial baseline data requires

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[295] Hodson, supplementary evidence dated 20 May 2022 at [8] and Appendix .1. Notably, the results for many streams/rivers is based on < than the NPS-FM (2020) specified 60 observations. Deposited fine sediment class 1 does not occur in Southland.

[296] See Transcript (Hodson) at 784.

[297] Depree, supplementary evidence dated 20 May 2022 at [4.3].

[298] Transcript (Hodson) at 787, where Mr Hodson confirms Dr Depree's evidence to this effect.

gathering over three to five years of monthly monitoring.[299] Mr Hodson's evidence was that:[300]

> … [s]uch duration of monitoring is unlikely to be available to inform a baseline for the majority of point source discharges, and risks misrepresenting the level of and impact of fine sediment.

[356] The Regional Council's wording has a measure of certainty in specifying the points where bed cover change is to be assessed, namely downstream after mixing relative to immediately upstream of the discharge. We have previously commented favourably on the use of the 'percentage points' phrase as going some way to addressing the court's concern about the potential for cumulative effects. Neither of these considerations, however, alter the reality that DFS cover will change at both points naturally over time, potentially making any initial 10% change assessment nugatory. The Forest & Bird/Fish & Game formulation simply provides that the change in bed cover must not exceed 10% (be it an increase or decrease) but relative to what is unstated. The Director-General's wording has the same limitations.

[357] In contrast to Rules 13 and 15 where new conditions for permitted activity rules were proposed, the provisions being considered here already exist and what is being pursued on appeal are improvements to their drafting. Whilst retaining concerns about the standard's likely efficiency and effectiveness, but keeping in mind that no party sought their deletion, we find the Regional Council's relative percentage wording preferable to either of the alternatives sought, and confirm it accordingly (for water bodies other than natural state and the three lake/wetland classes). In doing so, we have turned our minds to whether this outcome is inconsistent with the decisions made in relation to Rule 13(a)(i)(2) and Rule 15(a)(iv)(5), and find that it is not. Our thinking may have been different had

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[299] NPS-FM (2020) Table 16 – deposited fine sediments, Transcript (Death) p 842 and McCallum-Clark, supplementary evidence dated 3 August 2022 Appendix 2: s32AA evaluation at [40].
[300] Hodson, supplementary evidence dated 20 May 2022 at [11].

new standards been proposed for Appendix E which were entry conditions to a permitted activity. However, that is not the case.

Issue: should there be an absolute percentage bed cover standard for different water body classes?

[358] Forest & Bird/Fish & Game seek absolute conditions for nine of the 13 water body classes.

[359] The Forest & Bird/Fish & Game relief is based on Professor Death's recommended maximum percentage DFS bed cover limits for different water body classes.[301] The Professor deposed that more stringent limits are warranted for Mountain, Lake fed and Hill water bodies as these are likely to be in better ecological health (than other classes) and are therefore more sensitive to anthropological impacts.[302]

[360] However, he explained that, in practice, it is difficult to differentiate accurately between 10%, 15% and 20% DFS cover. In his opinion, the important thing is to keep below 20% cover for water bodies other than the Lowland soft bed class.[303] Because he was unaware of any research on potential effects of increased sedimentation on ecological health in lakes and wetlands, or how much change could still allow for good ecological health, he recommended a precautionary 'no discernible change' standard for these classes.[304]

[361] Professor Death accepted that a series of tests over a period of time would be required to establish the existing state of individual water bodies relative to the absolute conditions he supported.[305] He considered this could be done satisfactorily using 36 monthly records gathered over three years. And in his view it is better to adopt a precautionary approach by setting absolute limits in the plan

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[301] Death, statement of evidence dated 8 April 2022, Section 3 and Table 1.
[302] Death, statement of evidence dated 8 April 2022 at [3.4].
[303] Death, statement of evidence dated 8 April 2022 at [3.4].
[304] Death, statement of evidence dated 8 April 2022 at [3.5].
[305] Transcript (Death) at 852-853.

(now) to address immediate pressures on Southland's ecosystems as opposed to waiting for "perfect science" to determine (future) limits when the restoration challenge will be greater.[306]

[362] In response to the court's question on how the absolute DFS conditions proposed by Forest & Bird/Fish & Game might be administered between the plan change becoming operative and three years of data being gathered, Professor Death acknowledged that the existing state of the environment data for specific water bodies as presented by Mr Hodson[307] is limited and that a discharge requiring resource consent would have to do "that length of study" to know whether the [standard] would be breached.[308]

[363] Neither the Council nor its expert, Mr Hodson, support an absolute DFS coverage standard. Referencing soft bed streams, he stated these are defined by the presence of greater than 50% deposited fine sediment cover in which case it 'may not' be appropriate to have a plan numeric of 30% cover for Lowland soft bottom streams as supported by Professor Death.[309] He explained that recent analysis shows that the majority of monitored Lowland soft bed class streams are dominated by gravel and cobble substrates. Instead, he prefers the NPS-FM (2020) approach, which requires councils to ascertain whether a site is naturally soft or hard-bottomed and, in light of monitoring, to determine the appropriate basis on which to manage it.[310]

Consideration

[364] We have concluded that at this stage in the plan's development there is insufficient robust data for determining the percentage of deposited fine sediment bed cover in different water body classes covered by the Map Series, let alone in

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[306] Transcript (Death) at 852, 871 and 873.
[307] Hodson, supplementary evidence dated 20 May 2022 Appendix 1.
[308] Transcript (Death) at 873.
[309] Hodson, supplementary evidence dated 20 May 2022 at [16].
[310] Hodson, supplementary evidence dated 20 May 2022 at [17].

different reaches of them. Absent this information, plan users cannot know what scope there is to increase the absolute percentage bed cover and which of Policies 15A or 15B potentially apply to a proposed discharge. We are also mindful that:

(a) bed cover is prone to change as a result of natural causes across time and space, making Appendix E inapplicable;[311]

(b) it is impractical for the plan to be framed in such a way that a plan user needing to know if a proposed discharge would comply with an absolute deposited fine sediment bed cover standard for a permitted activity, has to wait for three to five years' worth of data gathering to learn whether it is possible to achieve compliance;

(c) the absolute limits Forest & Bird/Fish & Game propose for the three Mataura classes of 10%, 15% and 20% for mountain, hill and lowland hard bed respectively, are likely, in practice, to be difficult to differentiate accurately. The appropriate statistical techniques that Professor Death deposed might circumvent the difficulty were not described or tested in evidence; and

(d) none of the complex, and at times conflicting evidence before the court on this issue was satisfactorily tested in s 32 or 32AA terms.

[365] For the forgoing reasons we have determined that it is better that there not be an absolute standard for DFS bed cover in Appendix E at this time.

Issue: what deposited fine sediment standards should apply to Lowland/Coastal Lakes and Wetlands, Hill Lakes and Wetlands, and Mountain Lakes and Wetlands?

[366] For Lowland/Coastal Lakes and Wetlands, Hill Lakes and Wetlands, and Mountain Lakes and Wetlands, the Regional Council, Forest & Bird/Fish & Game,

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[311] October Consolidated Plan (Final SRC Changes), Appendix E: 2nd introductory paragraph at clause (a).

and the Director-General respectively seek the following formulations:

(a) the fine sediment (< 2mm diameter) bed cover must not increase;[312]
(b) there must be no discernible change in sediment cover;[313] and
(c) the change in fine sediment (< 2mm diameter) bed cover must not exceed 10%.[314]

[367] Each has the challenge of requiring a known base line against which assessments can be made in situations (lakes/wetlands) where there is seemingly a paucity of state of the environment information and a propensity for sediment to be transported/deposited by natural causes. Unlike the Regional Council's DFS standard for other water body classes, none of the wordings specify where an assessment is to be made, although this would, presumably, be proximate to the discharge.

[368] Absent wording to the contrary, the Director-General's option has the apparent disadvantage of either requiring the existing extent of lake/wetland bed cover to be known or determined at the time of an assessment, be it by a plan user or council. This does not strike the court as being practical, and we rule it out accordingly.

[369] Nor do the wordings proposed by the Regional Council or Forest & Bird/Fish & Game appear particularly efficacious. The Council's wording is somewhat open ended in that it is unclear what spatial area an increase is to be assessed over. We expect some potentially affected lakes/wetlands are large. Determining whether an 'increase' in DFS would or had occurred in such settings is a challenging prospect, especially where potential natural causes, for example deposition, would require consideration. The Forest & Bird/Fish & Game formulation has an advantage in that a discernible change could be visually

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[312] SRC's preferred wording.
[313] Forest & Bird/Fish & Game's amended relief.
[314] Director-General's amended relief.

ascertained if a plume, or similar, were evident adjacent to the discharge point.

[370] While by no means convinced about the provision's likely efficacy, and again being mindful that no party seeks its deletion, we determine that Forest & Bird/Fish & Game's wording for Lowland/Coastal Lakes and Wetlands, Hill Lakes and Wetlands, and Mountain Lakes and Wetlands is the better alternative reworded as:

> There must be no discernible change in fine sediment (< 2mm diameter) bed cover.

Outcome

[371] Subject to amendment, we allow in part, Fish & Game's appeal in relation to a clause in Appendix E for Lowland/Coastal Likes and Wetlands, Hill Lakes and Wetlands, and Mountain Lakes and Wetlands and approve the following wording:

> There must be no discernible change in fine sediment (< 2mm diameter) bed cover.

[372] For the balance of water bodies (Natural State Waters also excepted) we approve the wording in the October Consolidated Plan (Final SRC Changes) as follows:

> The fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not increase by more than 10 percentage points from that measured immediately upstream of the discharge.

[373] We decline the absolute standards proposed by Forest & Bird/Fish & Game.

[374] Finally, the balance of the amendments to Appendix E shown in blue tracked changes in the October Consolidated Plan (Final SRC Changes) are uncontested. These amendments are also approved.

Directions

[375] Having conferred with the parties, the Regional Council will respond to the court's suggested amendment to Appendix E standard for Lowland/Coastal Likes and Wetlands, Hill Lakes and Wetlands, and Mountain Lakes and Wetlands (above), tracking changes (as may be required).

Other matters

[376] In the following section the court determines the balance of matters in relation to which consent orders have been sought, corrects an error in Rule 29 in the October Consolidated Plan (Final SRC Changes), and formally approves rules that implement (now) confirmed policies.

Appendix A

[377] The court has yet to make consent orders sought in relation to Appendix A of the proposed plan. This was an oversight.

Outcome

[378] As we are satisfied that the identified water bodies should be added to the list of Regionally Significant Wetlands and Sensitive Water Bodies in Southland, we approve the amendments proposed to Appendix A. We also approve amended Note 1 and Note 2.

Correction – Rule 29

[379] There is an error in Rule 29 of the October Consolidated Plan (Final SRC Changes), which the court omitted to correct in Annexure 5 to the Fifth Interim Decision.[315] The error is that tracked amendments to Rule 29(a)(x) are no longer being pursued by the parties and are to be struck out.

Outcome

[380] The correction is shown in Annexure 3 to this Sixth Interim Decision by striking out Rule 29(a)(x) together with the preceding conjunctive 'and', which

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[315] [2022] NZEnvC 265.

aligns the rule with Rules 26 and 28.

Rules 9, 32B, 32D, 32E, 33 and 33A

[381] In the 2022 Consent Order decision,[316] we said (most) Topic B2 rules would be decided in the New Year together with the policies the rules implement.[317]

Rule 9

[382] We have discussed Rule 9 in the 2022 Consent Order decision.[318]

Outcome

[383] The court approves the wording of Rule 9 set out in the October Consolidated Plan (Final SRC Changes).

Rules 32B, 32D and 32E

[384] As noted above, in the 2022 Consent Order decision the court advised it would make a decision on Rules 32B, 32D, 32E, 33 and 33A in the New Year.[319] Regrettably, Annexure A to that decision records the consent orders as having been made. This was an error.

[385] Having settled the related higher order provisions, the court has now considered the above rules. Fortunately, we are in a position to confirm our approval of the same. For completeness we set out our assessment of the rules.

[386] With respect to Rules 32B and 32D, and the addition of new Rule 32E,

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316 [2022] NZEnvC 266.
317 [2022] NZEnvC 266 at [18]-[22].
318 [2022] NZEnvC 266 at [21].
319 [2022] NZEnvC 266 at [22].

Mr McCallum-Clark says the changes proposed largely correct issues with interpretation and functioning of the DV, which have subsequently become apparent during the processing of applications. The changes do not result in materially different outcomes, but rather enable the rules to function as they were intended, and not cause unintended consequences and resulting inefficiencies.[320]

[387] Mr McCallum-Clark deposed that new Rules 32D(c) and (d) fall outside this general position. Rule 32D(c) enables (as a controlled activity) the installation of an impermeable liner in an existing effluent storage pond.[321] Mr McCallum-Clark says the parties are cognisant that the storage and application of agricultural effluent has a high level of risk if poorly designed or managed, but conversely, if done well can have environmental and farm system benefits. Proposals not meeting the controlled activity standards fall to be considered as discretionary activities under clause (d). The parties agree that changes to Policy 17 – Agricultural effluent management – together with the subject rules will better secure good design and management outcomes.[322]

[388] During the hearing the court inquired about Rules 32B and 32D, and queried which policies are implemented by Rule 32C.[323] Mr McCallum-Clark advised Rule 32C implements Policies 15A and 15B and, potentially, (depending on the nature of the storage) Policies 16A and 17A.[324] The court was also assisted by Mr Duncan's evidence and related submissions.

Rules 33 and 33A

[389] Finally, Mr McCallum-Clark deposed that the agreed changes to Rules 33 and 33A improve the management of discharges of treated effluent from

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[320] McCallum-Clark, Affidavit – Topic B2 dated 2 February 2022 at [114].
[321] McCallum-Clark, Affidavit– Topic B2 dated 2 February 2022 at [115].
[322] McCallum-Clark, Affidavit – Topic B2 dated 2 February 2022 at [116].
[323] Minute dated 10 March 2022 at [31]-[32].
[324] 'All of Parties' Transcript at 304.

community sewerage schemes, and will result in more efficient outcomes.[325] He submitted that the parties are conscious of the important and widespread benefits derived from community sewerage schemes, the preference in the proposed plan for discharges to be to land, and that there is significant investment in existing systems that ought to be recognised – provided they are functioning appropriately. Discretionary and non-complying activity status for discharges to land and water respectively are considered appropriate, as either status enables the full range of adverse effects, and benefits, to be considered.[326]

[390] When asked by the court about consenting existing schemes under Rule 33,[327] Mr Maw explained that discharges from those constructed before 1 January 2017 will require a discretionary activity consent under Rule 33(aa) once existing consents expire. He noted that the existing schemes already require resource consent under Rule 5.2.1 of the operative Southland Regional Effluent Land Application Plan. Rule 33 does not, therefore, introduce a new obligation for consent; it simply provides a re-consenting pathway for those schemes.[328]

[391] The court inquired what plan provisions encourage discharges of treated effluent to land, and the activity status of related discharges.[329] Mr McCallum-Clark clarified that because existing water quality generally doesn't meet Appendix E standards, most applications for community scheme discharges are likely to be non-complying activities.[330] He also noted the preference in Policy 14 for discharges to land, which reflects in the previously noted discretionary activity status for such and a non-complying status for discharges to water.[331]

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[325] McCallum-Clark, Affidavit – Topic B2 dated 2 February 2022 at [75] and [80].
[326] McCallum-Clark, Affidavit – Topic B2 dated 2 February 2022 at [78].
[327] Minute dated 10 March 2022 at [59].
[328] 'All of Parties' Transcript at 75.
[329] Minute dated 10 March 2022 at [62]-[64].
[330] 'All of Parties' Transcript at 142.
[331] 'All of Parties' Transcript at 142.

Outcomes

[392] With related higher order policies now decided, the court is able to consider proposed amendments to rules implementing the same and, having been satisfied about their likely efficacy, we approve the amendments to Rules 32B, 32D, 32E, 33 and 33A as set out in the October Consolidated Plan (Final SRC Changes).

Concluding Directions

[393] In this interim decision, directions are made requiring the Regional Council and parties' response on identified matters.

[394] The parties have responded to similar directions made in the Fifth Interim Decision.[332] Appendix N: FEMP aside,[333] unless there is good reason to do otherwise, a final decision on all provisions will be made at the conclusion of the sense check conference. Leave has been granted for further directions to be sought (if required).

[395] Appendix N: FEMP has been set down for a hearing in the week commencing 29 May 2023. The hearing is not expected to last all week so if hearing time is required in response to **this** decision, this will also be accommodated in the week of 29 May 2023.

[396] By **Thursday 6 April 2023**, the Regional Council having consulted with the parties is directed to file a memorandum that:

(a) in relation to those provisions in respect of which the court has suggested alternative wording, being Policies 15A, 15B, Rule 15(ab), Rules 32B, and Appendix E proposes how these are to be resolved. The following options arise. The parties may:
   (i) support the court version;
   (ii) request referral of the court version to expert conferencing; or
   (iii) request the provision be set down for hearing and propose a suitable timetable for evidence exchange.

(b) for Policies 16A and 30 and finally, Rule 78 respond as directed;

(c) considers whether changes proposed by the court to the FEMP (see

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[332] [2022] NZEnvC 265.

[333] Appendix N: FEMP has been referred to a facilitated conference the object of which is to 'sense check' the drafting.

Rule 78) are to be referred to the sense check (with or without further amendment as may be appropriate);

(d) draws the court's attention to any amended provisions it has yet to address; and

(e) indicates whether the preceding matters require a pre-hearing conference to be convened to determine the way forward. If so, the proceedings will be set down for a conference on **13 April 2023** in Christchurch (attendance by AVL will be accommodated).

[397] Leave is reserved for the parties to seek further (or amended) directions.

R M Dunlop
Deputy Environment Commissioner

J E Borthwick
Environment Judge

Schedule – List of appellants

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-27	Fonterra Co-operative Group Limited
ENV-2018-CHC-29	Aratiatia Livestock Limited
ENV-2018-CHC-30	Wilkins Farming Co Limited
ENV-2018-CHC-31	Gore District Council & others
ENV-2018-CHC-32	DairyNZ Limited
ENV-2018-CHC-33	H W Richardson Group Limited
ENV-2018-CHC-34	Beef + Lamb New Zealand
ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish and Game Council
ENV-2018-CHC-38	Meridian Energy Limited
ENV-2018-CHC-40	Federated Farmers of New Zealand (Southland Province) Inc
ENV-2018-CHC-44	Wilkins Farming Co Limited (previously Campbell's Block Limited)
ENV-2018-CHC-45	Wilkins Farming Co Limited (previously Robert Grant)
ENV-2018-CHC-46	Southwood Export Limited & Others
ENV-2018-CHC-47	Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua & Te Rūnanga o Oraka Aparima
ENV-2018-CHC-49	Rayonier New Zealand Limited
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated

ANNEXURE 1

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

IN THE MATTER	of the Resource Management Act 1991
AND	appeals under clause 14 of the First Schedule of the Act
BETWEEN	ARATIATIA LIVESTOCK LIMITED
	(ENV-2018-CHC-29)
	(and all other appellants listed in the Schedule attached)
	Appellants
AND	SOUTHLAND REGIONAL COUNCIL
	Respondent

MINUTE OF THE ENVIRONMENT COURT
'Avoid where reasonably practicable, or otherwise remedy or mitigate'
(31 March 2022)

Introduction

[1] In this Minute the court addresses the phrase 'avoid where reasonably practicable, or otherwise remedy or mitigate' and how this is to be interpreted and applied in the context of resource consent applications.

[2] We do so as we are unable to evaluate[1] the changes proposed to certain policies (and their implementing methods) without a proper understanding of their intended meaning.

[3] We are grateful for the Regional Council's submissions on the meaning of 'reasonably practicable' and for the submissions of other parties who have engaged with the court.

[4] In this Minute we set out our preliminary view on the interpretative issues. Any party holding a different view is to respond as directed.

Context

[5] The parties propose to amend eight policies[2] to replace *avoid, remedy or mitigate* phrasing with 'avoid where reasonably practicable, or otherwise remedy or mitigate'.

[6] The phrase *avoid, remedy or mitigate*, was introduced into the decisions version of the plan weakening, in Mr McCallum-Clark's opinion, some of the policies.[3] Fish and Game appealed seeking to delete 'remedy or mitigate' from the relevant policies.

[7] The intent of agreed changes is to place greater emphasis on the 'duty to avoid adverse effects' in the first instance, before moving to consider whether those effects can be remedied or mitigated. The new phrasing is said to render the policy more consistent with the hierarchy of Te Mana o te Wai in the NPS-FM 2020.[4] However, having agreed the change there was no close consideration as to

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[1] RMA, s 32AA.

[2] Policies 15A, 15B, 16A, 17, 17A, 20, 28 and 30.

[3] Transcript (McCallum-Clark) at 86.

[4] Consent documentation including memoranda in support of the consent orders and supporting affidavits.

what the term 'reasonably practicable' means and how it applies in context.[5]

The issue – the intent of the change proposed

[8] The reason given by the witnesses for the change, is to place greater *emphasis* on the *duty* to avoid adverse effects in the first instance before considering whether effects are remedied or mitigated.

[9] We want to know whether it is intended by the parties that the proposed wording obliges applicants to avoid adverse effects where reasonably practicable leaving any (residual) effect that is not avoided to be remedied or mitigated or, as suggested by the Regional Council, minimised. The key difference being that the amended wording, when compared with the decisions version of the policies, restricts the applicant's election between avoiding or remedying or mitigating actions.

[10] In this Minute we set out our interpretation and application of 'avoid where reasonably practicable' for the parties' consideration.

Interpretation and application

[11] The interpretation and weight to be given to provisions are not matters for evidence but rather issues of law for the consent authority or court (on appeal) to determine.[6]

[12] Except where expressly stated, there is no absolute requirement to avoid the adverse effects of proposed activities[7] under the pSWLP policies and objectives.

[13] Depending on context, the term 'practicable' may have a narrow or wide

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[5] Transcript (McCallum-Clark) at 91-92.
[6] *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201 at [123].
[7] 'Avoid' meaning must not be allowed to occur.

meaning. Where the context requires, the narrower focus is often on what is able to be physically done and the wider focus being on what can reasonably be done in the particular circumstances, taking a range of factors into account.[8]

[14] Adopting a purposive approach, the law will usually import considerations of reasonableness where 'practicable' is used, unless the context demands otherwise. Most parties in this case wish reasonableness to be expressly stated.

[15] With the above in mind, the interpretation of reasonably practicable is 'entirely flexible, depending on the context in which the phrase is used'[9] and in the context of a plan this includes the plan's objectives and policies. These considerations are in addition to those identified in SRC's example. For this reason, we do not endorse the seven factors identified by SRC[10] as being the only factors that apply in every case as was suggested by some parties.[11]

[16] Inherent in the concept of 'reasonably practicable' is the notion of proportionality.[12] We think 'proportionality' concerns whether the effort to avoid adverse effects is a proportional response to the outcomes to be secured under the plan's objectives.

[17] Following a factual enquiry, it is a matter of judgement for the consent authority whether the effort required is a proportional response.[13] By 'effort'[14] we

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[8] *Wellington International Airport Ltd v New Zealand Air Line Pilots Assoc Industrial Union of Workers Inc* [2017] NZSC 199, [2018] 1 NZLR 780 at [65].

[9] per *Porter v Bandridge Ltd* [1978] ICR 943 (CA) at 951-952 cited in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749 at [86].

[10] This was in the context of Policy 15B.

[11] In some circumstance fewer/more/different considerations may be relevant – depends on facts – a judgement is required, consistent consent authority function

[12] *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749 at [83].

[13] Note: we do not regard the phrase 'avoid where reasonably practicable, or otherwise remedy or mitigate' as establishing a test. Rather, what is called for is judgement following an objective assessment of the relevant factors (see Territorial Authority submissions dated 24 March 2022 at [10]).

[14] Our 'effort' is instead of the term 'financial implications' in SRC's list of factors at [77] of SRC opening submissions dated 14 March 2022.

mean the resources that would be expended by the applicant to avoid the adverse effect.

[18] Whether avoidance is reasonably practicable and therefore a proportional response in a particular case, will almost always engage with the risk and impact of the adverse effect(s) if not avoided.

[19] Impacts, including those on Te Mana o te Wai,[15] on the mauri of water and its attendant capacity to provide for the health[16] of the environment, waterbodies and of the people (Objective 2) and water's capacity to enable economic, social and cultural wellbeing of the region (Objective 3) may require consideration.[17] This is in addition to those objectives that directly address the natural resource in question. These impacts are to be accounted for, when reaching a decision that the effort to avoid an adverse effect is not reasonably practicable or – put another way – whether the effort is too great.

[20] Is this the interpretative path and result that the parties have in mind? And – if it is not – then is more wording required to secure what is intended?

RMA s 32

[21] Until we have clarity on what is intended, we cannot satisfy ourselves that pursuant to RMA s 32AA, the changed provisions are 'most appropriate' while not necessarily being the 'superior method'; per *Rational Transport Society Inc v New Zealand Transport Agency.*[18] It follows that the court will not give provisional approval to any of the policies affected until we have clarity on this matter.

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[15] NPS-FM 2020, cl 1.3(1).
[16] More particularly, health and mauri.
[17] With the risk associated with particular effects assessed through the lens of s.3(e) and (f)".
[18] *Rational Transport Society Inc v New Zealand Transport Agency* [2012] NZRMA 298 at [45].

Directions

[22] Counsel for any party holding a **different** view are to address the court's interpretation and any alternative wording required to secure what was intended in their opening submissions to the court at the 'disputed provisions' hearing. Counsel, who respond, should address the wording of the policies at footnote 2 in the context of both the objectives they implement, and the methods/rules used to implement the policies, noting any matters that may arise between different policies.

[23] Leave is granted for the parties to seek further (or other) directions.

J E Borthwick
Environment Judge
Issued: 31 March 2022

Schedule – List of appellants

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-27	Fonterra Co-operative Group Limited
ENV-2018-CHC-29	Aratiatia Livestock Limited
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ENV-2018-CHC-31	Gore District Council & others
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ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish and Game Council
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ANNEXURE 2

Summary of ecological and cultural evidence relevant to Rule 78

[1] The following ecology JWS evidence, provided without dissenting opinion, is relevant as background to the changes and other relief sought by the parties:

(a) mitigation measures in the permitted activity rule at the time conferencing occurred were insufficient to protect the values of taonga freshwater species and would not meet Objective 15 or Policy 3;[1]

(b) effects on threatened species should be avoided. Relying on Dr Greer, who provided a background paper to the conference, the most effective method of minimising the effects of weed and sediment removal is to reduce the frequency and extent of the activity. The activity is destructive and the adverse effects on threatened species and non-diadromous galaxiids is likely to be significant;[2]

(c) because it is relevant to the discharge component of Rule 78, we also note Dr Greer's advice that increased suspended sediment caused by "drain" maintenance is a major source of environmental damage to taonga fish species, threatened fish species and non-migratory galaxiids. Sediment effects are not always temporary and minor. Drain maintenance, which he had observed in the Waituna catchment, reportedly resulted in an exceedingly large percentage increase in suspended sediment and without plants to trap sediment, concentrations remained elevated for more than two months. Adverse effects on biota are both direct and indirect.[3] They include impaired feeding ability due to reduced visibility; key food sources

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[1] Ecology JWS, dated 1 December 2021 at 4.

[2] Ecology JWS, dated 1 December 2021 at 4-5, Attachment 1: Greer (23 April 2021) Proposed Southland Water and Land Plan: Technical advice for mediation.

[3] For percentage increase see Ecology JWS, dated 1 December 2021, Attachment 1: Greer (23 April 2021) Proposed Southland Water and Land Plan: Technical advice for mediation at 8.

(invertebrates/plants) being reduced; gill function impaired; and water de-oxygenated – especially when the sediment contains a large amount of organic material;[4]

(d) summarised, the effects of drainage maintenance on indigenous species includes:[5]

- increased turbidity;
- after drain clearing, even small increases in flow give rise to sharp increases in turbidity;
- fish and invertebrate stranding and mortality;
- changes to stream morphology;
- increased suspended sediment and de-oxygenation of the water;
- habitat loss;
- damage to bank vegetation and structure;
- egg and larval removal and crushing;
- fish spawning [effects].

The permitted activity rule was said to not address many of these adverse effects;

(e) improved protection of indigenous freshwater species [would] include improving the way drains are managed [and] restoring them towards something like the way they used to be. It would be helpful if regional planning documents took a longer-term view than simply relying on best management practices to reduce impacts. Taking a longer-term view might include working towards a situation where less drain maintenance activities need to occur (i.e. reinstating resilience and natural processes). This would involve addressing sources of sediment and nutrients from the land, increasing shade from riparian vegetation to prevent nuisance plant growth, and naturalising channel

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[4] Ecology JWS, dated 1 December 2021, Attachment 1: Greer (23 April 2021) Proposed Southland Water and Land Plan: Technical advice for mediation at 8.

[5] Ecology JWS, dated 1 December 2021 at 5.

form. [It] would include a toolbox of mitigation measures to address excessive sedimentation, nutrient enrichment and plant growth;[6]

(f) mitigation measures should generally be considered a second-order priority after prevention and restoration. Prevention of the need for "drain maintenance" and the restoration of modified waterbodies is more consistent with the Te Mana o te Wai hierarchy than mitigating individual effects, i.e. the first priority is the health and wellbeing of the water body. Potentially impacted species cannot be protected by best practice [plan] type conditions alone. That is because the key activities being undertaken that adversely affect aquatic life, including taonga species, are disturbance and removal of aquatic vegetation and sediment. Best management practices do not protect aquatic species from these key activities. It would only work if mapping resulted in a fundamentally different way of drainage management in mapped areas;[7]

(g) most best practice activities rely on mobility of species i.e. they can escape the [drain clearing] bucket or return to the watercourse independently (e.g. eels). Species such as wai kākahi [freshwater mussels], eggs, and larval fish are vulnerable to crushing and removal. In addition, best practice activities cannot completely avoid the disturbance to species and the loss of habitat. Mitigation can be used to avoid critical periods such as spawning and migration for some species. However, for species like kanakana [lamprey] and wai kākahi this cannot be done as they are vulnerable year-round (larval kanakana are in the sediment for three to four years);[8]

(h) mapping could be undertaken for taonga species vulnerable to weed and sediment removal such as threatened species, species of low mobility, and where effects of the activity [cannot] be avoided,

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[6] Ecology JWS, dated 1 December 2021 at 5.
[7] Ecology JWS, dated 1 December 2021 at 6-8.
[8] Ecology JWS, dated 1 December 2021 at 8.

through the identification and avoiding of critical time periods. The species in Southland that this could apply to include non-diadromous galaxiids (already a provision in the draft rule), giant kōkopu, kanakana and waikakahi. Mapping of the known distribution of species such as giant kōkopu, kanakana, wai kākahi i and wai kōura would afford a higher level of protection than the permitted activity rule currently provides. However, this does not detract from the fact that unmapped habitat will be at risk from this activity;[9]

(i) where there is confidence that surveys have been undertaken for the purposes of mapping the extent of species distributions, mapping is of value in providing protection to those species (in those places). However, it is difficult to map species such as kanakana and waikakahi as both species are rarely detected using standard freshwater survey methods;[10]

(j) the experts have identified that, in the Waituna catchment for instance, extensive surveys mean [the experts] can have more confidence in mapping areas which should be excluded from the permitted activity rule. Mapping could include [be complemented by] incorporation of mātauranga Māori to identify mahinga kai areas and related habitat. Customary protection areas such as mātaitai will also assist in the identification of catchments with habitat of some mahinga kai species, e.g. Mataura and Waikawa for kanakana and tuna. Outside of those areas [the experts'] knowledge is patchy and risks excluding important habitats from protection.[11]

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[9] Ecology JWS, dated 1 December 2021 at 8.
[10] Ecology JWS, dated 1 December 2021 at 8.
[11] Ecology JWS, dated 1 December 2021 at 9.

ANNEXURE 2A

pSWLP Appendix M taonga freshwater fish and shellfish present in Council maintained and private 'drains'[12]

Name in Māori	Name in English	Scientific name	Present in SRC drainage network	Present in Southland drains
Inanga	Inanga (whitebait species)	*Galaxias maculatus*	✓	✓
	Banded kokopu	*Galaxias fasciatus*	✓	✓
Koaro	Koaro (whitebait species)	*Galaxias brevipinnis*	✓	✓
	Shortjaw kokopu	*Galaxias postvectis*		
Taiwharu	Giant kokopu	*Galaxias argenteus*	✓	✓
	Upland bully	*Gobiomorphus breviceps*	✓	✓
	Bluegill bully	*Gobiomorphus hubbsi*	✓	✓
Kokopu/hawai	Giant bully	*Gobiomorphus gobioides*	✓	✓
	Common bully	*Gobiomorphus cotidianus*	✓	✓
	Redfin bully	*Gobiomorphus huttoni*	✓	✓
Tuna	Longfin eel	*Anguilla dieffenbachii*	✓	✓
Tuna	Shortfin eel	*Anguilla australis*	✓	✓
Kanakana	Lamprey	*Geotria australis*	✓	✓
	Alpine galaxias (Southland)	*Galaxias paucispondylus*	✓	✓
	Gollum galaxias	*Galaxias gollumoides*	✓	✓
	Southern flathead galaxias (Southland, Otago)	*Galaxias depressiceps* /*Galaxias* "southern"	✓	✓

[12] August Consolidated Plan, Appendix M and Funnell 20 December 2021, Attachment 1: Memorandum from Dr Nicholas Dunn, dated 18 June 2021.

Name in Māori	Name in English	Scientific name	Present in SRC drainage network	Present in Southland drains
Piripiripohatu	Torrentfish	*Cheimarrichthys fosteri*	✓	✓
Paraki/ngaiore	Common smelt	*Retropinna retropinna*	✓	✓
	Black flounder	*Rhombosolea retiaria*	✓	✓
Koura/kewai/ wai Kōura	Freshwater crayfish	*Paranephrops planifrons, Paranephrops zealandicus*	✓	✓
Kākahi/wai Kākahi	Freshwater mussel	*Echyridella menziesi*		✓

In addition, two species mentioned in the evidence of Ms Funnell do not appear on the list in Appendix M pSWLP:[13]

	Yelloweyed mullet	*Aldrichetta forsteri*		✓
	Estuarine triplefin	*Fosterygion nigripenne*		✓

[13] Funnell 20 December 2021, Attachment 1: Memorandum from Dr Nicholas Dunn, dated 18 June 2021.

ANNEXURE 3
Sixth Interim Decision

SOUTHLAND Water and Land Plan

PART A - DECISIONS VERSION
Operative in part

environment SOUTHLAND REGIONAL COUNCIL
Te Taiao Tonga

Proposed Southland Water and Land Plan Part A

Court Version

Court's decisions are indicated by blue shading, and includes provisions approved by a consent order.

ISBN 978-0-909043-25-4
Publication number 2018/3

Mai ea i te pō i te ti Mātānga.
Mai ea ki ngā hekenga kia Māku.

Otirā, ka kii a ngā puna roimata a Rangi,
ko tōna aroha kia Papatūānuku, kia kii
ōna puna hei oranga mōna me ōna
Taonga e noho ake nei.

Ko tātou, ngā kaitiaki o tēnei taonga tuku iho
kia kaha i roto i te tapu, kia whai māna
i roto i tōna wehi, kia tōna wairua,
ka whakanoa i muri ake nei.

From the void, through the regions of the night,
through the steps of the evolution, eventually
arriving at the dampness, indeed filling the pools
of Rangi which overflow eventually as tears of love
on Papatūānuku. In turn her bosom is filled
with those tears and she disperses them evenly
to everything that grows on her.

We Tangata whenua and Te Taiao Tonga
have the responsibility as protectors for this treasure
handed down for use in its natural state
with prestige, retaining its spiritual wellbeing so that
we can continue to use it safely and wisely into the future.

Schedule of amendments to the Decisions Version of the proposed Southland Water and Land Plan

The proposed Southland Water and Land Plan, after going through a Council hearing process, was approved then publically released by the Southland Regional Council on 4 April 2018. This is the Decisions Version.

The appeals to the Environment Court are indicated in the Decisions Version of the Plan by shaded provisions and footnotes showing which parties have made those appeals. These shaded provisions will be updated as the appeal points are resolved.

Decisions Version of the pSWLP	4 April 2018	Version #
Schedule 1 Clause 16(2) of RMA	11 April 2018	1
Schedule 1 Clause 16(2) of RMA	24 April 2018	2
Shaded provisions under appeal to Environment Court	1 June 2018	3
Schedule 1 Clause 16(2) of RMA	23 January 2020	4
Appeals shading updated	31 January 2020	5
Schedule 1 Clause 16(2) of RMA Amended Objectives	18 February 2021	6
Schedule 1 Clause 16(2) of RMA Schedule 1 Clause 16(1) of RMA to insert Objective 19	26 March 2021	7

Note: *Any reference to the Appeals Version of the propsed Southland Water and Land Plan refers to the Decisions Version (with shaded Environment Court Appeals). This Decisions Version will be updated as the Environment Court appeals are resolved. The most current version can be found on the Environment Southland website www.es.govt.nz*

Key:

Black underline and ~~strikethrough~~ = changes provisionally approved.

Blue underline and ~~strikethrough~~ = changes agreed through mediation.

Black underline and ~~strikethrough~~ in boxes = Council's final preferred version.

Yellow highlight = SRC changes from 03 August 2022 version.

Blue shading and 'CV' notation = provision approved or drafting suggested by the court. The annexure distinguishes between the decisions made in the Fifth Interim Decision and Sixth Interim Decision.

Blue shading and 'Consent Orders' notation = the appeal(s) having been allowed the court has made orders by consent.

Resource Management Act 1991

Approval (in part) of the Southland Water and Land Plan

It is hereby certified that this is the Southland Water and Land Plan.

Adoption (in part) by resolution of the Council on 27 day of January 2021 for the Southland Water and Land Plan. The following provisions were approved:

- Objectives 2, 3, 6, 7, 9/9A, 9B, 10, 13, 14, 17, and 18.

DATED this 22 day of February 2021

The Common Seal of the
Southland Regional Council
was affixed pursuant to a resolution of
the Council dated 19 February 2021.

Chief Executive

Chairman

The above listed provisions to the Water and Land Plan for Southland shall become operative on the 1st day of March 2021.

Resource Management Act 1991

Approval (in part) of the Southland Water and Land Plan

It is hereby certified that this is the Southland Water and Land Plan.

Adoption (in part) by resolution of the Council on 10 March 2021 for the Southland Water and Land Plan. The following provisions were approved:

- Objectives 1-19, excluding Objective 16 which is yet to be approved.

DATED this 17 **day of** March **2021**

The Common Seal of the
Southland Regional Council
was affixed pursuant to a resolution of
the Council dated 10 March 2021.

Chief Executive

Chairman

The above listed provisions to the Water and Land Plan for Southland shall become operative on 22 March 2021.

Contents

Part A

Preamble **9**
Te Mana o te Wai **9**
Introduction **11**
Purpose of this Plan 11
Statutory Context of the Plan 16
Issues **20**
Water Quality 20
Water Quantity 20
Soil Resources 21
River and Lake Beds 22
Indigenous Biodiversity 22
Physiographic Zones **24**
Region-wide Objectives **28**
Region-wide Policies **32**
Ngāi Tahu Policies 32
Physiographic Zone Policies ..... **Error! Bookmark not defined.**
Water Quality 37
Water Quantity 47
Activities that affect water quality and quantity 50
Consideration of Resource Consent Applications 54
Freshwater Management Unit Process Policies 56
Region-wide Rules **58**
Discharge Rules **59**
Land Use Rules **70**
Wastewater, Effluent and Sludge **82**
Landfills **103**
Land Contamination **106**
Taking and Using Water **108**
Structures in river and lake beds and wetlands **118**
Bed disturbance activities in river and lake beds and wetlands **133**
Financial Contributions **143**
Glossary **146**

Appendix A – Regionally Significant Wetlands and Sensitive Water Bodies in Southland 162

Appendix B – Ngāi Tahu Statutory Acknowledgement Areas 167

Appendix C – ANZECC Sediment Guidelines 189

Appendix E – Receiving Water Quality Standards 191

Appendix F – Water Conservation Orders 205

Appendix G – Popular Bathing Sites 214

Appendix I – Natural State Waters Outside National Parks 215

Appendix J – Drinking Water Protection Zones 217

Appendix K – Surface Water Appendix 219

Appendix L – Groundwater Appendix 223

Appendix L.1 Aquifer test requirements 223

Appendix L.2 Stream depletion effects 224

Appendix L.3 Interference effects 227

Appendix L.4 Calculation of seasonal surface water and groundwater allocation 229

Appendix L.5 Groundwater Allocation 230

Appendix L.6 Establishing allocation volumes for confined aquifers 232

Appendix L.7 Establishing allocation volumes for takes outside of groundwater management zones 232

Appendix M – Taonga Species List 233

Appendix N – Farm Environmental Management Plan Requirements 237

Appendix O – Reasonable and Efficient Use of Water 239

Appendix P – Effluent Pond Drop Test methodology 240

Appendix R – Fish Screen Standards and Guidelines 241

Appendix S – Archaeological Site Responsibilities 243

Part B

Maps – separate volume

Preamble

This Plan forms part of a suite of planning instruments which manage Southland's water and land resources. It provides a regulatory tool for a variety of issues relating to these resources, with particular emphasis on the management of activities that may adversely affect the quality of the region's freshwater, much of which has deteriorated.

In Southland, water shapes the landscape, the economy and the region's way of life. Water is a taonga (a treasure of the people, a sacred place). Southland also has a diverse range of highly productive land uses that contribute to the region's prosperity and will likely form the foundation of further growth and expansion. The ongoing intensification of land use, both urban and rural, brings challenges to the environment (including people), particularly in terms of maintaining water quantity and quality.

The Southland Regional Council (Environment Southland is the brand name of the Southland Regional Council) seeks to manage water and land resources in a way that encompasses the Ngāi Tahu philosophy of "ki uta ki tai". This integrated approach recognises that water is important in a variety of ways, including for customary and recreation uses, mahinga kai, drinking water, agricultural production, irrigation, hydro-electricity generation, fisheries and tourism. This approach also recognises that the Southland Regional Council is committed to managing the connections between land and all water, particularly the effects of water quality and quantity changes on the health and function of estuaries and coastal lagoons.

This Plan gives effect to the National Policy Statement for Renewable Electricity Generation 2011 and the New Zealand Coastal Policy Statement 2010, to the extent that they apply to this Plan. This Plan also gives effect to the objectives and policies of the National Policy Statement for Freshwater Management 2014 (as amended in 2017), aside from the policies subject to the Southland Regional Council's Progressive Implementation Progamme[1] which will be given effect to through a time-staged implementation programme to set freshwater objectives and limits for all Freshwater Management Units in Southland.

Te Mana o te Wai

This Plan recognises the national significance of Te Mana o te Wai, which puts the mauri of the water body and its ability to provide for te hauora o te tangata (the health of the people), te hauora o te taiao (the health of the environment) and te hauora o te wai (the health of the water body) to the forefront of freshwater management.

Te Mana o te Wai has three key functions:

1. it is a korowai (cloak) or overarching statement associating the values relating to a particular water body and freshwater management unit;
2. it provides a platform for tangata whenua and the community to collectively express their values for freshwater; and
3. it aligns management tools with values and aspirations to maintain and improve both water quality and quantity.

[1] Being Policies A1, A2, A3, B1, B2, B5, B6, CA1, CA2, CA3 and CA4 of the NPSFM.

Te Mana o te Wai is influenced by five key factors:

1. the values that are determined for the water body and how they are weighed locally;
2. the current state of the water body;
3. the timeframes tangata whenua and the community establish to achieve defined objectives, and quality and quantity;
4. the mechanisms and tools used to achieve defined objectives, and quality and quantity states; and
5. the quality and availability of technical information.

The National Policy Statement for Freshwater Management 2014 (as amended in 2017) provides a framework for recognising the national significance of freshwater and Te Mana o te Wai. Te Mana o te Wai is fundamental to the integrated framework for freshwater management in Southland. It provides a way of expressing Southland's aspirations for freshwater, now and into the future.

Pursuant to Section 86B(1)(a) and (3) of the Resource Management Act 1991 all of the rules in the Proposed Southland Water and Land Plan take immediate legal effect from the date of notification.

Introduction

Purpose of this Plan

The Southland Water and Land Plan has been developed by the Southland Regional Council under the Resource Management Act 1991 (RMA). This Plan is intended to provide direction and guidance regarding the sustainable use, development and protection of water and land resources in the Southland region. This Plan fits within, and is influenced by an RMA framework of national, regional and local policy documents.

For the avoidance of doubt, no rule in this Plan applies in the coastal marine area.

Framework of this Plan and Freshwater Management Units[2] (CV – Fifth Interim Decision)

The Southland Regional Policy Statement outlines the significant water management issues for the region, and how these issues should be managed. This includes directions to prepare, implement and administer a regional plan for the management of water quality and quantity, and protection of certain values of lakes, rivers and wetlands.

The National Policy Statement for Freshwater Management 2014 (NPSFM, as amended in 2017) also sets out a framework for managing water quality and water quantity. It includes requirements to: protect the life-supporting capacity of water; maintain water quality and improve it where it is degraded; and avoid over-allocating water.

The NPSFM includes a requirement to define the water bodies to be managed, and set outcomes, limits, targets and other measures to achieve those outcomes. In accordance with this framework, the Southland region has been divided into five catchments, which stretch from the mountains to the estuaries and sea at the bottom of these catchments. These are the Freshwater Management Units (FMU) for the purposes of the NPSFM.

This Plan outlines objectives, policies and rules that apply to the whole of the region. Through the FMU limit setting process, freshwater objectives, policies, limits and rules will be developed for each FMU. These will be tailored to respond to the pressures faced within each particular catchment. As the FMU limit setting process proceeds, the region-wide objectives, policies and rules in the Plan may be added to or replaced by the freshwater objectives, policies, limits and rules specific to each FMU. The Southland Regional Council intends to complete its FMU limit setting programme by December 2025.

While Objectives 1 to 18 are objectives relating to the management of freshwater, they are not freshwater objectives established in accordance with Section CA2 of the NPSFM. Freshwater objectives established in accordance with Section CA2 of the NPSFM will be developed under the

[2] While the plan uses the term degraded, the plan has not been prepared in accordance with the National Policy Statement for Freshwater Management 2020, National Objectives Framework and has not identified target attribute states or environmental flows and levels.

Southland Regional Council's Freshwater Management Unit process, in time, in accordance with the Southland Regional Council's Progressive Implementation Programme.

The New Zealand Coastal Policy Statement 2010 (NZCPS) also contains a number of policies that, while targeted to the coastal environment, have implications for water quality management throughout the region, due to the connection between freshwater and coastal water bodies.

Partnership between the Southland Regional Council and Ngai Tāhu ki Murihiku

As tangata whenua of Murihiku (which includes the Southland region), Ngāi Tahu share a strong connection to the natural environment (including lands, coasts, water, air and biodiversity) of the area.

Kaitiakitanga is central to Ngāi Tahu and is key to their mana whenua. By exercising kaitiakitanga, Ngāi Tahu ki Murihiku actively work to ensure that spiritual, cultural and mahinga kai values are upheld and sustained for future generations. Kaitiakitanga in this context includes ensuring the protection, restoration and enhancement of the productivity and life-supporting capacity of mahinga kai, indigenous biodiversity, air, water, land, natural habitats and ecosystems, and all other natural resources valued by Ngāi Tahu ki Murihiku.

Ngāi Tahu have a tribal council, Te Rūnanga o Ngāi Tahu, which is made up of 18 papatipu rūnanga who hold the rights and responsibilities to defined areas of land and waters within the takiwā (area) of Ngāi Tahu. The following four papatipu rūnanga in Murihiku are the principal mana whenua and kaitiaki (guardian) for the Southland region:

- Waihōpai Rūnaka;
- Te Rūnanga o Ōraka-Aparima;
- Hokonui Rūnaka;
- Te Rūnanga o Awarua.

The Southland Regional Council and these four papatipu rūnanga have an enduring and legitimate relationship, established over many years. The Southland Regional Council is an active participant and signatory to a Charter of Understanding – He Huaraki mā Ngā Uri Whakatupu in place between the southern councils and Ngāi Tahu ki Murihiku. The Charter sets out the basis and conduct of the councils and rūnanga in the context of the RMA and the agreed common goal of *"the sustainable management of the region's environment and for the social, cultural, economic and environmental wellbeing of the community, for now and into the future"*.

The Charter provides for an ongoing relationship to assist in developing the capacity of Māori to contribute to the decision-making processes. Additionally, the RMA has specific obligations for regional councils regarding kaitiakitanga, the principles of the Treaty of Waitangi, Māori in decision making and the relationship between Māori and their culture and their traditions with their ancestral lands, water, sites, wāhi tapu and other taonga (a treasure of the people, a sacred place).

For Ngāi Tahu, the management of the natural resources in the region is dealt with in a holistic way and the approach taken to the issues that are of significance to iwi (tribe) in this Plan reinforces that approach. There is no specific or separate section in this document that deals with tangata whenua matters. Rather, tangata whenua themes and issues have been integrated through this Plan to reinforce the Ngāi Tahu philosophy of *ki uta ki tai* (from mountains to sea).

Water, and land, like all things in the natural world, are seen by Māori as having the spiritual qualities of mauri and wairua (spiritual dimension). The continued wellbeing of these qualities is dependent on

the physical health of the water and land, which in turn affects the mana (integrity, respect, prestige, authority) of the kaitiaki (guardian). These spiritual qualities can both be adversely affected by activities such as taking and using water, discharges of contaminants to land and water, the diversion of water from one catchment to another, and the clearance of vegetation, wetlands and drains.

The principal elements identified as being of importance to tangata whenua in relation to water bodies and land include:

- ***Mauri and wairua*** - Protection of the mauri and wairua of rivers, lakes and wetlands;

- ***Mahinga kai*** - Adverse effects on mahinga kai and harvested aquatic species, including tuna (eel), kana kana (lamprey), inanga (whitebait), waikōura (freshwater crayfish), waikākahi (freshwater mussels) and wātakirihi (watercress);

- ***Wāhi tapu and other taonga*** - The protection of wāhi tapu and areas or resources associated with water and the beds of rivers and lakes that are of special significance;

- ***Special significance of particular water bodies and Ngāi Tahu landscapes*** - Recognition of the special significance of particular rivers and lakes to iwi and the aspirations of iwi to develop, use and protect water.

Particular rivers, wetlands, springs and lakes have special significance to Ngāi Tahu as their identity is inextricably linked to those locations and surrounding lands and mountains. These areas accommodate and sustain specific uses and values that cannot be relocated to other locations.

Treaty of Waitangi

The Ngāi Tahu Claims Settlement Act was passed in 1998 and put into effect the terms and redress package agreed to by Ngāi Tahu and the Crown to mitigate and remedy breaches of the Treaty of Waitangi. The Act includes several mechanisms specifically designed to be used in implementing other legislation such as the RMA and Fisheries Act 1996. These mechanisms legally recognise the importance of natural resources to Ngāi Tahu.

This Act sets out areas required to be recognised for various purposes when dealing with issues under the RMA and consequently this Plan. These areas are known as statutory acknowledgement areas, tōpuni features (landscape features of special importance or value), nohoanga, mahinga kai, and taonga species of plants, and animals. Appendix B sets out the full details of each of these.

Mahinga Kai

Mahinga kai is central to the Ngāi Tahu ki Murihiku way of life and a principal component of environmental management. Mahinga kai is about the customary gathering of food and natural materials, the health of the resource and its associated habitat, and the places where those resources are gathered.

Whenua

Ngāi Tahu cultural landscapes, nohoanga, tribal properties and Māori lands maintain continuity between the past, the present and the future, binding Ngāi Tahu to the whenua. Respect for the places that are important to Ngāi Tahu includes actively managing uses and activities on those lands. Reconnection with lands through access and customary use recognises the mana of Ngāi Tahu on the landscape, and restores the ability of Ngāi Tahu to give practical effect to kaitiaki (guardian) responsibilities.

Mātaitai and taiāpure

Mātaitai reserves and taiāpure are part of the suite of management tools created under Part IX of the Fisheries Act 1996. Mātaitai are designed to give effect to the Treaty of Waitangi Fisheries Claims Settlement Act 1992 by developing policies to help recognise use and management practices of Māori in the exercise of non-commercial fishing rights. The tools provide practical recognition of the rights guaranteed to tangata whenua under the Treaty of Waitangi.

While mātaitai are predominantly in coastal marine areas legislatively there can be freshwater mātaitai. Within Southland, mātaitai comprise of coastal and inland areas with the Mataura River Mātaitai Reserve being the first freshwater mātaitai in New Zealand. The quality and quantity of freshwater, and the use of land, have direct and indirect effects on the regulations of all mātaitai and on the customary rights of Ngāi Tahu.

Statutory Context of the Plan

This Plan fits within a framework of national, regional and local resource management policies. As such, the following documents have influenced the provisions of this Plan.

The Resource Management Act

The purpose of the Resource Management Act 1991 (RMA) is to promote the sustainable management of natural and physical resources. The RMA requires that all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall:

- recognise and provide for the specified matters of national importance listed in Section 6;
- have particular regard to the other matters listed in Section 7;
- take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Under Sections 13, 14 and 15 of the Resource Management Act 1991, many activities involving the beds of lakes and rivers, water or water bodies, and the discharge of contaminants into water can only occur if they are expressly allowed by a rule in a regional plan, or by a resource consent.

Section 30 of the RMA gives regional councils specific functions relating the control of the use of any land (including the beds of lakes and rivers) for the purposes of soil conservation, water quality, water quantity and the maintenance of ecosystems in water bodies, the avoidance or mitigation of natural hazards. Regional councils also have functions relating to controlling the planting of plants in the beds of lakes and rivers, the maintenance of indigenous biological diversity and the integration of strategic infrastructure and land use.

National Policy Statements and New Zealand Coastal Policy Statements

Under the Section 67(3) of the RMA, a regional plan must give effect to any operative national policy statement. There are currently four operative National Policy Statements and one operative New Zealand Coastal Policy Statement:

- ***National Policy Statement for Freshwater Management 2014 (as amended in 2017)***

  This National Policy Statement sets out objectives and policies that direct local government to manage water in an integrated and sustainable way, while providing for economic growth within set water quantity and quality limits. The NPSFM aims to improve freshwater management at a national level to address the over-allocation of water in catchments for abstraction or discharges. This Plan, and the processes established for Freshwater Management Units, gives effect to the NPSFM.

- ***National Policy Statement for Renewable Electricity Generation 2011***

  This National Policy Statement sets out objectives and policies for renewable electricity generation. It ensures a consistent approach to planning for renewable electricity generation in New Zealand. It gives clear government direction on the benefits of renewable electricity generation and requires all councils to make provision for it in their plans.

- **National Policy Statement on Urban Development Capacity 2016**

  This National Policy Statement sets out objectives and policies to provide direction on planning for urban environments. It recognises the national significance of well-functioning urban environments, with particular focus on ensuring local authorities enable growth and change in response to the changing needs of communities and provide sufficient space for housing and business.

- **National Policy Statement on Electricity Transmission 2008**

  This National Policy Statement sets out the objective and policies that confirm the national significance of, and benefits of, the National Grid. It establishes a consistent approach to operation, maintenance, upgrade and development of the National Grid, and the management of adverse effects of, and on, the National Grid. It also includes a requirement for regional councils to include objectives, policies and methods to facilitate long-term planning for investment in transmission infrastructure and its integration with land uses.

- ***New Zealand Coastal Policy Statement 2010***

  This National Policy Statement sets out objectives and policies which promote the sustainable management of the natural and physical resources of the coastal environment, including coastal land, foreshore and seabed, and coastal waters from the high tide mark to the 12 nautical mile limit. Given the physical geography of the Southland region, which includes an extensive range of estuaries, coastal lagoons, and coastal wetlands, the NZCPS is highly relevant to this Plan. The Plan's provisions and the processes established for Freshwater Management Units seek to manage the water quality and quantity of the upstream water bodies, to give effect to the NZCPS.

Regional Policy Statement

Under the Section 67(3) of the RMA, a regional plan must give effect to the relevant regional policy statement.

- ***Southland Regional Policy Statement 2017***

  The Southland Regional Policy Statement guides resource management policy and practice in Southland. It provides a framework on which to base decisions regarding the management of the region's natural and physical resources, gives an overview of the significant resource management issues facing Southland, including issues of significance to tangata whenua, and includes objectives, policies and methods to resolve any identified issues.

National Environmental Standards

National Environmental Standards are regulations issued under Section 43 of the RMA and apply nationally. National environmental standards can prescribe technical standards, methods or other requirements for environmental matters. Each regional, city or district council must enforce the same standard. In some circumstances, councils can impose stricter standards. There are currently six National Environmental Standards relevant to this Plan:

- ***National Environmental Standard for Sources of Human Drinking Water***

  The purpose of the National Environmental Standard for Sources of Human Drinking Water is to reduce the risk of human drinking water sources becoming contaminated. It requires regional councils to ensure that effects of activities on drinking water sources are considered in decisions on resource consents and in regional plans.

- ***National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health***

  The purpose of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health is to provide a nationally consistent set of planning controls and soil contaminant values. It ensures that land affected by contaminants in soil is appropriately identified and assessed before it is developed, and if necessary the land is remediated, or the contaminants contained to make the land safe for human use.

- ***National Environmental Standards for Air Quality 2004***

  The purpose of the National Environmental Standards for Air Quality is to set a guaranteed minimum level of health protection for all New Zealanders. The regulations include standards for banning specified activities, ambient outdoor air quality standards, a design standard for new wood burners in urban areas and a requirement for large landfills to collect greenhouse gas emissions.

- ***National Environmental Standards for Telecommunication Facilities 2016***

  The purpose of the National Environmental Standards for Telecommunication Facilities is to provide consistent planning requirements for the deployment of telecommunications infrastructure across New Zealand while ensuring that the effects on the environment are minimised and managed appropriately.

- ***National Environmental Standards for Electricity Transmission Activities 2009***

  The purpose of the National Environmental Standards for Electricity Transmission Activities is to provide a nationally consistent regulatory framework for existing National Grid transmission lines, including regulations that establish consenting requirements for their operation, maintenance and upgrading.

- ***National Environmental Standards for Plantation Forestry 2017***

  The purpose of the National Environmental Standards for Plantation Forestry is to maintain or improve the environmental outcomes associated with plantation forestry activities and to increase the certainty and efficiency in the management of those activities. The regulations

permit core forestry activities including afforestation, earthworks and harvesting provided there are no significant adverse environmental effects.

Note: *This list of applicable National Policy Statements and National Environmental Standards was current at January 2018. Please see the Ministry for the Environment's website for any updates.*

This Plan should be read in conjunction with these documents, as well as the Southland Regional Coastal and Air Plans, and the District Plans of Gore District, Invercargill City, and Southland District Councils.

Water Conservation Orders

Water conservation orders recognise the outstanding amenity or intrinsic values of water bodies, and are the strongest form of protection of water under the RMA. A water conservation order can prohibit or restrict a regional council issuing new water and discharge permits. Regional policy statements, regional plans and district plans must not be inconsistent with the provisions of a water conservation order.

The approach taken in this Plan is not inconsistent with the Water Conservation Order (Mataura River) 1997 and the Water Conservation Order (Ōreti River) 2008. Plan provisions, where relevant, recognise the requirements of these orders. Plan users should refer directly to these water conservation orders if they propose to carry out any activities which may impact on the rates of flow in the Mataura or Waikaia River; to dam or affect fish passage in the main stem or tributaries of the Mataura, Waikaia or Ōreti Rivers; or discharge to any of these waters.

Issues

Water Quality

Water is a fundamental resource. The Southland economy is based on rural production and servicing, fisheries, tourism, energy production and industrial processing, all of which rely on the availability of good quality water. Water quality is a key factor in the ecological health of water bodies, influencing which species are present. The mauri of a water body is affected by water quality. Many people recreate in or near Southland's water bodies, including swimming, white baiting, duck hunting, fishing, walking or tramping and boating activities.

Southland's main catchments end with estuaries and its smaller catchments can end with estuaries, freshwater lakes, coastal lagoons or coastal lakes, which are all particularly sensitive to nutrient and sediment loads. Degraded estuary, lagoon and lake water quality and habitats are particularly difficult and expensive to reverse. This highlights the importance of maintaining good water quality in upstream rivers.

Adverse effects on water quality result from point source discharges and non-point source discharges. Over the past two decades, adverse effects from point source discharges have been reduced, largely through resource consenting processes for urban activities. However, they still contribute significant levels of contaminants to water bodies and there is therefore a need for continuous improvement. The most significant point source discharges are the major industrial and municipal discharges to the Lower Mataura and Ōreti Rivers and tributaries, with a number of smaller point source discharges scattered around the more developed parts of the region.

Non-point source discharges, such as stormwater in towns and leaching of contaminants from rural activities, are generally caused by rainwater carrying contaminants over or through the ground to surface water bodies or groundwater, or by bank and bed erosion. To date, there has been little regulatory management of non-point source discharges from rural activities, which cumulatively contribute significant amounts of contaminants to water bodies. Despite some improvements being made, non-point source discharges from agricultural land are the most significant contributors of contaminants. Other types of land use, including industrial, urban, forestry, some landfills and horticulture also contribute contaminants.

Land use intensification also tends to increase the amount of contaminants entering water therefore requiring appropriate mitigations to be put in place to ensure water quality can be maintained or improved over time when intensification occurs.

Water Quantity

Water has a range of values, both instream and for abstraction and use. Historically, Southland has had an abundance of water, with modest limits on use being appropriate. However, more recently there has been increasing demand for the use of water for a variety of activities, and an improved understanding of the linkage between water quantity and quality. The primary allocation thresholds in this Plan are therefore intended to be precautionary, with fixed allocation limits to be developed and implemented within the FMU sections of this Plan over time.

Surface Water

Rivers, lakes and wetlands support a range of instream values that are largely sustained by a sufficient quantity and quality of water. Out-of-stream uses, such as the abstraction, damming and diversion of surface water, can reduce water quantity and alter flow regimes in water bodies, which can have a number of adverse effects on instream values, including reducing water quality and aquatic habitat, diminishing natural character, amenity, aesthetic and landscape values and impacting on recreational and cultural values and fisheries and harvesting. These effects can be particularly significant during summer when rainfall is less, river levels are low, and the demand for water is at a peak. This can lead to a conflict between instream values and out-of-stream values, and between users.

In terms of surface water allocation, as at March 2015 more than 50% of the primary surface water allocation thresholds had been allocated in the majority of the region. The Waiau catchment is fully allocated as a result of the Manapōuri hydro-electric generation scheme, which uses water in the Fiordland and Waiau catchments for the generation of renewable energy. The resulting flow regime is highly modified, particularly below the Manapōuri Lake Control Structure (Mararoa weir), whilst supporting a range of biological, recreational, landscape, amenity and other community values.

Groundwater

Southland has considerable groundwater resources, occurring in aquifers over wide areas and at varying depths, both in shallow river gravel deposits and in deeper sedimentary rock.

Abstracting groundwater may result in a number of adverse effects including depleting aquifer storage volumes and reducing groundwater availability, interfering with existing bore yields, diminishing surface water flows, and collapsing coastal aquifers and sink holes. The significance of these effects depends on the volume and rate of abstraction and on the characteristics of the aquifer. In addition to abstraction, aquifer levels are influenced by changing land use, land drainage development and rainfall patterns.

Due to the hydraulic connection between ground and surface water resources, consideration of the impact of groundwater abstraction on surface water is important, particularly those water bodies subject to a water conservation order.

As at March 2015, less than 50% of the groundwater primary allocation thresholds had been allocated in the majority of the region. Some aquifers are fully allocated in terms of the primary allocation thresholds or close to this point.

Soil Resources

Soil resources are fundamental to the region's primary production economy, and can assist in maintaining or enhancing water quality and supporting human health, cultural, social and economic activities.

Discharges onto or into land can carry contaminants, including heavy metals, hydrocarbons and biological contaminants, that can create adverse effects on the quality and/or structure of the soil resource. Conversely, some contaminants, when applied appropriately, can have positive effects on the soil resource and plant growth, such as fertilisers and agricultural effluent.

Inappropriate land use or land management practices may adversely affect soil quality and structure, including through erosion and soil compaction.

River and Lake Beds[3]

River beds (including beds of streams and modified watercourses) and lake beds have a wide variety of values, including natural, ecological, cultural and spiritual values, with rivers and lakes used for a range of recreational and cultural activities, including walking, fishing, game bird hunting, boating, and food gathering. Southland's braided river beds are a nationally significant habitat for braided river birds, being a national stronghold for the threatened black billed gull and important for the threatened black fronted tern and banded dotterel. The use and development of river beds and lake beds also has value for economic, social and community health and safety reasons, which can be broken down into two main categories:

- activities that involve structures, such as bridges, culverts, dams, weirs, pipes, cables, boat ramps, jetties, moorings and flood and erosion control works;
- activities that disturb the bed, such as gravel extraction, channel realignment, construction activities, vegetation planting and removal, and vehicle and stock access.

Some of these activities can have positive effects on the natural environment, for example, bridges and culverts allow access across a river without disturbing the bed. Other activities, such as infrastructure, are important to enable people and communities to provide for their economic, cultural, and social wellbeing. These activities can also have adverse effects on the environment, including generating sediment, disturbing habitat and preventing fish passage.

Indigenous Biodiversity

Indigenous biodiversity covers native flora and fauna in both dryland and wetland environments. Southland contains a variety of ecosystems and habitats, including indigenous vegetation, wetlands, lakes, and rivers. Indigenous plants and animals are an integral part of the natural character values of the region, and in addition to their intrinsic value, plants and animals are significant for cultural, economic, scientific and educational reasons, biological diversity and provision of ecosystem services. The region contains a number of significant and distinctive ecosystems, including the network of culturally and ecologically significant river mouths, estuaries and lagoons, the largely unmodified alpine environments, particularly of Fiordland, extensive high country, and many lakes and wetlands that provide nationally and internationally significant bird habitat.

There continues to be substantial impacts on ecosystems and losses of significant indigenous biodiversity for a variety of reasons. The most significant losses in indigenous habitat and biodiversity have occurred in lowland and coastal environments where most of the original indigenous vegetation has been lost.

Ngāi Tahu, as tangata whenua, have a significant interest in the protection, management and restoration of indigenous ecosystems and biodiversity. This stems from their close interaction with Southland's indigenous biodiversity over centuries of occupation and the importance of it in Māori culture, including its significance as mahinga kai and taonga species.

[3] Memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.

Wetlands are a vital link between land and water and include permanently and intermittently wet areas, shallow water, and margins that support a natural ecosystem of plants and animals adapted to wet conditions. They provide important hydrological functions and ecosystem services such as filtering contaminants from water and soils. They are also an important natural and cultural resource, rich in biodiversity and important sources of mahinga kai.

Wetlands were once more prevalent, with Southland having lost approximately 90% of its wetlands in developed areas, including from hill and high country. Many remaining wetlands are on publicly held land and afforded some level of protection. Other wetlands are on private land and little is known about their health, values and use. Land use change leads to conflict between productive use of land, including wet areas, and protecting habitats and biodiversity.

The Awarua Wetlands, comprising of Awarua Bay and Waituna Lagoon, are one of the largest remaining wetland complexes in Southland and are important for their biological diversity and cultural values. The wetlands are officially recognised on the Ramsar Convention on Wetlands: List of Wetlands of International Importance.[4] The Awarua site includes four major wetland types: coastal lagoons (notably Waituna Lagoon), freshwater swamps, extensive peatlands, and estuaries.

Each ecosystem is unique and maintained by different ecological processes. Awarua Wetlands is frequented by diverse trans-equatorial migrating and wading bird species, as well as threatened plants and insects including sub-alpine species.

[4] https://rsis.ramsar.org

Physiographic Zones

Southland's physiographic zones have been developed at a regional scale to better understand our region's water, how it moves across the landscape and why water quality is better in some places than others.

Scientists have divided Southland into nine physiographic zones. Each zone represents areas of the landscape with common attributes that influence water quality, such as climate, topography, geology and soil type. Zones differ in the way sediment, microbes (e.g. *E.coli*) and nutrients, such as nitrogen and phosphorus, build up and move through the soil, aquifers (areas of groundwater) and into our rivers and streams.

Alpine

The Alpine physiographic zone includes all land above 800 metres elevation, and is mainly found in northern and western parts of Southland. This zone is characterised by steep slopes with thin soils or bare bedrock. Its high elevation results in high snowfall and rainfall, which provides large volumes of pristine water to downstream physiographic zones. Overland flow (surface runoff) is the key transport pathway, however contaminant loss is limited due to low intensity of land use.

Key transport pathway for contaminants:

- ***Overland flow*** **–** nitrogen, phosphorus, sediment and microbes to rivers.

Central Plains

The Central Plains physiographic zone extends across flat to gently undulating terraces in the lower reaches of the Aparima and Ōreti catchments in Central Southland. This zone has many small streams and has an extensive underlying aquifer system. Soils are characteristically rich in clay, which means they swell when wet and crack when dry. When soils are wet, contaminants move quickly through artificial drainage networks to surface waterways. When soils are dry, cracks allow water and contaminants to rapidly drain down through the soil to groundwater.

Key transport pathways for contaminants:

- ***Artificial drainage*** – nitrogen, phosphorus, sediment and microbes to rivers;
- ***Deep drainage*** – nitrogen to aquifers.

Gleyed

The Gleyed physiographic zone extends across flat to gently undulating land across the plains of both northern and southern Southland. It is generally found in areas that were once wetlands, has a dense network of streams and has a high water table during winter. Soils are prone to waterlogging and have some denitrification ability, which reduces build-up of soil nitrogen. However, an extensive network of artificial drainage rapidly transports contaminants to surface water, particularly during heavy rain. The zone also has an overland flow or (o) variant, which means that in parts of the zone overland flow is also a key transport pathway for contaminants.

Key transport pathways for contaminants:

- ***Artificial drainage*** – nitrogen, phosphorus, sediment and microbes to rivers;
- ***Overland flow (in some parts of the zone - (o) variant)*** – nitrogen, phosphorus, sediment and microbes to rivers and streams.

Bedrock/Hill Country

The Bedrock/Hill Country physiographic zone is the largest in the Southland Region, covering half the mapped area (approximately 1.6 million hectares). It is characterised by rolling to steep land below 800 metres elevation. This zone has high rainfall due to elevation, which results in a dense network of streams that flow to lowland areas. This zone contains an overland flow or (o) variant, as well as an artificial drainage or (a) variant, which means that in some parts of the zone, overland flow is a key transport pathway, and in some parts variant which are areas within a zone where either overland flow or artificial drainage is the key contaminant transport pathway. This means that streams in developed areas of these variants are at risk of receiving contaminants from surface runoff and artificial drainage.

Key transport pathways for contaminants:

- ***Overland flow (in some parts of the zone - (o) variant)*** – nitrogen, phosphorus, sediment and microbes to rivers;
- ***Artificial drainage (in some parts of the zone – (a) variant)*** – nitrogen, phosphorus, sediment and microbes to rivers.

Lignite-Marine Terraces

The Lignite-Marine Terraces physiographic zone is distributed along Southland's south coast and in areas of Eastern and Western Southland where the underlying geology has elevated organic carbon (such as lignite or coal). There is little nitrogen build-up in soils and aquifers due to high denitrification potential. Phosphorus build-up in soils is also low where lignite and marine sediments are close to the surface. Like Bedrock/Hill Country, this zone contains an overland flow or (o) variant, as well as an artificial drainage or (a) variant.

Key transport pathways for contaminants:

- ***Overland flow (in some parts of the zone - (o) variant)*** – nitrogen, phosphorus, sediment and microbes to rivers;
- ***Artificial drainage (in some parts of the zone – (a) variant)*** – nitrogen, phosphorus, sediment and microbes to rivers.

Old Mataura

The Old Mataura physiographic zone is located on the older, high terraces in the Mataura catchment. Soils and aquifers in this zone have high risk of nitrogen build-up due to low denitrification potential. The combination of flat land and well drained soils results in high rates of nitrogen leaching (deep drainage) to underlying aquifers. Groundwater in this zone discharges into springs, streams and aquifers in lower parts of the Mataura catchment, adding to their contaminant levels.

Key transport pathway for contaminants:

- ***Deep drainage*** – nitrogen to aquifers.

Oxidising

The Oxidising physiographic zone is located on intermediate terraces along the margins of major river systems. Many surface waterways draining this unit originate from headwaters in neighbouring physiographic zones. Soils and aquifers in this zone have high risk of nitrogen build-up due to low denitrification potential. The combination of flat land and well drained soils results in high rates of nitrogen leaching (deep drainage) to underlying aquifers. Like Bedrock/Hill Country and Lignite-Marine Terraces, this zone contains an overland flow or (o) variant, as well as an artificial drainage or (a) variant.

Key transport pathways for contaminants:

- ***Deep drainage*** – nitrogen to aquifers;
- ***Overland flow (in some parts of the zone – (o) variant) –*** nitrogen, phosphorus, sediment and microbes to rivers;
- ***Artificial drainage (in some parts of the zone – (a) variant) –*** nitrogen, phosphorus, sediment and microbes to rivers.

Peat Wetlands

The Peat Wetlands physiographic zone was once extensive across Southland. However, today it accounts for less than 2% of the total land area. This zone is characterised by highly acidic peaty soils and a naturally high water table. Developed areas have an extensive artificial drainage network, comprised of open and mole-pipe drains. There is little nitrogen build-up in soils and aquifers due to high denitrification potential. However, acidic conditions result in elevated concentrations of soluble phosphorus in both soils and aquifers.

Key transport pathways for contaminants:

- ***Deep drainage*** – phosphorus to aquifers;
- ***Artificial drainage*** – nitrogen, phosphorus, sediment and microbes to rivers;
- ***Lateral drainage*** – microbes and phosphorus to rivers.

Riverine

The Riverine physiographic zone occurs along the margins of Southland's major river systems. Rivers and streams within this zone carry large volumes of pristine alpine water to the coast. However, river water in this zone also contains soil water drainage from adjacent land.

Soil water drains quickly through shallow, stony soils to underlying shallow aquifers, which are highly connected to rivers. This, combined with the low denitrifying potential of soils and aquifers, results in aquifers and adjacent rivers being at risk of nitrogen build-up from soil leaching (deep drainage). Therefore, nitrogen loss from aquifers can contribute significant nitrogen loads to downstream environments. Like Gleyed, this zone has an overland flow or (o) variant.

Key transport pathways for contaminants:

- ***Deep drainage*** – nitrogen to aquifers;
- ***Overland flow (in some parts of the zone - (o) variant))*** - nitrogen, phosphorus, sediment and microbes to rivers.

Region-wide Objectives

Note: *While Objectives 1 to 18 are objectives relating to the management of freshwater, they are not freshwater objectives established in accordance with Section CA2 of the National Policy Statement for Freshwater Management. Freshwater objectives established in accordance with Section CA2 of the National Policy Statement for Freshwater Management will be developed under Southland Regional Council's Freshwater Management Unit process, in time, in accordance with Southland Regional Council's Progressive Implementation Programme.*

Interpretation Statement[5] (Consent Orders)

All persons exercising functions and powers under this Plan and all persons who use, develop or protect resources to which this Plan applies shall recognise that:

(i) Objectives 1 and 2 are fundamental to this plan, providing an overarching statement on the management of water and land, and all objectives are to be read together and considered in that context; and

(ii) The plan embodies ki uta ki tai and upholds Te Mana o Te Wai and they are at the forefront of all discussions and decisions about water and land;

(iii) The Policies in this plan must be interpreted and applied in a manner that implements the Objectives.

Objective 1

Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.

Objective 2[6]

The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).

Objective 3[7]

Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region.

Objective 4

Tangata whenua values and interests are identified and reflected in the management of freshwater and associated ecosystems.

[5] Second Interim Decision [2020] NZEnvC 93 and Third Interim Decision [2020] NZEnvC 110.
[6] Second Interim Decision [2020] NZEnvC 93, Third Interim Decision [2020] NZEnvC 110 and Minute dated 5 August 2020. Note: as signalled, the court will issue corrigendum and correct the third Interim Decision pursuant to R11.10 District Court Rules.
[7] First Interim Decision [2020] NZEnvC 93.

Objective 5

Ngāi Tahu have access to and sustainable customary use of, both commercial and non-commercial, mahinga kai resources, nohoanga, mātaitai and taiāpure.[8]

Objective 6[9]

Water quality in each freshwater body, coastal lagoon and estuary will be:

(a) maintained where the water quality is not degraded; and
(b) improved where the water quality is degraded by human activities.

Objective 7[10]

Following the establishment of freshwater objectives, limits, and targets (water quality and quantity) in accordance with the Freshwater Management Unit processes:

(a) where water quality objectives and limits are met, water quality shall be maintained or improved;
(b) any further over-allocation of freshwater is avoided; and
(c) any existing over-allocation is phased out in accordance with freshwater objectives, targets, limits and timeframes.

Objective 8

(a) The quality of groundwater that meets both the Drinking Water Standards for New Zealand 2005 (revised 2008) and any freshwater objectives, including for connected surface water bodies, established under Freshwater Management Unit processes is maintained; and
(b) The quality of groundwater that does not meet Objective 8(a) because of the effects of land use or discharge activities is progressively improved so that:
    (1) groundwater (excluding aquifers where the ambient water quality is naturally less than the Drinking Water Standards for New Zealand 2005 (revised 2008)) meets the Drinking Water Standards for New Zealand 2005 (revised 2008); and
    (2) groundwater meets any freshwater objectives and freshwater quality limits established under Freshwater Management Unit processes.

Objective 9/9A[11]

The quantity of water in surface water bodies is managed so that:

(a) the life-supporting capacity and aquatic ecosystem health, the values of outstanding natural features and landscapes, the natural character and the historic heritage values of waterbodies and their margins are safeguarded.
(b) there is integration with the freshwater quality objectives (including the safeguarding of human health for recreation); and
(c) provided that (a) and (b) are met, surface water is sustainably managed in accordance with Appendix K to support the reasonable needs of people and communities to provide for their economic, social and cultural wellbeing.

[8] Mātaitai and taiāpure are defined in the Introduction to the Plan on page 10.
[9] First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.
[10] First Interim Decision [2020] NZEnvC 93 and memorandum of counsel dated 4 August 2020.
[11] First Interim Decision [2020] NZEnvC93, Minute dated 31 August 2020 and memorandum of counsel dated 9 September 2020.

Objective 9B[12]

The importance of Southland's regionally and nationally significant infrastructure is recognised and its sustainable and effective development, operation, maintenance and upgrading enabled.

Objective 10[13]

The national importance of the existing Manapōuri hydro-electric generation scheme in the Waiau catchment is provided for and recognised in any resulting flow and level regime.

Objective 11

The amount of water abstracted is shown to be reasonable for its intended use and water is allocated and used efficiently.

Objective 12

Groundwater quantity is sustainably managed, including safeguarding the life-supporting capacity, ecosystem processes and indigenous species of surface water bodies where their flow is, at least in part, derived from groundwater.

Objective 13[14]

Provided that:

(a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and
(b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and
(c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded,

then land and soils may be used and developed to enable the economic, social and cultural wellbeing of the region.

Objective 14[15]

The range and diversity of indigenous ecosystems and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.

Objective 15

Taonga species, as set out in Appendix M, and related habitats, are recognised and provided for.

[12] First Interim Decision [2020] NZEnvC 93 and memorandum of counsel dated 4 August 2020.
[13] First Interim Decision [2020] NZEnvC 93, Minute dated 31 August 2020, memorandum of counsel dated 9 September 2020 and memorandum of counsel dated 25 September 2020.
[14] First Interim Decision [2020] NZEnvC 93, Minute dated 31 August 2020, memorandum of counsel dated 9 September 2020 and memorandum of counsel dated 25 September 2020.
[15] First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August 2020 and Minute dated 31 August 2020.

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~~Objective 16~~[16]

~~Public access to, and along, river (excluding ephemeral rivers) and lake beds is maintained and enhanced, except in circumstances where public health and safety or significant indigenous biodiversity values are at risk.~~

Objective 16 (CV – Fifth Interim Decision)

Public access to, and along, river ~~(excluding ephemeral rivers)~~ and lake beds is maintained and enhanced, except in circumstances where public health and safety or significant indigenous biodiversity values are at risk.

Objective 17[17]

Preserve the natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, and protect them from inappropriate use and development.

Objective 18[18]

All persons implement environmental practices that optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.

Objective 19 – Fish passage (Clause 3.26 of NPSFM 2020)

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

[16] Appeal to Environment Court by Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

[17] First Interim Decision [2020] NZEnvC 93, memorandum of counsel dated 4 August2020, Minute dated 31 August 2020 and memorandum of counsel dated 25 September 2020.

[18] Minute dated 11 September 2020.

Region-wide Policies (Consent Orders)

~~The Policies of this Plan implement the Objectives and must be read in their entirety and considered together~~. (CV)

Ngāi Tahu Policies

Policy 1 – Enable papatipu rūnanga to participate

Enable papatipu rūnanga[19] to effectively undertake their kaitiaki (guardian/steward) responsibilities in freshwater and land management through the Southland Regional Council:

1. providing copies of all applications that may affect a Statutory Acknowledgement area, tōpuni (landscape features of special importance or value), nohoanga, mātaitai or taiāpure to Te Rūnanga o Ngāi Tahu and the relevant papatipu rūnanga;

2. identifying Ngāi Tahu interests in freshwater and associated ecosystems in Murihiku (includes the Southland Region); and

3. reflecting Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Murihiku (includes the Southland Region), consistent with the Charter of Understanding.

Policy 2 – Take into account iwi management plans

Any assessment of an activity covered by this Plan must:

1. take into account any relevant iwi management plan; and

2. assess water quality and quantity, taking into account Ngāi Tahu indicators of health.

Policy 3[20] – Ngāi Tahu ki Murihiku taonga species

To manage activities that adversely affect taonga species, identified in Appendix M.

[19] Papatipu rūnanga are defined in the Introduction to the Plan on page 9.
[20] Appeal to Environment Court by Southland Fish and Game Council ENV-2018-CHC-000037

Policy 4[21] – Alpine (Consent Orders)

In the Alpine physiographic zone~~, avoid, remedy, or mitigate erosion and adverse effects on water quality from contaminants, by~~:

1. avoid, as a first priority, risk to water quality from erosion and contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
   i. identifying contaminant pathways to ground and surface water bodies;
   ~~1.~~ ii. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow;
   ~~2.~~ iii. having particular regard to adverse effects of contaminants transported via overland flow when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
~~3.~~ 2. prohibiting dairy farming and intensive winter grazing, and ~~decision makers generally not granting resource consents for cultivation~~ avoiding cultivation where contaminant losses will increase as a result of the proposed activity.

Policy 5[22] – Central Plains (Consent Orders)

In the Central Plains physiographic zone~~, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by~~:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
   i. identifying contaminant pathways to ground and surface water bodies;
   ~~1.~~ ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage and deep drainage;
   ~~2.~~ iii. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage and deep drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
   ~~3.~~ 2. ~~decision makers generally not granting resource consents for additional dairy farming of cows or additional~~ avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

[21] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030
(ii) Director-General of Conservation ENV-2018-CHC-000036
(iii) Southland Fish and Game Council ENV-2018-CHC-000037
(v) Federated Farmers of New Zealand ENV-2018-CHC-000040
(vi) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(vii) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[22] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Federated Farmers of New Zealand ENV-2018-CHC-000040
(v) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(vi) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

Policy 6[23] – Gleyed~~, Bedrock/Hill Country and Lignite-Marine Terraces~~ (Consent Orders)

In the Gleyed~~, Bedrock/Hill Country and Lignite-Marine Terraces~~ physiographic zone~~,~~ avoid, as a first priority, risk to ~~remedy, or mitigate adverse effects on~~ water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:

1. identifying contaminant pathways to ground and surface water bodies;
~~1.~~2. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and
~~2.~~ 3. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.

Policy 7–Bedrock/Hill Country (Consent Orders)

In the Bedrock/Hill Country physiographic zone~~,~~ avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:

1. identifying contaminant pathways to ground and surface water bodies;
2. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and
3. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.

Policy 8–Lignite-Marine Terrances (Consent Orders)

In the Lignite-Marine Terraces physiographic zone~~,~~ avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:

1. identifying contaminant pathways to ground and surface water bodies;
2. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant; and
3. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.

Policy 9[24] – Old Mataura (Consent Orders)

In the ~~O~~old Mataura physiographic zone~~, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by~~:

[23] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[24] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
   i. identifying contaminant pathways to ground and surface water bodies;
   ~~2.~~ ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage;
   ~~3.~~ iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and

~~3.~~ 2. ~~decision makers generally not granting resource consents for additional dairy farming of cows or additional~~ avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Policy 10[25] – Oxidising (Consent Orders)

In the Oxidising physiographic zone~~, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by~~:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
   i. identifying contaminant pathways to ground and surface water bodies;
   ~~1.~~ ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant;
   ~~2.~~ iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and

~~3.~~ 2. ~~decision makers generally not granting resource consents for additional dairy farming of cows or additional~~ avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Policy 11[26] – Peat Wetlands (Consent Orders)

In the Peat Wetlands physiographic zone~~, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by~~:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
   i. identifying contaminant pathways to ground and surface water bodies;

(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Federated Farmers of New Zealand ENV-2018-CHC-000040
(v) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(vi) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[25] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Federated Farmers of New Zealand ENV-2018-CHC-000040
(v) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(vi) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[26] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Federated Farmers of New Zealand ENV-2018-CHC-000040
(v) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(vi) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

~~1.~~ ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage;

~~2.~~ iii. having particular regard to adverse effects on water quality from contaminants transported via artificial drainage, deep drainage, and lateral drainage when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and

~~3.~~ 2. ~~decision makers generally not granting resource consents for additional dairy farming of cows or additional~~ avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Policy 12[27] – Riverine (Consent Orders)

In the Riverine physiographic zone~~, avoid, remedy, or mitigate adverse effects on water quality from contaminants, by~~:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:

i. identifying contaminant pathways to ground and surface water bodies;

~~1.~~ ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant;

~~2.~~ iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow where relevant when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and

~~3.~~ 2. ~~decision makers generally not granting resource consents for additional dairy farming of cows or additional~~ avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Policy 12A – Improved physiographic zone information

Where site specific information is available that better identifies or delineates the relevant physiographic zones or contaminant loss pathways for a landholding or site, that information must be taken into account when undertaking activities, preparing Farm Environmental Management Plans or when determining resource consent applications for that landholding or site.

[27] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Federated Farmers of New Zealand ENV-2018-CHC-000040
(v) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(vi) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

Water Quality

Policy A4 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017)

1. When considering any application for a discharge the consent authority must have regard to the following matters:
   (a) the extent to which the discharge would avoid contamination that will have an adverse effect on the life-supporting capacity of freshwater including on any ecosystem associated with freshwater; and
   (b) the extent to which it is feasible and dependable that any more than minor adverse effect on freshwater, and on any ecosystem associated with freshwater, resulting from the discharge would be avoided.

2. When considering any application for a discharge the consent authority must have regard to the following matters:
   (a) the extent to which the discharge would avoid contamination that will have an adverse effect on the health of people and communities as affected by their contact with freshwater; and
   (b) the extent to which it is feasible and dependable that any more than minor adverse effect on the health of people and communities as affected by their contact with freshwater resulting from the discharge would be avoided.

3. This policy applies to the following discharges (including a diffuse discharge by any person or animal):
   (a) a new discharge; or
   (b) a change or increase in any discharge of any contaminant into freshwater, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering freshwater.

4. Paragraph 1 of this policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management 2011 took effect on 1 July 2011.

5. Paragraph 2 of this policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management 2014 takes effect.

Policy 13 – Management of land use activities and discharges[28] (Consent Orders)

1. Recognise that the use and development of Southland's land and water resources~~, including for primary production,~~ enables people and communities to provide for their social, economic and cultural wellbeing.

2. Manage land use activities and discharges (point source and non-point source) to enable the achievement of Policies 15A, 15B and 15C.

[28] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(ii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

Policy 14 – Preference for discharges to land

Prefer discharges of contaminants to land over discharges of contaminants to water, unless adverse effects associated with a discharge to land are greater than a discharge to water. Particular regard shall be given to any adverse effects on cultural values associated with a discharge to water.

Policy 15A[29] – Maintain water quality where standards are met

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by~~:~~

~~1.~~ avoiding, where reasonably practicable, or otherwise remedying or mitigating any ~~the~~ adverse effects of ~~new~~ discharges~~,~~ so that ~~beyond the zone of reasonable mixing,~~ those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges)~~; and~~.

~~2. requiring any application for replacement of an expiring discharge permit to demonstrate how the adverse effects of the discharge are avoided, remedied or mitigated, so that beyond the zone of reasonable mixing those standards or sediment guidelines will continue to be met.~~

CV – Sixth Interim Decision

Policy 15A – Approach where Appendix E or Appendix C ~~Maintain water quality where~~ standards are met

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality, ~~including~~ by:

~~1.~~ avoiding~~,~~ where reasonably practicable or otherwise minimising any ~~remedying or mitigating the~~ adverse effects, including residual adverse effects, of ~~new~~ discharges~~,~~ so that ~~beyond the zone of reasonable mixing,~~ those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges)~~; and~~

Policy 15B[30] – Improve water quality where standards are not met

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:

1. avoiding ~~where practicable and otherwise remedying or mitigating~~ any adverse effects of new point source discharges to surface water on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and

1a. avoiding, where reasonably practicable, or otherwise remedying or mitigating any adverse effects of other new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines; and

[29] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[30] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

2. requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated~~,~~ so that ~~beyond the zone of reasonable mixing~~ water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

CV – Sixth Interim Decision

Policy 15B - Approach where Appendix E or Appendix C ~~Improve water quality where~~ standards are not met

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, ~~improve~~ water quality will be: ~~including by:~~

1. maintained~~,~~ ~~including by~~ avoiding ~~where practicable and otherwise remedying or mitigating~~ any adverse effects of new point source discharges to surface water on water quality or sediment quality so that ~~would exacerbate~~ the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated beyond the zone of reasonable mixing; and

1a. maintained~~, including~~ by avoiding, where reasonably practicable, or otherwise minimising any adverse effects, including residual adverse effects, on water quality or sediment quality from new discharges to land, new discharges to groundwater or new diffuse discharges to water so that the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated; and

2. improved~~, including by~~ requiring any application for the replacement of an expiring discharge permit~~,~~ seeking a discharge permit for an existing but previously unconsented discharge, or seeking a different discharge permit for an existing activity, including a variation under ss 127-129 RMA which do not involve a new discharge, to demonstrate how ~~and by when~~ adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated~~,~~ so that ~~beyond the zone of reasonable mixing~~ water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

CV – Sixth Interim Decision

~~Policy 15C[31] – Maintaining and improving water quality after FMU processes~~

~~Following the establishment of freshwater objectives and limits under Freshwater Management Unit processes, and including through implementation of non-regulatory methods, improve water quality where it is degraded to the point where freshwater objectives are not being met and otherwise maintain water quality where freshwater objectives are being met.~~

Policy 16[32] – Farming activities that affect water quality

1. Minimising the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and groundwater) from farming activities by:

[31] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[32] Appeal to Environment Court by (i) Fonterra Co-operative Group Limited ENV-2018-CHC-000027

(a) discouraging the establishment of new dairy farming of cows or new intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and

(b) ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where:

(i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided or mitigated; or

(ii) existing water quality is already degraded to the point of being overallocated; or

(iii) water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines; and

(c) ensuring that, after the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities:

(i) will generally not be granted where freshwater objectives are not being met; and

(ii) where freshwater objectives are being met, will generally not be granted unless the proposed activity (allowing for any offsetting effects) will maintain the overall quality of groundwater and water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes.

2. Requiring all farming activities, including existing activities, to:

(a) implement a Farm Environmental Management Plan, as set out in Appendix N;

(b) actively manage sediment run-off risk from farming and hill country development by identifying critical source areas and implementing practices including setbacks from water bodies, sediment traps, riparian planting, limits on areas or duration of exposed soils and the prevention of stock entering the beds of surface water bodies; and

(c) manage collected and diffuse run-off and leaching of nutrients, microbial contaminants and sediment through the identification and management of critical source areas within individual properties.

3. When considering a resource consent application for farming activities, consideration should be given to the following matters:

(a) whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be addressed in a single resource consent; and

(b) granting a consent duration of at least 5 years.

Policy 16 – Farming activities that affect water quality (CV – Fifth Interim Decision)

~~Minimising~~ Avoid where reasonably practicable, or otherwise minimise any ~~the~~ adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and groundwater) from farming activities by:

(ii) Director-General of Conservation ENV-2018-CHC-000036
(iii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(v) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

~~(a) discouraging the establishment of new dairy farming of cows or new intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and~~

~~(b) ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where:~~

~~(i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided or mitigated; or~~

~~(ii) existing water quality is already degraded to the point of being overallocated; or~~

~~(iii) water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines; and~~

~~(c) ensuring that, after the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities:~~

~~(i) will generally not be granted where freshwater objectives are not being met; and~~

~~(ii) where freshwater objectives are being met, will generally not be granted unless the proposed activity (allowing for any offsetting effects) will maintain the overall quality of groundwater and water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes.~~

(a) ensuring that all farming activities:

(i) do not increase nitrogen, phosphorus, sediment or microbial contaminant discharges; and

(ii) minimise nitrogen, phosphorus, sediment or microbial contaminant discharges; and

(iii) reduce adverse effects on water quality where the farming activity occurs within the catchment of a waterbody identified in Schedule X; and

(b) ensuring that new, or further intensification of existing, dairy farming of cows, or any intensive winter grazing or pasture-based wintering activities[33] are not located in close proximity to Regionally Significant Wetlands, Sensitive Water bodies identified in Appendix A, nohoanga listed in Appendix B, mātaitai reserves, taiāpure, estuaries or the coastal marine area; and

(c1) subject to (a) and (b) being achieved across the whole of the land holding, recognising that a limited proportion of intensive winter grazing or pasture-based wintering[34] ~~high risk pasture winter grazing~~ is required on most land holdings to carry stock over winter; and

~~2.~~(c) Requiring all farming activities~~, including existing activities,~~ to:

(i) be undertaken in accordance with ~~implement~~ a Farm Environmental Management Plan~~, as set out in Appendix N;~~ that:

(1) identifies whether the farming activity is occurring, or would occur, in a catchment of a waterbody identified in Schedule X;

(2) identifies and responds to contaminant loss risk, and the contaminant pathways (and variants) for the relevant Physiographic Zones;

(3) sets out how adverse effects on water quality from the discharge of contaminants from farming activities will be minimised or, where the farming activity is occurring in a catchment of a waterbody identified in Schedule X, reduced;

[33] See Policy 16 decision

[34] Amendment here and elsewhere renaming activity as suggested by Fonterra.

(4) is certified as meeting all relevant requirements of this Plan and any regulation under Part 9A of the RMA; and

(5) is independently audited and reported on;

(ii)~~(b)~~ ~~actively manage~~ avoids where reasonably practicable, or otherwise minimises sediment run-off risk from farming and hill country development activities by identifying critical source areas and implementing actions and maintaining practices including setbacks from water bodies, sediment traps, riparian planting, limits on areas or duration of exposed soils and the prevention of stock entering the beds of surface water bodies; and

(iii)~~(c)~~ ~~manage~~ avoids where reasonably practicable, otherwise minimises collected and diffuse run-off and leaching of nitrogen, phosphorus ~~nutrients~~, microbial contaminants and sediment through the identification and management of critical source areas and the contaminant pathways identified for the relevant Physiographic Zones (and variants) within individual properties.

2.~~3.~~ When considering a resource consent application for farming activities, consideration should be given to the following matters:

(a) whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be addressed in a single resource consent; and

(b) granting a consent duration of at least 5 years where doing so is consistent with Policy 40.

Policy 16A[35] – Industrial and trade processes that may affect water quality

Subject to Policies 15A and 15B, require the adoption of best practicable option to manage the treatment and discharge of contaminants by:

(a) Avoiding where practicable, or otherwise remedying or mitigating the adverse effects of discharges from any new industrial or trade process

(b) At the time of any replacement discharge permit, minimising the adverse effects of discharges from any existing industrial or trade process.

The adverse effects to be managed in accordance with (a) and (b) above include effects on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries, salt marshes and groundwater.

~~Minimise the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries, salt marshes and groundwater) by requiring the adoption of the best practicable option to manage the treatment and discharge of contaminants derived from industrial and trade processes.~~

CV – Sixth Interim Decision

Policy 16A – Industrial or trade processes that may affect water quality

[35] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(ii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

Subject to Policies 15A and 15B, require the adoption of best practicable option to manage the treatment and discharge of contaminants derived from industrial or trade processes.

The adverse effects to be managed include effects on the quality of water and sediments in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries, salt marshes and groundwater.

Policy 17[36] – Agricultural effluent management

1. Avoid ~~significant~~ where reasonably practicable, or otherwise remedy or mitigate, any adverse effects on water quality, and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, agricultural effluent management systems~~.~~ by:

~~2. Manage agricultural effluent systems and discharges from them by:~~

(a) designing, constructing and locating systems appropriately and in accordance with best practice;

(b) maintaining and operating effluent systems in accordance with best practice guidelines;

(c) avoiding any surface run-off or overland flow, ponding or contamination of water, including via sub-surface drainage, resulting from the ~~application~~ discharge of agricultural effluent to pasture; and

(d) avoiding the discharge of untreated agricultural effluent to water.

Note: *Examples of best practice referred to in Policy 17(2)(a) for agricultural effluent include IPENZ Practice Note 21: Farm Dairy Effluent Pond Design and Construction and IPENZ Practice Note 27: Dairy Farm Infrastructure (although these will not be applicable to all above ground tanks).*

Note: *Examples of best practice guidelines referred to in Policy 17(2)(b) for agricultural effluent include DairyNZ's guidelines A Farmer's Guide to Managing Farm Dairy Effluent – A Good Practice Guide for Land Application Systems, 2015 and A Staff Guide to Operating Your Effluent Irrigation System, 2013.*

CV – Sixth Interim Decision

Policy 17 – Agricultural effluent management

1. Avoid ~~significant~~ where reasonably practicable, or otherwise minimise, any adverse effects on water quality, and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, agricultural effluent management systems~~.~~ including by:

~~2. Manage agricultural effluent systems and discharges from them by:~~

(a) designing, constructing and locating systems appropriately and in accordance with best practice;

(b) maintaining and operating effluent systems in accordance with best practice guidelines;

(c) avoiding any surface run-off or overland flow~~,~~ or ponding ~~or contamination of water, including via sub-surface drainage,~~ resulting from the ~~application~~ discharge of agricultural effluent to pasture; and

[36] Appeal to Environment Court by (i) Fonterra Co-operative Group Limited ENV-2018-CHC-000027
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

(ca) minimising contamination of water by agricultural effluent via sub-surface drainage.

(d) avoiding the discharge of untreated agricultural effluent to water.

Note: *Examples of best practice referred to in Policy 17(1)(a) for agricultural effluent include IPENZ Practice Note 21: Farm Dairy Effluent Pond Design and Construction and IPENZ Practice Note 27: Dairy Farm Infrastructure (although these will not be applicable to all above ground tanks).*

Note: *Examples of best practice guidelines referred to in Policy 17(1)(b) for agricultural effluent include DairyNZ's guidelines A Farmer's Guide to Managing Farm Dairy Effluent – A Good Practice Guide for Land Application Systems, 2015 and A Staff Guide to Operating Your Effluent Irrigation System, 2013.*

Policy 17A[37] – Community sewerage schemes and on-site wastewater systems

1. ~~Minimise~~ Avoid where reasonably practicable, or otherwise remedy or mitigate, any adverse effects on water quality, and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, community sewerage schemes by:
   (a) designing, operating and maintaining community sewerage schemes in accordance with recognised industry standards;
   (b) implementing measures to ~~progressively~~ reduce the frequency and volume of wet weather overflows from community sewerage schemes; and
   (c) ensuring community sewerage schemes are operated and maintained to minimise ~~the likelihood of~~ dry weather overflows occurring.
2. Avoid the discharge of untreated domestic wastewater to water or onto or into land; and avoid, remedy, or mitigate the adverse effects of discharges from on-site wastewater systems; by:
   (a) avoiding any surface run-off or overland flow, ponding, or contamination of water from the application of domestic wastewater to land; and
   (b) designing, locating and maintaining on-site wastewater systems in accordance with Sections 5 and 6 of the New Zealand Standard AS/NZS 1547:2012 On-site Domestic Wastewater Management.

CV – Sixth Interim Decision

Policy 17A – Community sewerage schemes and on-site wastewater systems

1. ~~Minimise~~ Avoid where reasonably practicable, or otherwise minimise, any adverse effects on water quality, and avoid, remedy, or mitigate other adverse effects of the operation of, and discharges from, community sewerage schemes by:
   (a) designing, operating and maintaining community sewerage schemes in accordance with recognised industry standards;
   (b) implementing measures to ~~progressively~~ reduce the frequency and volume of wet weather overflows from community sewerage schemes; and

[37] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(ii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

(c) ensuring community sewerage schemes are operated and maintained to minimise ~~the likelihood of~~ dry weather overflows occurring.

2. Avoid the discharge of untreated domestic wastewater to water or onto or into land; and avoid, remedy, or mitigate the adverse effects of discharges from on-site wastewater systems; by:
   (a) avoiding any surface run-off or overland flow, ponding, or contamination of water from the application of domestic wastewater to land; and
   (b) designing, locating and maintaining on-site wastewater systems in accordance with Sections 5 and 6 of the New Zealand Standard AS/NZS 1547:2012 On-site Domestic Wastewater Management.

Policy 18[38] – Stock exclusion from water bodies

Reduce sedimentation and microbial contamination of water bodies and improve river (excluding ephemeral rivers) and riparian ecosystems and habitats by:

1. requiring progressive exclusion of all stock, except sheep, from lakes, rivers (excluding ephemeral rivers), natural wetlands, artificial watercourses, and modified watercourses on land with a slope of less than 15 degrees by 2030;

2a. requiring the management of sheep in critical source areas and in those catchments where *E.coli* levels could preclude contact recreation;

3. encouraging the establishment and enhancement of healthy vegetative cover in riparian areas, particularly through use of indigenous vegetation; and

4. ensuring that stock access to lakes, rivers (excluding ephemeral rivers), natural wetlands, artificial watercourses and modified watercourses is managed in a manner that avoids significant adverse effects on water quality, bed and bank integrity and stability, mahinga kai, and river and riparian ecosystems and habitats.

Policy 18 – Stock exclusion from water bodies (CV, Fifth Interim Decision (decided in part))

Sixth Interim Decision (balance)

~~Reduce~~ Avoid where reasonably practicable, or otherwise remedy or mitigate, any adverse effects from the discharge of sediment~~ation and~~ or microbial ~~contamination of~~ contaminants to water bodies and improve river ~~(excluding ephemeral rivers)~~ and riparian ecosystems and habitats by:

1. requiring progressive exclusion of all stock, except sheep, from lakes, rivers ~~(excluding ephemeral rivers)~~, natural wetlands, artificial watercourses, and modified watercourses on land with a slope of less than 15 degrees by 2030;

2~~a~~. requiring the management of sheep in critical source areas and in those catchments where E.coli levels could preclude contact recreation;

[38] Appeal to Environment Court by (i) Beef + Lamb New Zealand ENV-2018-CHC-000034, 000035
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

3.	encouraging the establishment, maintenance and enhancement of healthy vegetative cover in riparian areas, particularly through use of indigenous vegetation; and
4.	ensuring that stock access to lakes, rivers ~~(excluding ephemeral rivers)~~, natural wetlands, artificial watercourses and modified watercourses is managed in a manner that avoids ~~significant~~ adverse effects on water quality, bed and bank integrity and stability, mahinga kai, and ~~river~~ aquatic and riparian ecosystems and habitats~~.~~; and
5.	showing, in a Farm Environmental Management Plan prepared, certified, implemented and audited in accordance with Appendix N, how 1-4 will be achieved and by when.

Water Quantity

Policy B7 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017)

1. When considering any application the consent authority must have regard to the following matters:
   (a) the extent to which the change would adversely affect safeguarding the life-supporting capacity of freshwater and of any associated ecosystem; and
   (b) the extent to which it is feasible and dependable that any adverse effect on the life-supporting capacity of freshwater and of any associated ecosystem resulting from the change would be avoided.

2. This policy applies to:
   (a) any new activity; and
   (b) any change in the character, intensity or scale of any established activity;
   that involves any taking, using, damming or diverting of freshwater or draining of any wetland, which is likely to result in any more than minor adverse change in the natural variability of flows or level of any freshwater, compared to that which immediately preceded the commencement of the new activity or the change in the established activity (or in the case of a change in an intermittent or seasonal activity, compared to that on the last occasion on which the activity was carried out).

3. This policy does not apply to any application for consent first lodged before the National Policy Statement for Freshwater Management 2011 took effect on 1 July 2011.

CV – Sixth Interim Decision
Policy 20[39] – Management of water resources

Manage the taking, abstraction, use, damming or diversion of surface water and groundwater so as to:

1A. recognise that the use and development (such as primary production) of Southland's land and water resources~~, including for primary production,~~ can have positive effects including enabling people and communities to provide for their social, economic and cultural wellbeing;

[39] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041
(iv) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(v) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

1. avoid~~,~~ where reasonably practicable, or otherwise remedy or mitigate, adverse effects from the use and development of surface water resources on:
   (a) the quality and quantity of aquatic habitat, including the life supporting capacity and ecosystem health and processes of water bodies;
   (b) natural character values, natural features, and amenity, aesthetic and landscape values;
   (c) areas of significant indigenous vegetation and significant habitats of indigenous fauna;
   (d) recreational values;
   (e) the spiritual and cultural values and beliefs of tangata whenua;
   (f) water quality, including temperature and oxygen content;
   (g) the reliability of supply for lawful existing surface water users, including those with existing, but not yet implemented, resource consents;
   (h) groundwater quality and quantity; ~~and~~
   (i)~~(j)~~ mātaitai, taiāpure and nohoanga; and
   (j) historic heritage values.

2. avoid, ~~remedy or mitigate~~ where reasonably practicable, or otherwise remedy or mitigate, ~~significant~~ adverse effects from the use and development of groundwater resources on:
   (a) long-term aquifer storage volumes;
   (b) the reliability of supply for lawful existing groundwater users, including those with existing, but not yet implemented, resource consents;
   (c) surface water flows and levels, particularly in spring-fed streams, natural wetlands, lakes, aquatic ecosystems and habitats (including life supporting capacity and ecosystem health and processes of water bodies) and their natural character; and
   (d) water quality, including temperature and oxygen content;

3. ensure water is used efficiently and reasonably by requiring that the rate and volume of abstraction specified on water permits to take and use water are no more than reasonable for the intended end use following the criteria established in Appendix O and Appendix L.4.

Policy 21 – Allocation of water

Manage the allocation of surface water and groundwater by:

1. determining the primary allocation for confined aquifers not identified in Appendix L.5, following the methodology established in Appendix L.6;

2. determining that a water body is fully allocated when the total volume of water allocated through current resource consents and permitted activities is equal to either:
   (a) the maximum amount that may be allocated under the rules of this Plan, or
   (b) the provisions of any water conservation order;

3. enabling secondary allocation of surface water and groundwater subject to appropriate surface water environmental flow regimes, minimum lake and wetland water levels, minimum groundwater level cutoffs or seasonal recovery triggers, to ensure:
   (a) long-term aquifer storage volumes are maintained; and
   (b) the reliability of supply for existing groundwater users (including those with existing resource consents for groundwater takes that have not yet been implemented) is not adversely affected;

4. when considering levels of abstraction, recognise the need to exclude takes for non-consumptive uses that return the same amount (or more) water to the same aquifer or a hydraulically connected lake, river, modified watercourse or natural wetland.

Policy 22 – Management of the effects of groundwater and surface water use

Manage the effects of surface and groundwater abstractions by:

1. avoiding allocating water to the extent that the effects on surface water flow would not safeguard the mauri of that waterway and mahinga kai, taonga species or the habitat of trout and salmon, in accordance with Appendix K;

2. ensuring interference effects are acceptable, in accordance with Appendix L.3; and

3. utilising the methodology established in Appendix L.2 to:
   (a) manage the effects of consented groundwater abstractions on surface water bodies; and
   (b) assess and manage the effects of consented groundwater abstractions in groundwater management zones other than those specified in Appendix L.5.

Policy 23 – Stream depletion effects

Manage stream depletion effects resulting from groundwater takes which are classified as having a Riparian, Direct, High or Moderate hydraulic connection, as set out in Appendix L.2 Table L.2, to ensure the cumulative effect of those takes does not:

1. exceed any relevant surface water allocation regime (including those established under any water conservation order) for groundwater takes classified as Riparian, Direct, High or Moderate hydraulic connection; or

2. result in abstraction occurring when surface water flows or levels are less than prescribed minimum flows or groundwater levels for takes classified as Riparian, Direct or High hydraulic connection.

Policy 24[40] – Water abstraction for community water supply (Consent Orders)

Recognise the need for, and assign priority to, the provision of water for community water supply when allocating water:

1. provided that significant adverse effects on the following are avoided as a first preference, and if unable to be avoided, are mitigated or remedied:
   (a) the quality and quantity of aquatic habitat, including the life supporting capacity and ecosystem health and processes of water bodies;
   (b) natural character values, natural features, and amenity, aesthetic and landscape values;
   (c) areas of significant indigenous vegetation and significant habitats of indigenous fauna;
   (d) recreational values;
   (e) the spiritual and cultural values and beliefs of the tangata whenua;
   (f) water quantity and quality; ~~and~~
   (g) long-term aquifer storage volumes; and
   (h) historic heritage values; and

2. provided that a water demand management strategy commensurate to both the scale of the activity and its potential effects is part of any application for:
   (a) a new or replacement water permit for a community water supply; or

[40] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

(b) an amendment to an existing water permit for a community water supply.

Policy 25 – Priority takes[41](Consent Orders)

When issuing a water shortage direction, the Southland Regional Council will give priority to reasonable water abstractions for the following uses (in no particular order):

1. domestic needs, including community water supplies;
2. reasonable animal drinking needs;
~~2a. industries that process perishable foods;~~
3. fire-fighting purposes;
4. public health needs; and
5. animal welfare needs;

and as a second priority industries that process perishable primary produce.

Activities that affect water quality and quantity

Policy 26[42] – Renewable energy

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:

1. allocating surface water for abstraction, damming, diversion and use; and
2. considering all resource consent applications for surface water abstractions, damming, diversion and use.

Policy 26A[43] – Infrastructure (Consent Orders)

Recognise and provide for the sustainable and effective development, operation, maintenance and upgrading of regionally ~~significant,~~ and nationally significant ~~and critical~~ infrastructure in a way that avoids where practicable, or otherwise remedies or mitigates, adverse effects on the environment.

Policy 27 – Bore construction and management

Require minimum standards for the construction, operation and maintenance of bores and wells.

[41] Appeal to Environment Court by Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
[42] Appeal to Environment Court by (i) Aratiatia Livestock Limited ENV-2018-CHC-000029
(ii) Meridian Energy Limited ENV-2018-CHC-000038
(iii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(iv) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
[43] Appeal to Environment Court by (iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

Policy 27A – Loss of river extent and values (CV – Fifth Interim Decsiion)

[Advice Note - Placeholder for direct insertion of policy required by clause 3.24 of the National Policy Statement for Freshwater Management 2020 Policy 3.24]

Policy 28[44] (CV – Fifth Interim Decision) – Structures and bed disturbance activities of rivers (including modified watercourses) and lakes

a. Except where Policy 27A ~~28b~~ applies, - m~~M~~anage structures, bed disturbance activities and associated discharges in the beds and margins of lakes, rivers and modified watercourses, to avoid~~,~~ where reasonably practicable, or otherwise remedy or mitigate adverse effects on:

1. water quality and quantity;
2. habitats, ecosystems and fish passage;
3. indigenous biological diversity;
5. the spiritual and cultural values and beliefs of the tangata whenua;
6. mātaitai and taiāpure;
7. public access (except in circumstances where public health and safety are at risk) and amenity values;
8. natural character values and outstanding natural features;
9. river morphology and dynamics, including erosion and sedimentation;
10. flood risk;
11. infrastructural assets;
12. navigational safety;
13. landscape values; and
14. historic heritage values.

~~(b) The loss of river extent and values is avoided, unless the Southland Regional Council is satisfied:~~

~~(i) that there is a functional need for the activity in that location; and~~

~~(ii) that the effects of the activity are managed by applying the effects management hierarchy~~[45]

Policy 29[46] – Provide for the extraction of gravel (Consent Orders)

Recognise the value of gravel and provide for its extraction to meet the social, economic and cultural needs of the community in a way that:

a. avoids, remedies or mitigates adverse effects on land, groundwater quality, rivers and their margins, and recreational values and;

b. for river bed based extractions:

1. ~~for river based extractions, requires the restoration of~~ aquatic, riverine and riparian habitat is restored or enhanced once the[47] gravel extraction activity has ceased;
2. results in no long-term net loss of habitat in the river channel, bed or floodplain;

2a. ensures that the rate and volume of gravel extraction is sustainable;

[44] Appeal to Environment Court by (i) Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041
(ii) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[45] As defined in the NPS-FM (2020)

[46] Appeal to Environment Court by (i) HW Richardson Group Limited ENV-2018-CHC-000033
(ii) Director-General of Conservation ENV-2018-CHC-000036
(iii) Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041
(iv) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(v) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[47] Note that there was a typographical error in the mediation agreement which meant this "the" was missing from the agreed wording (but is included in the decisions version wording). Accordingly, we have shown it as deleted.

3. ensures no degradation of flood protection and erosion control infrastructure and the integrity of physical resources;
4. does not adversely affect the Ngāi Tahu cultural values and interests associated with the land or river, including taonga species habitat, mahinga kai, mātaitai and taiāpure;[48]
5. ~~results in no long-term adverse effects on recreational values;~~ and
6. maintains public access (except in circumstances where public health and safety are at risk)~~.~~;
7. protects historic heritage values; and
8. protects areas of significant indigenous vegetation and significant indigenous fauna.

Policy 30[49] – Drainage maintenance

In recognition of the community benefits of maintaining flood conveyance capacity and land drainage, ensure that drainage maintenance activities within artificial watercourses and the beds of modified watercourses and their margins are managed in a way that ~~either~~:

1. avoids~~,~~ where reasonably practicable, or otherwise remedies or mitigates, ~~significant~~ adverse effects on the aquatic environment~~; or~~, and riparian habitat in modified watercourses and significant adverse effects on aquatic and riparian habitat in artificial watercourses; or
2. maintains or enhances habitat value~~.~~, including fish passage, gravel spawning habitat and bank stability;
3. in addition to 1 or 2, minimises the quantity of sediment released from drainage maintenance activities.

CV – Sixth Interim Decision

Policy 30 – Drainage maintenance

In recognition of the community benefits of maintaining flood conveyance capacity and land drainage, ensure that drainage maintenance activities within artificial watercourses and the beds of modified watercourses and their margins are managed in a way that ~~either~~:

1. avoids~~,~~ where reasonably practicable, or otherwise remedies or mitigates, ~~significant~~ adverse effects on the aquatic environment~~; or~~, and riparian habitat in modified watercourses and significant adverse effects on aquatic and riparian habitat in artificial watercourses; or
2. maintains or enhances habitat value~~.~~, including fish passage, gravel spawning habitat and bank stability;
3. in addition to 1 or 2, minimises the quantity of sediment released from drainage maintenance activities~~.~~; and
4. recognises the need to reduce the extent and frequency of disturbance, including through changes to land management so that sediment does not enter these watercourses, by improving practices and providing guidance, and improvement of riparian areas and habitat.

Policy 31 – Whitebait stands

Restrict the allocation of space for whitebait stands in the beds of lakes, rivers and modified watercourses to:

1. stands lawfully existing as of 1 June 2003; or

[48] Mātaitai and taiāpure are defined in the Introduction to the Plan on page 10.
[49] Appeal to Environment Court by Southland Fish and Game Council ENV-2018-CHC-000037

2. new stands used in lieu of previously lawfully existing stands, but as close as practical to the former site where that site can no longer be used because of either natural alterations to the course of the river, bank erosion or high-water mark alterations.

Policy 32[50] – Protect significant indigenous vegetation and habitat (Consent Orders)

Protect significant indigenous vegetation and significant habitats of indigenous fauna and maintain indigenous biodiversity associated with natural wetlands, lakes and rivers and their margins.

Policy 33 – Adverse effects on natural wetlands

Prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal.

Policy 34 – Restoration of existing wetlands, the creation of wetlands and riparian planting

Recognise the importance of wetlands and indigenous biodiversity, particularly their potential to improve water quality, offset peak river flows and assist with flood control, through encouraging:

1. the maintenance and restoration of existing natural wetlands and the creation of new wetlands; and
2. the establishment of wetland areas and associated indigenous riparian plantings, including on-farm, in subdivisions, on industrial sites and for community sewerage schemes.

Policy 35 – Discharge waste and cleanfill appropriately

Ensure that sites used for the discharge of contaminants as waste or cleanfill are appropriate.

Policy 36 – Manage contaminated land

Require the best practicable option be adopted to prevent or minimise adverse effects from contaminated land or a discharge of a hazardous substance.

Policy 37 – Climate change

Avoid or mitigate increased risks on the environment arising from climate change, taking into account the potential effects of rising sea levels and the potential for more variable and extreme weather patterns in coming decades.

Policy 38 – Natural hazards

Reduce the susceptibility of the Southland community and environment to natural hazards by improving planning, responsibility and community awareness for the avoidance and mitigation of natural hazards.

[50] Appeal to Environment Court by Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

Consideration of Resource Consent Applications

Policy 39[51] – Application of the permitted baseline (Consent Orders)

When considering any application for resource consent for the use of land for a farming activity, the Southland Regional Council shall ~~should~~ consider all adverse effects of the proposed activity on water quality, whether or not this Plan permits an activity with that effect.

~~Advice Note: Nothing in this policy affects the ability of the Council to take into account the effects of activities lawfully occurring at the date an application is made when determining the existing environment.~~

Policy 39A[52] – Integrated management (Consent Orders)

When considering the cumulative effects of land use and discharge activities within whole catchments, consider:

1. how to improve the integrated management of freshwater and the use and development of land including the interactions between freshwater, land and associated ecosystems (including estuaries and the wider coastal area); and

2. through the Freshwater Management Unit process, facilitating the collective management of nutrient losses, including through initiatives such as nutrient user groups and catchment management groups.

Policy 40 – Determining the term of resource consents

When determining the term of a resource consent consideration will be given, but not limited, to:

1. granting a shorter duration than that sought by the applicant when there is uncertainty regarding the nature, scale, duration and frequency of adverse effects from the activity or the capacity of the resource;
2. relevant tangata whenua values and Ngāi Tahu indicators of health;
3. the duration sought by the applicant and reasons for the duration sought;
4. the permanence and economic life of any capital investment;
5. the desirability of applying a common expiry date for water permits that allocate water from the same resource or land use and discharges that may affect the quality of the same resource;
6. the applicant's compliance with the conditions of any previous resource consent, and the applicant's adoption, particularly voluntarily, of good management practices; and
7. the timing of development of FMU sections of this Plan, and whether granting a shorter or longer duration will better enable implementation of the revised frameworks established in those sections.

[51] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(ii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(iii) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[52] Appeal to Environment Court by (ii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(iii) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

Policy 41 – Matching monitoring to risk

Consider the risk of adverse environmental effects occurring and their likely magnitude when determining requirements for auditing and supply of monitoring information on resource consents.

Policy 42[53] – Consideration of water permit applications

When considering resource consent applications for water permits to take and use water:

1. except for non-consumptive uses, consent will not be granted if a water body is over allocated or fully allocated; or to grant consent would result in a water body becoming over allocated or would not allow an allocation target for a water body to be achieved within a time period defined in this Plan;

2. except for non-consumptive uses, consents replacing an expiring resource consent for an abstraction from an over-allocated water body will generally only be granted at a reduced rate, the reduction being proportional to the amount of over-allocation and previous use, using the method set out in Appendix O;

3. installation of water measuring devices will be required on all new permits to take and use water and on existing permits in accordance with the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010;

4. where appropriate, minimum level or flow cut-offs and seasonal recovery triggers on resource consents for groundwater abstraction will be imposed; and

5. conditions will be specified relating to a minimum flow or level, or environmental flow or level regime (which may include flow sharing), in accordance with Appendix K, for all new or replacement resource consents (except for water permits for non-consumptive uses, community water supplies and water bodies subject to minimum flow and level regimes established under any water conservation order) for:
   (a) surface water abstraction, damming, diversion and use; and
   (b) groundwater abstraction in accordance with Policy 23.

Policy 43 – Transfer of water permits

1. Enable the transfer of water permits to take and use water provided the transfer occurs in the same surface water or groundwater management zone or aquifer, any other abstractor is not adversely affected, and the transfer is consistent with the provisions of this Plan, including the minimum flow and allocation regime.

2. Provide for the transfer of water permits for groundwater abstraction between groundwater zones or aquifers in the same surface water catchment, provided the transfer does not increase cumulative stream depletion effects in the reach where the take is proposed or result in the minimum flow being breached and effects of the new abstraction are consistent with the provisions of this Plan.

[53] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030
(ii) Southland Fish and Game Council ENV-2018-CHC-000037

Freshwater Management Unit Process Policies

Policy 44 – Implementing Te Mana o te Wai

Te Mana o te Wai is recognised at a regional level by tangata whenua and the local community identifying values held for, and associations with, a particular water body and freshwater management unit.

Particular regard will be given to the following values, alongside any additional regional and local values determined in the Freshwater Management Unit limit setting process:

- Te Hauora o te Wai (the health and mauri of water);
- Te Hauora o te Tangata (the health and mauri of the people);
- Te Hauora o te Taiao (the health and mauri of the environment);
- Mahinga kai;
- Mahi māra (cultivation);
- Wai Tapu (Sacred Waters);
- Wai Māori (municipal and domestic water supply);
- Āu Putea (economic or commercial value);
- He ara haere (navigation).

Policy 45[54] – Priority of FMU values, objectives, policies and rules (CV - Fifth Interim Decision)

In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections of this Plan may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Region-wide Policies.

Any provision on the same subject matter in the relevant FMU section of a plan (including Freshwater Objectives) must give effect to the Region-wide Objectives.

FMU provisions developed for a specific geographical area will not initiate a plan change to the Region-wide objectives or Region-wide policies.

Note: It would be unfair if changes are made to Region-wide objectives and policies~~,~~ based on decisions for individual FMUs in specific parts of Southland, ~~which apply in other parts of Southland~~, without the involvement of the wider Regional ~~ese wider~~ communities.

Any provision on the same subject matter in the relevant FMU section of this Plan prevails over the relevant provision within the Region-wide Objectives and Region-wide Policy sections, unless it is

[54] Appeal to Environment Court by Southland Fish and Game Council ENV-2018-CHC-000037

explicitly stated to the contrary.

As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.

Note: *It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.*

Policy 46[55] – Identified FMUs (CV – Fifth Interim Decision)

The FMU Sections of this Plan are based on the following identified Freshwater Management Units for Southland, as shown on Map Series 6: Freshwater Management Units:

- Fiordland and Islands;
- Aparima and Pourakino – Jacobs River Estuary;
- Mataura – Toetoes Harbour;
- Ōreti and Waihopai – New River Estuary; and
- Waiau – Waiau Lagoon.
- Waituna

Policy 47[56] – FMU processes (CV - Fifth Interim Decision)

The FMU sections of this Plan will give effect to the region wide Objectives – and

1. identify values and establish freshwater objectives for each Freshwater Management Unit, including where appropriate at a catchment or sub-catchment level, having particular regard to the national significance of Te Mana o te Wai, and any other values developed in accordance with Policies CA1-CA4 and Policy D1 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017);

2. set water quality and water quantity limits and targets to achieve the freshwater objectives;

3. set methods to phase out any over-allocation, within a specified timeframe; and

4. assess water quality and quantity taking into account Ngāi Tahu indicators of health.

[55] Appeal to Environment Court by Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050
[56] Appeal to Environment Court by Southland Fish and Game Council ENV-2018-CHC-000037

Region-wide Rules

Pursuant to Section 86B(1)(a) and (3) of the Resource Management Act 1991 all of the rules in the Proposed Southland Water and Land Plan take immediate legal effect from the date of notification.

After 1 May 2018 the rules of this Regional Plan do not apply to any activity specifically regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, unless regulation 6 of those regulations applies. Further guidance on the application of regulation 6 is available on Southland Regional Council's website.

The rules of this Regional Plan do not apply to any activity specifically regulated by the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009.

Rule 1

(a) Any activity must comply with all applicable rules within the Region-wide Rules section of this Plan, unless it is explicitly stated to the contrary in any other applicable rule in this Plan.

Rule 2

(a) Any rule on the same subject matter in the relevant FMU section of this Plan prevails over the relevant rule within the Region-wide Rules section, unless it is explicitly stated to the contrary in any applicable rule in this Plan.

Rule 3

(a) When considering applications for controlled activities or restricted discretionary activities, in addition to the matters over which:
    (i) control is reserved; or
    (ii) exercise of discretion is restricted;

    the decision-maker may also consider the lapse period sought, the duration of the resource consent sought, the review of the conditions of a resource consent, the need for a bond and the collection, recording, monitoring and provision of information concerning the exercise of a resource consent.

Rule 4

(a) Any activity that:
    (i) would otherwise contravene Sections 13(1), 14(2), 14(3) or 15(1) of the RMA; and
    (ii) is not classified by this Plan as any other class of activity listed in Section 87A of the RMA;

    is a discretionary activity.

Note: *Nothing in this Plan exempts any person from meeting the requirements of a relevant district plan or other legislation.*

Discharge Rules

Rule 5[57] – Discharges to surface water bodies (Consent Orders)

(a) Except as provided for elsewhere in this Plan the discharge of any:

(i) contaminant, or water, into a lake, river, artificial watercourse, modified watercourse or natural wetland; or

(ii) contaminant onto or into land in circumstances where it may enter a lake, river, artificial watercourse, modified watercourse or natural wetland;

is a discretionary activity provided the following conditions are met:

1. where the water quality upstream of the discharge meets the standards set for the relevant water body in Appendix E "Water Quality Standards", the discharge does not reduce the water quality below those standards at the downstream edge of the reasonable mixing zone; or
2. where the water quality upstream of the discharge does not meet the standards set for the relevant water body in Appendix E "Water Quality Standards", the discharge must not further reduce the water quality below those standards at the downstream edge of the reasonable mixing zone; and
3. ~~except for discharges from a territorial authority reticulated stormwater or wastewater system,~~ the discharge does not contain any raw sewage.

Rule 6 – Discharges to surface water bodies that do not meet water quality standards

(a) Except as provided for elsewhere in this Plan the discharge of any:

(i) contaminant, or water, into a lake, river, artificial watercourse, modified watercourse or natural wetland; or

(ii) contaminant onto or into land in circumstances where it may enter a lake, river, artificial watercourse, modified watercourse or natural wetland that does not meet the conditions in Rule 5;

is a non-complying activity.

Rule 8 – Discharges of surface water

(a) Except as provided for elsewhere in this Plan, the discharge of surface water into a lake, river, artificial watercourse, modified watercourse or natural wetland is a controlled activity provided the following conditions are met:

(i) the discharge was lawfully established prior to 1 January 2010;

(ii) the lawfully established discharge point has not changed; and

(iii) at the downstream edge of the reasonable mixing zone, the discharge does not reduce the water quality of the receiving waters or give rise to any of the following effects in the receiving water:

(1) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or

[57] Appeal to Environment Court by (i) Director-General of Conservation ENV-2018-CHC-000036
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

(2) any conspicuous change in visual clarity; or
(3) the rendering of freshwater unsuitable for consumption by farm animals; or
(4) any significant adverse effects on aquatic life.

The Southland Regional Council will reserve its control to the following matters:

1. the potential for flooding of any person's property as a result of the discharge;
2. erosion of the bed or banks of the receiving lake, river, artificial watercourse, modified watercourse, or natural wetland as a result of the discharge; and
3. actual or potential effects on existing water users and aquatic ecosystems.

CV – Sixth Interim Decision

Rule 9[58] – Discharge of agrichemicals onto or into surface water

(a) The discharge of agrichemicals and any associated wetting, antifoaming and anti-drifting agent and marker dyes into or onto surface water is a permitted activity provided the following conditions are met:

(i) the discharge is for the purpose of eradicating, modifying or controlling excessive growth of aquatic plants, and does not exceed the quantity, concentration or rate necessary~~,~~ as approved by the Environmental Protection Authority, or if no Environmental Protection Authority approval exists, as recommended by the manufacturer ~~or approved by the Environmental Protection Authority~~;

(ii) the agrichemical is approved for aquatic use within New Zealand under the Hazardous Substances and New Organisms Act 1996, and the use and discharge of the substance is in accordance with all the conditions of the approval;

(iii) the discharge is undertaken in a manner consistent with NZS8409:2004 Management of Agrichemicals and for specific activities in compliance with the following sections of NZS8409: 2004 Management of Agrichemicals:

1. Use – Part 5.3 and related Appendices;
2. Storage – Section 4 and Appendix L4;
3. Disposal – Section 6 and Appendix S; and
4. Records – Appendix C9;

(iv) all practicable measures are taken to minimise spray drift beyond the target area;

(v) at the downstream edge of the reasonable mixing zone, the discharge does not give rise to any of the following effects in the receiving water:

1. the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or
2. any conspicuous change in visual clarity; or
3. the rendering of freshwater unsuitable for consumption by farm animals; or
4. any significant adverse effects on aquatic life, other than the target species;

(vi) there is no adverse effect on any water take permitted by the RMA, this Plan or under a resource consent;

(vii) the discharge is not into water within natural state waters, a mātaitai reserve or taiāpure,[59] or within the microbial health protection zone of a surface water drinking water supply site identified in Appendix J, or where no such zone is identified, within 250 metres upstream of the abstraction point of a surface water drinking water supply site identified in Appendix J; and

[58] Appeal to Environment Court by Director-General of Conservation ENV-2018-CHC-000036
[59] Mātaitai and taiāpure defined in the introduction at page 10.

(viii) the discharge is not into waters subject to the Mataura River Water Conservation Order or identified in item 1 of Schedule 1 of the Ōreti River Water Conservation Order, unless the discharge is undertaken pursuant to the Soil Conservation and Rivers Control Act 1941 or by a provider of regional, national or critical infrastructure as part of infrastructure maintenance or protection activities.

Note: *Provisions in the Regional Air Plan also apply to the discharge of agrichemicals.*

Note*: Any discharge of the vertebrate toxic agents brodifacoum, rotenone or sodium fluoroacetate that complies with the Resource Management (Exemption) Regulations (2017) is exempt from any discharge controls under the Resource Management Act and this Plan.*

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

Rule 10 – Discharge of agrichemicals to land where they may enter water

(a) The discharge of agrichemicals and any associated wetting, antifoaming and anti-drifting agents and marker dyes onto or into land including where they may enter water is a permitted activity provided the following conditions are met:

(i) the agrichemical is approved for use within New Zealand under the Hazardous Substances and New Organisms Act 1996, and the use and discharge of the substance is in accordance with all the conditions of the approval;

(ii) all practicable measures are taken to minimise spray drift beyond the target area; and

(iii) the discharge is not to a mātaitai reserve or taiāpure and there is no reduction in the quality of water beyond the zone of reasonable mixing for natural state waters and waters subject to the Mataura River Water Conservation Order or identified in Item 1 of Schedule 1 of the Ōreti River Water Conservation Order.

Rule 11 – Discharge of vertebrate pest control poisons

(a) The discharge of a vertebrate toxic agent, other than those complying with the Resource Management (Exemption) Regulations 2017, into or onto land where it may enter water is a permitted activity provided the following conditions are met:

(i) the vertebrate toxic agent is approved for use within New Zealand under the Hazardous Substances and New Organisms Act 1996, and the use and discharge of the substance is in accordance with all the conditions of the approval; and

(ii) the discharge does not occur within the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J.

Note*: Any discharge of the vertebrate toxic agents brodifacoum, rotenone or sodium fluoroacetate that complies with the Resource Management (Exemption) Regulations 2017 is exempt from any discharge controls under the Resource Management Act and this regional plan.*

Rule 12 – Discharge of non-toxic dyes

(a) The discharge of non-toxic dyes for investigative purposes onto or into water other than within natural state waters is a controlled activity.

The Southland Regional Council will reserve its control to the following matters:

1. the type of dye used;
2. the amount of dye used and the rate of application;
3. any requirements for public notice of the investigation occurring; and
4. duration of the investigation.

An application for resource consent under Rule 12 will be processed and considered without public or limited notification unless the applicant requests notification or the Southland Regional Council considers special circumstances exist that warrant notification of the application.

Rule 13[60] – Discharge from subsurface drainage systems

(a) The discharge of land drainage water to water from an on-farm subsurface drainage system is a permitted activity, provided the following conditions are met:

(i) the discharge does not cause:

(1) a ~~conspicuous~~ change to the colour or clarity of the receiving waters beyond 20 metres from the point of discharge that exceeds the maximum percentage change specified for the relevant water body class in Appendix E; or

(2) more than a 10% change in the sediment cover of the receiving waters beyond 20 metres from the point of discharge; or

(3)~~(2)~~ conspicuous oil or grease films, scrums or foams, or floatable or suspended materials beyond 20 metres from the point of discharge;

(ii) the discharge does not render freshwater unsuitable for consumption by farm animals;

(iii) the discharge does not cause the flooding of any other landholding;

(iv) the discharge does not cause any scouring or erosion of any land or bed of a water body beyond the point of discharge;

(vi) the discharge does not cause any significant adverse effects on aquatic life;

(vii) the subsurface drainage system does not drain a natural wetland; and

(viii) for any known existing drains and for any new drains, the locations of the drain outlets are mapped and provided to the Southland Regional Council on request.

(b) The discharge of land drainage water to water from an on-farm subsurface drainage system that does not comply with Rule 13(a) is a discretionary activity.

[60] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(ii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(iii) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

CV – Sixth Interim Decision
Rule 13 – Discharge from subsurface drainage systems

Southland Regional Council (final):

(a) The discharge of land drainage water to water from an on-farm subsurface drainage system is a permitted activity, provided the following conditions are met:
- (i) the discharge does not cause:
  - (1) ~~a conspicuous~~ change to the colour or clarity of the receiving waters beyond 20 metres from the point of discharge that exceeds the maximum percentage change specified for the relevant water body class in Appendix E; or
  - ~~(2) fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, increasing by more than 10 percentage points from that measured immediately upstream of the discharge;~~
  - (3) conspicuous oil or grease films, scrums or foams, or floatable or suspended materials beyond 20 metres from the point of discharge;
- (ii) the discharge does not render freshwater unsuitable for consumption by farm animals;
- (iii) the discharge does not cause the flooding of any other landholding;
- (iv) the discharge does not cause any scouring or erosion of any land or bed of a water body beyond the point of discharge;
- (vi) the discharge does not cause any significant adverse effects on aquatic life;
- (vii) the subsurface drainage system does not drain a natural wetland; and
- (viii) for any known existing drains and for any new drains, the locations of the drain outlets are mapped and provided to the Southland Regional Council on request.

(b) The discharge of land drainage water to water from an on-farm subsurface drainage system that does not comply with Rule 13(a) is a discretionary activity.

Rule 14[61] – Discharge of fertiliser

(a) The discharge of fertiliser onto or into land in circumstances where contaminants may enter water is a permitted activity provided the following conditions are met:
- (i) other than for incidental discharges of windblown fertiliser dust, there is no direct discharge of fertiliser into a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse, or natural wetland or into groundwater;
- (ii) there is no fertiliser discharged when the soil moisture exceeds field capacity;
- (iii) there is no fertiliser discharged directly into or within 3 metres of the boundary of any significant indigenous biodiversity site identified in a district plan that includes surface water; and
- (iv) where a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse or wetland:
  - (1) has riparian planting from which stock is excluded, fertiliser may be discharged up to the paddock-side edge of the riparian planting but not onto the riparian planting, except for fertiliser required to establish the planting; or
  - (2) does not have riparian planting from which stock is excluded, fertiliser is not discharged directly into or within 3 metres of the bed or within 3 metres of a wetland.

[61] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037

(b) The discharge of fertiliser onto or into land in circumstances where the fertiliser may enter water that does not meet the conditions of Rule 14(a) is a non-complying activity.

Rule 14 – Discharge of fertiliser (CV - Fifth Interim Decision)

(a) The discharge of fertiliser onto or into land in circumstances where contaminants may enter water is a permitted activity provided the following conditions are met:

(i) other than for incidental discharges of windblown fertiliser dust, there is no direct discharge of fertiliser into a lake, river ~~(excluding ephemeral rivers)~~, artificial watercourse, modified watercourse, or natural wetland or into groundwater;

(ii) there is no fertiliser discharged when the soil moisture exceeds field capacity;

(iii) there is no fertiliser discharged directly into or within 3 metres of the boundary of any significant indigenous biodiversity site identified in a district plan that includes surface water; and

(iv) where a lake, river ~~(excluding ephemeral rivers)~~, artificial watercourse, modified watercourse or wetland:

(1) has riparian planting from which stock is excluded, fertiliser may be discharged up to the paddock-side edge of the riparian planting but not onto the riparian planting, except for fertiliser required to establish the planting; or

(2) does not have riparian planting from which stock is excluded, fertiliser is not discharged directly into or within 3 metres of the bed or within 3 metres of a wetland.

(b) The discharge of fertiliser onto or into land in circumstances where the fertiliser may enter water that does not meet the conditions of Rule 14(a) is a non-complying activity.

Rule 15[62] – Discharge of stormwater

(a) The discharge of stormwater onto or into land in circumstances where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, is a permitted activity provided the following conditions are met:

(i) the discharge is not from a reticulated system; and

(ii) the discharge does not originate from industrial or trade premises where hazardous substances are stored or used unless:

(1) hazardous substances cannot enter the stormwater system; or

(2) there is an interceptor system in place to collect stormwater that may contain hazardous substances and discharge or divert it to a trade waste system; or

(3) the stormwater contains no hazardous substances except oil and grease and the stormwater is passed through an oil interceptor system prior to discharge; and

(iii) the discharge does not contain any sewage, contaminants from on-site wastewater systems and mobile toilets, or agricultural effluent;

(iv) for discharges to a lake, river, artificial watercourse, modified watercourse or wetland, the discharge does not result in:

(1) the production of any conspicuous oil or grease films, scums, foams or floatable or suspended materials; or

(2) the rendering of freshwater unsuitable for the consumption by farm animals; or

(3) significant adverse effects to aquatic life; or

[62] Appeal to Environment Court by (i) Gore District Council & others ENV-2018-CHC-000031
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

(4) ~~any conspicuous change in the colour or visual clarity of the receiving waters at the downstream edge of the reasonable mixing zone;~~ more than a 20% change in the colour or visual clarity of the receiving waters at the downstream edge of the reasonable mixing zone; or

(5) more than a 10% change in sediment cover of the receiving waters at the downstream edge of the reasonable mixing zone;

(v) except for the discharge of stormwater from a roof, road or vehicle parking area, the discharge is not into water within natural state waters; and

(vi) for discharges to land, the discharge does not cause flooding, erosion, or land instability to any other person's property.

(ab) The discharge of stormwater and any contaminants contained within, from a reticulated system onto or into land where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, that does not meet Rule 15(a)(i) is a discretionary activity provided the following conditions are met:

(i) the reticulated system is owned by a territorial authority and is operated by them or their agent;

(ii) a management plan is provided with the application that sets out, in a manner that reflects the scale and significance of water quality improvements required in the catchment:

(1) targets for the reduction in the volume and frequency of wastewater overflows into the stormwater network, and methods to monitor the volume and frequency of those overflow discharges;

(2) a monitoring and investigation programme to identify and remedy wastewater cross-connections on private and public land; and

(3) methods to improve the quality of the discharge, which may include capital works, bylaws, investigations, education and preventative activities; and

(iii) demonstration of funding for implementing the management plan is provided with the application~~.~~; and

(iv) the discharge does not contain any contaminants from on-site wastewater systems and mobile toilets, or agricultural effluent; and

(v) where the water quality upstream of a point source discharge meets the standards set for the relevant waterbody in Appendix E "Water Quality Standards", the discharge does not reduce the water quality below those standards at the downstream edge of the reasonable mixing zone; or

(vi) where the water quality upstream of a point source discharge does not meet the standards set for the relevant water body in Appendix E "Water Quality Standards", the discharge must not further reduce the water quality below those standards at the downstream edge of the reasonable mixing zone.

(b) The discharge of stormwater onto or into land in circumstances where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, that does not meet one or more of the conditions in Rule 15(a), excluding condition (a)(iii), a(v) or a(vi), and which is not otherwise specified in Rule 15(ab) is a discretionary activity.

(c) The discharge of stormwater onto or into land in circumstances where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, that does not meet Rule 15(a)(iii), a(v) or a(vi), and is not otherwise specified in Rule 15(ab) is a non-complying activity.

CV - Sixth Interim Decision
Rule 15 – Discharge of stormwater

(a) The discharge of stormwater onto or into land in circumstances where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, is a permitted activity provided the following conditions are met:

(i) the discharge is not from a reticulated system; and

(ii) the discharge does not originate from industrial or trade premises where hazardous substances are stored or used unless:

(1) hazardous substances cannot enter the stormwater system; or

(2) there is an interceptor system in place to collect stormwater that may contain hazardous substances and discharge or divert it to a trade waste system; or

(3) the stormwater contains no hazardous substances except oil and grease and the stormwater is passed through an oil interceptor system prior to discharge; and

(iii) the discharge does not contain any sewage, contaminants from on-site wastewater systems and mobile toilets, or agricultural effluent;

(iv) for discharges to a lake, river, artificial watercourse, modified watercourse or wetland, the discharge does not result in:

(1) the production of any conspicuous oil or grease films, scums, foams or floatable or suspended materials; or

(2) the rendering of freshwater unsuitable for the consumption by farm animals; or

(3) significant adverse effects to aquatic life; or

(4) ~~any conspicuous change in the colour or visual clarity of the receiving waters at the downstream edge of the reasonable mixing zone;~~ more than a 20% change in the colour or visual clarity of the receiving waters at the downstream edge of the reasonable mixing zone; or

~~(5) fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, increasing by more than 10 percentage points from that measured immediately upstream of the discharge;~~

(v) except for the discharge of stormwater from a roof, road or vehicle parking area, the discharge is not into water within natural state waters; and

(vi) for discharges to land, the discharge does not cause flooding, erosion, or land instability to any other person's property.

(ab) The discharge of stormwater and any contaminants contained within, from a reticulated system onto or into land where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, that does not meet Rule 15(a)(i) is a discretionary activity provided the following conditions are met:

(i) the reticulated system is owned by a territorial authority and is operated by them or their agent;

(ii) a management plan is provided with the application that sets out, in a manner that reflects the scale and significance of water quality improvements required in the catchment:

(1) targets for the reduction in the volume and frequency of wastewater overflows into the stormwater network, and methods to monitor the volume and frequency of those overflow discharges;

(2) a monitoring and investigation programme to identify and remedy wastewater cross-connections on private and public land; and

(3) methods to improve the quality of the discharge, which may include capital works, bylaws, investigations, education and preventative activities; and

(iii) demonstration of funding for implementing the management plan is provided with the application~~.~~; and

(iv) the discharge does not contain any contaminants from on-site wastewater systems and mobile toilets, or agricultural effluent; and

(v) where the water quality upstream of a point source discharge meets the standards set for the relevant waterbody in Appendix E "Water Quality Standards", water quality shall be maintained ~~the discharge does not reduce the water quality below those standards~~ at the downstream edge of the reasonable mixing zone; or

(vi) where the water quality upstream of a point source discharge does not meet the standards set for the relevant water body in Appendix E "Water Quality Standards", the discharge must maintain water quality where Policies 15B(1) and (1a) apply and improve water quality where Policy 15B(2) applies ~~not further reduce the water quality below those standards~~ at the downstream edge of the reasonable mixing zone.

(b) The discharge of stormwater onto or into land in circumstances where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, that does not meet one or more of the conditions in Rule 15(a), excluding condition (a)(iii), a(v) or a(vi), and which is not otherwise specified in Rule 15(ab) is a discretionary activity.

(c) The discharge of stormwater onto or into land in circumstances where contaminants may enter water, or into a lake, river, artificial watercourse, modified watercourse or wetland, that does not meet Rule 15(a)(iii), a(v) or a(vi), and is not otherwise specified in Rule 15(ab) is a non-complying activity.

Rule 16 – Discharge of water from bores and wells for aquifer testing

(a) The discharge of water from any bore or well into a lake, river, artificial watercourse, modified watercourse or wetland or onto or into land where it may enter a lake, river, artificial watercourse, modified watercourse or wetland, as a result of aquifer testing, is a permitted activity provided the following conditions are met:

(i) the discharge does not cause flooding of any other person's property, erosion of the bed or banks of the receiving water body or land instability; and

(ii) where the discharge is to water, there is no conspicuous change to colour and clarity of the receiving waters at a distance of 20 metres from the point of discharge.

Rule 17 – Dust Suppressants

(a) The discharge of a dust suppressant onto or into land in circumstances where a contaminant may enter water is a permitted activity, provided one of the following conditions are met:

(i) the dust suppressant is not a hazardous substance; or

(ii) the dust suppressant is approved under the Hazardous Substances and New Organisms Act 1996 and the use and discharge of the dust suppressant is undertaken in accordance with all conditions of the approval.

(b) The discharge of a dust suppressant onto or into land in circumstances where a contaminant may enter water that does not meet the conditions in Rule 17(a) is a discretionary activity.

Rule 18 – Discharge of water from purging of instruments at a water treatment plant and portable potable water treatment units

(a) The discharge of water containing contaminants from the purging of instruments at a water treatment plant and from the use of portable potable water treatment units onto or into land in circumstances where contaminants may enter water is a permitted activity, provided the following conditions are met:

(i) the volume of water discharged does not exceed 3 cubic metres per day;
(ii) the concentration of chlorine does not exceed 2 milligrams per litre;
(iii) the pH of the discharge is between 6 and 8; and
(iv) the discharge does not result in overland flow to surface water or beyond the landholding boundary, or ponding.

Rule 18A – Discharges from emergency fire-fighting

(a) The discharge of water or contaminants associated with emergency fire-fighting activities into a lake, river, artificial watercourse, modified watercourse or wetland, or onto or into land in circumstances where the water or contaminants may enter water is a permitted activity.

Rule 18B – Discharges from emergency response training activities

(a) The discharge of water or contaminants associated with emergency response training activities undertaken by Fire and Emergency New Zealand, the Department of Conservation, New Zealand Defence Force or a local authority into a lake, river, artificial watercourse, modified watercourse or wetland, or onto or into land in circumstances where the water or contaminant may enter water, is a permitted activity provided the following conditions are met:
  (i) the discharge does not give rise to any of the following effects in a lake, river, artificial watercourse, modified watercourse or wetland:
    (1) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or
    (2) any conspicuous change in visual clarity; or
    (3) the rendering of freshwater unsuitable for consumption by farm animals; or
    (4) any significant adverse effects on aquatic life;
  (ii) the discharge does not occur to a lake, river, artificial watercourse, modified watercourse or wetland for more than two continuous hours within a 24-hour period; and
  (iii) the discharge of fire-fighting foam or powder (whether mixed with water or not) does not occur directly to a lake, river, artificial watercourse, modified watercourse or natural wetland.

Rule 19 – Discharge of water associated with water treatment processes

(a) The discharge of water containing contaminants associated with water treatment processes from a water treatment plant onto or into land in circumstances where water containing contaminants may enter water is a controlled activity, provided the following conditions are met:
  (i) the associated water take does not exceed 7,500 cubic metres per day;
  (ii) the discharged volume of water containing contaminants does not exceed 8% of the daily water take;
  (iii) at the boundary of the reasonable mixing zone the discharge does not give rise to any or all of the following effects in the receiving water:
    (1) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or
    (2) any conspicuous change in visual clarity; or
    (3) the rendering of freshwater unsuitable for consumption by farm animals; or
    (4) any significant adverse effects on aquatic life; and

(iv) at the boundary of the reasonable mixing zone the discharge does not reduce the water quality below any standards set for the relevant receiving water body in Appendix E "Water Quality Standards".

The Southland Regional Council will reserve its control to the following matters:

1. the assimilative capacity and drainage characteristics of the soil;
1a. adverse effects on the soil;
2. compliance with the ANZECC Guidelines for Fresh and Marine Water Quality (2000);
3. the separation distance of the discharge from surface water bodies, artificial watercourses, subsurface drains, the coastal marine area, residential dwellings, landholding boundaries and drinking water sources; and
4. management of the discharge, including discharge methods.

Land Use Rules

Rule 20[63] – Farming

(aa) Unless stated otherwise by Rules 20, 25, 70 or any other rule in this Plan:

(i) intensive winter grazing; or

(ii) cultivation; or

(iii) the disturbance by livestock including cattle, deer, pigs or sheep;

in, on or over the bed of an ephemeral river is a permitted activity.

(a) The use of land for a farming activity is a permitted activity provided the following conditions are met:

(i) the landholding is less than 20 hectares in area; or

(ii) where the farming activity includes a dairy platform on the landholding, the following conditions are met:

(1) the dairy platform has a maximum of 20 cows; or

(2) the dairy platform had a dairy effluent discharge permit on 3 June 2016 that specified a maximum number of cows;

(3) cow numbers have not increased beyond the maximum number specified in the dairy effluent discharge permit that existed on 3 June 2016;

(4) from 1 May 2019, a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N;

(5) the landowner provides to the Southland Regional Council on request:

(A) a written record of the good management practices, including any newly instigated good management practices in the preceding 12 months, occurring on the landholding; and

(B) the Farm Environmental Management Plan prepared in accordance with Appendix N;

(6) the land area of the dairy platform is no greater than at 3 June 2016; and

(7) no part of the dairy platform is at an altitude greater than 800 metres above mean sea level; and

(iii) where the farming activity includes intensive winter grazing on the landholding, the following conditions are met:

(1) from 1 May 2019, intensive winter grazing does not occur on more than 15% of the area of the landholding or 100 hectares, whichever is the lesser area;

(2) from 1 May 2019, a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N;

(3) from 1 May 2019, all of the following practices are implemented:

(A) if the area to be grazed is located on sloping ground, stock are progressively grazed (break-fed or block-fed) from the top of the slope to the bottom, or a 20 metre 'last-bite' strip is left at the base of the slope;

(B) when the area is being break-fed or block-fed, the stock (excluding sheep and deer) are back fenced to prevent stock entering previously grazed areas;

[63] Appeal to Environment Court by (i) Fonterra Co-operative Group Limited ENV-2018-CHC-000027
(ii)Aratiatia Livestock Limited ENV-2018-CHC-000029
(iii) Wilkins Farming Co ENV-2018-CHC-000030
(iv) DairyNZ Limited ENV-2018-CHC-000032
(vi) Southland Fish and Game Council ENV-2018-CHC-000037
(vii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(xii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(xiv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

(C) transportable water trough(s) are provided in or near the area being grazed to prevent stock accessing a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse or natural wetland for drinking water;

(D) if supplementary feed (including baleage, straw or hay) is used in the area being grazed it is placed in portable feeders;

(E) if cattle or deer are being grazed the mob size being grazed is no more than 120 cattle or 250 deer; and

(F) critical source areas (including swales) within the area being grazed that accumulate runoff from adjacent flats and slopes are grazed last;

(4) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 5 metres;

(5) from 1 May 2019, intensive winter grazing does not occur within 20 metres of the outer edge of the bed of any Regionally Significant Wetland or Sensitive Water Bodies listed in Appendix A, estuary or the coastal marine area; and

(6) no intensive winter grazing occurs at an altitude greater than 800 metres above mean sea level; and

(iv) for all other farming activities, from 1 May 2020 a Farm Environmental Management Plan is prepared and implemented in accordance with Appendix N.

(b) The use of land for a farming activity that includes intensive winter grazing on the landholding and which meets all conditions of Rule 20(a) other than condition (iii)(3) is a permitted activity, provided that:

(i) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 20 metres.

(c) Despite any other rule in this Plan, the use of land for a dairy platform or intensive winter grazing at an altitude greater than 800 metres above mean sea level is a prohibited activity.

(d) The use of land for a farming activity that meets all conditions of Rule 20(a) other than (i), (ii), (iii)(1),(iii)(4) or (iii)(5) or does not meet condition (i) of Rule 20(b) is a restricted discretionary activity, provided the following conditions are met:

(i) a Farm Environmental Management Plan is prepared and implemented in accordance with Appendix N; and

(ii) the application includes the following material, prepared by a suitably qualified person:

(1) an assessment that shows that the annual amount of nitrogen, phosphorus, sediment and microbiological contaminants discharged from the landholding will be no greater than that which was lawfully discharged annually on average for the five years prior to the application being made; and

(2) for any mitigation proposed, a detailed mitigation plan (taking into account contaminant loss pathways) that identifies the mitigation or actions to be undertaken including any physical works to be completed, their timing, operation and their potential effectiveness.

The Southland Regional Council will restrict its discretion to the following matters:

1. the quality of and compliance with the Farm Environmental Management Plan for the landholding;
2. whether the assessment undertaken under Rule20(d)(ii) above takes into account reasonable and appropriate good management practices to minimise the losses of contaminants from the existing farming activity;
3. good management practices to be undertaken, including those to minimise the discharge of nitrogen, phosphorus, sediment and microbiological contaminants to water from the use of land, taking into account contaminant loss pathways;
4. the potential benefits of the activity to the applicant, the community and the environment;
5. the potential effects of the farming activity on surface and groundwater quality and sources of drinking water; and
6. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.

(e) The use of land for a farming activity that is not specified as a permitted, restricted discretionary or prohibited activity under Rule 20 is a discretionary activity.

Rule 20 – Farming (CV - Fifth Interim Decision)

~~(aa) Unless stated otherwise by Rules 20, 25, 70 or any other rule in this Plan:~~
~~(i) intensive winter grazing; or~~
~~(ii) cultivation; or~~
~~(iii) the disturbance by livestock including cattle, deer, pigs or sheep;~~
~~in, on or over the bed of an ephemeral river is a permitted activity.~~

(a) The use of land for a farming activity, other than for intensive winter grazing or pasture-based wintering ~~high-risk pasture winter grazing,~~ is a permitted activity provided the following conditions are met:
   (i) the landholding is less than 20 hectares in area; or
   (ii) where the farming activity includes a dairy platform on the landholding, the following conditions are met:
      (1) the dairy platform has a maximum of 20 cows; or
      (2) the dairy platform had a dairy effluent discharge permit on 3 June 2016 that specified a maximum number of cows; and
      (3) cow numbers have not increased beyond the maximum number specified in the dairy effluent discharge permit that existed on 3 June 2016; and
      (4) A Farm Environmental Management Plan is:
         (A) prepared~~,~~ and certified, and ~~implemented~~ compliance with it is audited, in accordance with Appendix N; and
         (B) implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan.
      ~~(5) the landowner provides to the Southland Regional Council on request:~~
         ~~(A) a written record of the good management practices, including any newly instigated good management practices in the preceding 12 months, occurring on the landholding; and~~
         ~~(B) the Farm Environmental Management Plan prepared in accordance with Appendix N;~~
      (6) the land area of the dairy platform is no greater than at 3 June 2016.~~;~~ ~~and~~

~~(7) no part of the dairy platform is at an altitude greater than 800 metres above mean sea level; and~~

~~(iii) where the farming activity includes intensive winter grazing on the landholding, the following conditions are met:~~

~~(1) from 1 May 2019, intensive winter grazing does not occur on more than 15% of the area of the landholding or 100 hectares, whichever is the lesser area;~~

~~(2) from 1 May 2019, a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N;~~

~~(3) from 1 May 2019, all of the following practices are implemented:~~

~~(A) if the area to be grazed is located on sloping ground, stock are progressively grazed (break-fed or block-fed) from the top of the slope to the bottom, or a 20 metre 'last-bite' strip is left at the base of the slope;~~

~~(B) when the area is being break-fed or block-fed, the stock (excluding sheep and deer) are back fenced to prevent stock entering previously grazed areas;~~

~~(C) transportable water trough(s) are provided in or near the area being grazed to prevent stock accessing a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse or natural wetland for drinking water;~~

~~(D) if supplementary feed (including baleage, straw or hay) is used in the area being grazed it is placed in portable feeders;~~

~~(E) if cattle or deer are being grazed the mob size being grazed is no more than 120 cattle or 250 deer; and~~

~~(F) critical source areas (including swales) within the area being grazed that accumulate runoff from adjacent flats and slopes are grazed last;~~

~~(4) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 5 metres;~~

~~(5) from 1 May 2019, intensive winter grazing does not occur within 20 metres of the outer edge of the bed of any Regionally Significant Wetland or Sensitive Water Bodies listed in Appendix A, estuary or the coastal marine area; and~~

~~(6) no intensive winter grazing occurs at an altitude greater than 800 metres above mean sea level; and~~

(iii)~~(iv)~~ ~~For all other farming activities a~~A a Farm Environmental Management Plan is:

(A) prepared~~,~~ and certified, and ~~implemented~~ compliance with it is audited, in accordance with Appendix N; and

(B) implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan.

(iv) no part of the dairy platform occurs at an altitude greater than 800 metres above mean sea level.

~~(b) The use of land for a farming activity that includes intensive winter grazing on the landholding and which meets all conditions of Rule 20(a) other than condition (iii)(3) is a permitted activity, provided that:~~

~~(i) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 20 metres.~~

~~(c) Despite any other rule in this Plan, the use of land for a dairy platform or intensive winter grazing at an altitude greater than 800 metres above mean sea level is a prohibited activity.~~

~~(d)~~(c) The use of land for a farming activity, other than for intensive winter grazing or pasture-based wintering ~~high risk pasture winter grazing,~~ that ~~meets all conditions of Rule 20(a) other than (i), (ii), (iii)(1),(iii)(4) or (iii)(5) or~~ does not meet ~~condition (i) of Rule 20(b)~~ any one of conditions (ii)(1)-(6) or (iii) of Rule 20(a) is a restricted discretionary activity, provided the following conditions are met:

(i) A Farm Environmental Management Plan is:

(A) prepared~~,~~ and certified, and ~~implemented~~ compliance with it is audited, in accordance with Appendix N; and

(B) implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan.

(ii) the application includes the following material, prepared by a suitably qualified person:

(1) an assessment that shows that the ~~annual amount~~ risk of nitrogen, phosphorus, sediment and microbiological contaminants being discharged from the landholding will be no greater than the risk of contaminant discharge ~~that~~ which was lawfully discharged ~~annually~~ on average for the five years prior to the application being made; and

(2) for any mitigation proposed, a detailed mitigation plan (taking into account contaminant loss pathways) that identifies the mitigation or actions to be undertaken including any physical works to be completed, their timing, operation and their potential effectiveness.

The Southland Regional Council will restrict its discretion to the following matters:

1. ~~the quality of and~~ compliance with Appendix N and the quality of the Farm Environmental Management Plan for the landholding;
2. whether the assessment undertaken under Rule20~~(d)~~(c)(ii) above takes into account reasonable and appropriate mitigation actions ~~good management practices~~ to minimise the losses of contaminants from the existing farming activity;
3. mitigation actions ~~good management practices~~ to be undertaken, including those to minimise the discharge of nitrogen, phosphorus, sediment and microbiological contaminants to water from the use of land, taking into account contaminant loss pathways;

3(a). whether the farming activity is being undertaken in the catchment of a waterbody identified in Schedule X, and if so, the mitigations actions to be implemented to reduce adverse effects on water quality in comparison to the activity currently occurring on the site;

4. the potential benefits of the activity to the applicant, the community and the environment;
5. the potential effects of the farming activity on surface and groundwater quality and sources of drinking water; and
6. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.

~~(e)~~(d) The use of land for a farming activity, other than for intensive winter grazing or pasture-based wintering ~~high risk pasture winter grazing, that is not specified as a permitted, restricted discretionary or prohibited activity under~~ which is not a restricted discretionary activity under Rule 20(c) is a ~~discretionary~~ non-complying activity.

(e) The use of land for a farming activity, other than for intensive winter grazing or high risk pasture winter grazing, that does not comply with Rule 20(a)(iv) is a prohibited activity.

Rule 20A – Intensive Winter Grazing

Rule 20A – Intensive Winter Grazing (CV - Fifth Interim Decision)

(a) Intensive winter grazing is a permitted activity provided the following conditions are met:

(i) intensive winter grazing does not occur on more than 50ha or 15% ~~10%~~ of the area of the land holding, whichever is the greater; and

(ia) intensive winter grazing does not occur on more than the maximum area of the landholding used for intensive winter grazing in any one year, during the five years 2014-2019; and

(ii) ~~the slope of land that is used for intensive winter grazing must be 10 degrees or less; and~~

(iii) stock must be separated by a vegetated setback at least:

(1) 20 metres from the bed of any Regionally Significant Wetland or Sensitive Water Bodies listed in Appendix A, nohoanga listed in Appendix B, mātaitai reserve, taiāpure, estuary or the coastal marine area; and

(2) 20 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland, where the slope of the land used for intensive winter grazing is 10 degrees or more; and

(3) 10 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland, where the slope of the land used for intensive winter grazing is 10 degrees or less.

(iv) critical source areas within the area being intensively winter grazed must:

(1) be identified in the Farm Environmental Management Plan; and

(2) have stock excluded from them; and

(3) not be cultivated into forage crops for intensive winter grazing; and

(v) the land that is used for intensive winter grazing must be replanted as soon as practicable after livestock have grazed the land's annual forage crop; and

(vi) a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N, that also includes a winter grazing plan that includes:

(1) downslope grazing or a 20 metre 'last-bite' strip at the base of the slope; and

(2) back fencing to prevent stock entering previously grazed areas; and

(3) transportable water troughs; and

(vii) no intensive winter grazing occurs at an altitude greater than 800 metres above mean sea level. ~~; and~~

(b) The use of land for intensive winter grazing that does not meet conditions (a)(i)-(vi) of Rule 20A is a restricted discretionary activity provided the following conditions are met:

(i) a Farm Environmental Management Plan is prepared and implemented in accordance with Appendix N that demonstrates that nitrogen, phosphorus, sediment and microbial contaminants will be minimised, and reduced where the intensive winter grazing occurs in a catchment identified in Schedule X in comparison to the activity currently occurring on the site; and

(ii) the area used for intensive winter grazing on the property is no greater than the average area used on the property for the five years prior to the application being made;

The Southland Regional Council will restrict its discretion to the following matters:

1. compliance with Appendix N and the quality of the Farm Environmental Management Plan for the landholding;
2. mitigation actions to be undertaken, including those to minimise the discharge of nitrogen, phosphorus, sediment and microbiological contaminants to water from the use of land, taking into account contaminant loss pathways;
3. whether the intensive winter grazing activity is being undertaken in the catchment of a waterbody identified in Schedule X, and if so, the mitigation actions to reduce adverse effects on water quality in comparison to the activity currently occurring on the site;
4. the potential benefits of the activity to the applicant, the community and the environment;
5. the potential effects of the farming activity on surface and groundwater quality and sources of drinking water;
6. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.

(c) The use of land for intensive winter grazing that does not meet conditions of Rule 20A(b) is a non-complying activity.

(d) The use of land for intensive winter grazing that does not meet condition (vii) of Rule 20A(a) is a prohibited activity.

Slope in Rule 20A is the average slope over any 20-metre distance.

Rule 20B – ~~High risk pasture winter grazing~~

Rule 20B – Pasture-based wintering of cattle (CV - Fifth Interim Decision)

(a) ~~High risk pasture winter grazing~~ Pasture-based wintering is a permitted activity provided the following conditions are met:

~~(ia) the slope of land that is used for high risk pasture winter grazing must be 20 degrees or less; and~~

(i) stock must be separated by a vegetated setback at least:

(1) 20 metres from the bed of any Regionally Significant Wetland or Sensitive Water Bodies listed in Appendix A, nohoanga listed in Appendix B, mātaitai reserve, taiāpure, estuary or the coastal marine area; and

(2) 20 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland, where the slope of the land used for pasture-based wintering is 10 degrees or more; and

(3) 10 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland, where the slope of the land used for pasture-based wintering is 10 degrees or less.

(ii) critical source areas within the area being used for pasture-based wintering ~~high risk pasture winter grazing~~ must:

(1) be identified in the Farm Environmental Management Plan; and

(2) have stock excluded from them; and

(iii) on areas where significant de-vegetation occurs, vegetation is re-established as soon as practicable; and

(iv) A Farm Environmental Management Plan:

(1) is prepared, and certified, and ~~implemented~~[64] compliance with it is audited, in accordance with Appendix N; and

(2) is implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan; and

(v) the Farm Environmental Management Plan includes a winter grazing plan that includes:

(1) downslope grazing or a 20 metre 'last-bite' strip at the base of the slope; and

(2) back fencing to prevent stock entering previously grazed areas; and

(vi) no pasture-based wintering ~~high-risk pasture winter grazing~~ occurs at an altitude greater than 800 metres above mean sea level; and

(b) The use of land for pasture-based wintering ~~high risk pasture winter grazing~~ that does not meet conditions (a)(ia)-(iv) or condition (iva) of Rule 20B is a restricted discretionary activity provided the following condition is met:

(i) A Farm Environmental Management Plan:

(1) is prepared, and certified, and ~~implemented~~[65] compliance with it is audited, in accordance with Appendix N; and

(2) is implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan and

(3) includes a winter grazing plan.

The Southland Regional Council will restrict its discretion to the following matters:

1. compliance with Appendix N and the quality of the Farm Environmental Management Plan for the landholding;
2. mitigation actions and good management practices to be undertaken, including those to minimise the discharge of nitrogen, phosphorus, sediment and microbiological contaminants to water from the use of land, taking into account contaminant loss pathways;

3a. whether the pasture-based wintering ~~high risk pasture winter grazing~~ activity is being undertaken in the catchment of a waterbody identified in Schedule X, and if so, the mitigation actions to reduce adverse effects on water quality in comparison to the activity currently occurring on the site;

3. the potential benefits of the activity to the applicant, the community and the environment;
4. the potential effects of the farming activity on surface and groundwater quality and sources of drinking water;
5. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.

(c) The use of land for pasture-based wintering ~~high risk pasture winter grazing~~ that does not meet conditions of Rule 20B(b) is a non-complying activity.

(d) The use of land for pasture-based wintering ~~high risk pasture winter grazing~~ that does not meet condition (v) of Rule 20B(a) is a prohibited activity.

[64] Redundant term.

[65] Redundant term.

Rule 24[66] – Incidental discharges from farming

(a) The discharge of nitrogen, phosphorus, sediment or microbial contaminants onto or into land in circumstances that may result in a contaminant entering water that would otherwise contravene section 15(1) of the RMA is a permitted activity, provided the following conditions are met:

- (i) the land use activity associated with the discharge is authorised under Rules 20, 25, or 70 of this Plan; and
- (ii) any discharge of a contaminant resulting from any activity permitted by Rules 20, 25 or 70 is managed to ensure that after reasonable mixing it does not give rise to any of the following effects on receiving waters:
  - (1) any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or
  - (2) any conspicuous change in the colour or visual clarity; or
  - (3) the rendering of fresh water unsuitable for consumption by farm animals; or
  - (4) any significant adverse effects on aquatic life.

(b) the discharge of nitrogen, phosphorus, sedimentor microbial contaminants onto or into land in circumstances that may result in a contaminant entering water that would otherwise contravene section 15(1) of the RMA and that does not meet one or more of the conditions of Rule 24(a) is a non-complying activity.

Southland Regional Council (final):

Rule 24 – Incidental discharges from farming

(a) The discharge of nitrogen, phosphorus, sediment or microbial contaminants onto or into land in circumstances that may result in a contaminant entering water that would otherwise contravene section 15(1) of the RMA is a permitted activity, provided the following conditions are met:

- (i) the land use activity associated with the discharge is authorised under Rules 20, 20A, 20B, 25, 35B, or 70 of this Plan; and
- (ii) any discharge of a contaminant resulting from any activity permitted by Rules 20, 20A, 20B, 25, 35B, or 70 is managed to ensure that after reasonable mixing it does not give rise to any of the following effects on receiving waters:
  - (1) any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or
  - (2) any conspicuous change in the colour or visual clarity; or
  - (3) the rendering of fresh water unsuitable for consumption by farm animals; or
  - (4) any significant adverse effects on aquatic life.

(b) the discharge of nitrogen, phosphorus, sedimentor microbial contaminants onto or into land in circumstances that may result in a contaminant entering water that would otherwise contravene section 15(1) of the RMA and that does not meet one or more of the conditions of Rule 24(a) is a non-complying activity.

Rule 25[67] – Cultivation (Stay of Proceeding Granted [2023] NZenvC 39)

(a) The use of land for cultivation is a permitted activity provided the following conditions are met:

[66] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(ii) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[67] Appeal to Environment Court by (ii) Southland Fish and Game Council ENV-2018-CHC-000037

(i) cultivation does not take place within the bed of a lake, river (excluding ephemeral rivers where cultivation is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland;
(ii) cultivation does not take place within a distance of 5 metres from the outer edge of the bed of a lake, river (excluding ephemeral rivers where cultivation is permitted under Rule 20(aa)) artificial watercourse, modified watercourse or natural wetland;
(iii) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and
(iv) cultivation does not occur on land with a slope greater than 20 degrees.[68]

(b) The use of land for cultivation that does not meet the setback distance of Rule 25(a)(ii) is a permitted activity provided the following conditions are met:
(i) cultivation does not take place within the bed of a lake, river (excluding ephemeral rivers where cultivation is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland and a distance of 3 metres from the outer edge of the bed;
(ii) cultivation does not take place more than once in any 5-year period;
(iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle; and
(iv) cultivation does not occur at an altitude greater than 800 metres above mean sea level.

(c) The use of land for cultivation, which does not meet one or more of the conditions of Rule 25(a) or Rule 25(b) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:
1. potential adverse effects of discharges of sediment and other contaminants from the area being cultivated on water quality and biodiversity;
1a. mitigation measures for addressing adverse effects; and
3. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.

(d) Despite any other rule in this Plan, the use of land for cultivation at an altitude greater than 800 metres above mean sea level is a non-complying activity.

Rule 25 – Cultivation (CV - Fifth Interim Decision)

(a) The use of land for cultivation is a permitted activity provided the following conditions are met:
(i) cultivation does not take place within the bed of a lake, river ~~(excluding ephemeral rivers where cultivation is permitted under Rule 20(aa))~~, artificial watercourse, modified watercourse or natural wetland;

(iii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(vi) Campbell's Block Limited ENV-2018-CHC-000044
(vii) Grant, Robert ENV-2018-CHC-000045
(viii) Southwood Export Limited & others ENV-2018-CHC-000046
(ix) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

[68]Slope in Rule 25(a)(iv) is the average slope over any 20 metre distance.

(ii) cultivation does not take place within a distance of: ~~5 metres from the outer edge of the bed of a lake, river (excluding ephemeral rivers where cultivation is permitted under Rule 20(aa)) artificial watercourse, modified watercourse or natural wetland;~~
  (1) 5 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland on land with a slope of less than 10 degrees; and
  (2) 10 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland on land with a slope between 10 and 20 degrees.

~~(iii)~~(iv) cultivation does not occur at an altitude greater than 800 metres above mean sea level; ~~and~~

~~(iv)~~(iii) cultivation does not occur on land with a slope greater than 20 degrees; and

(v) critical source areas are:
  (a) identified in a farm environment plan ahead of cultivation activies; and
  (b) not cultivated with forage crops for intensive winter grazing; and
  (c) when cultivating for any other purpose, sediment detention is established prior to cultivation; and
  (d) other critical source area management measures are outlined in a farm environment plan are implemented; and

(vi) Farm Environmental Management Plans prepared in accordance with Appendix N must outline paddock specific erosion and sediment control measures, including the most appropriate time of the year for the activity to avoid or minimise loss of sediment to waterways.

(b) The use of land for cultivation that does not meet the setback distance of Rule 25(a)(ii)(2) is a permitted activity provided the following conditions are met:
  (i) cultivation does not take place within ~~the bed of a lake, river (excluding ephemeral rivers where cultivation is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland and~~ a distance of 5~~3~~ metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland;
  (ii) cultivation does not take place more than once in any 5-year period;
  (iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing or on land used for pasture-based wintering, even as part of a pasture renewal cycle; and
  (iv) all other conditions of Rule 25(a) are complied with ~~cultivation does not occur at an altitude greater than 800 metres above mean sea level~~.

(ba) The use of land with a slope greater than 20 degrees for the purpose of renewing or establishing pasture by direct drilling is a permitted activity provided the following conditions are met:
  (i) cultivation does not take place within a distance of 10 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland;
  (ii) cultivation does not take place more than once in any 5-year period;
  (iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle; and
  (iv) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and
  (v) critical source areas are:
    (a) identified in a farm environment plan ahead of cultivation activies; and
    (b) not cultivated with forage crops for intensive winter grazing; and

(c) when cultivating for any other purpose, sediment detention is established prior to cultivation; and

(d) other critical source area management measures are outlined in a farm environment plan are implemented; and

(vi) Farm Environmental Management Plans prepared in accordance with Appendix N must outline paddock specific erosion and sediment control measures, including the most appropriate time of the year for the activity to avoid or minimise loss of sediment to waterways.

(bb) The use of land with a slope greater than 20 degrees fr the purpose of renewing or establishing pasture by over-sowing, and/or spraying with the assistance of animals in the pasture establishment period is a permitted activity provided the following conditions are met:

(i) cultivation does not take place within a distance of 20 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland; and

(ii) cultivation does not take place more than once in any 5-year period; and

(iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle; and

(iv) critical source areas are:

(a) identified in a farm environment plan ahead of cultivation activies; and

(b) not cultivated with forage crops for intensive winter grazing; and

(c) when cultivating for any other purpose, sediment detention is established prior to cultivation; and

(d) other critical source area management measures are outlined in a farm environment plan are implemented; and

(v) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and

(vi) during the establishment of the pasture up to 10 weeks, or when ground remains bare the land must not be grazed except as follows:

a. An initial 48-hour grazing period to assist in the establishment of seed; and

b. No grazing for six weeks; and

c. One further 48-hour grazing period between 6 to 10 weeks;

(vii) If the ground remains bare following 10 weeks, the land must not be grazed until pasture is re-established; and

(viii) Farm Environmental Management Plans prepared in accordance with Appendix N must outline paddock specific erosion and sediment control measures, including the most appropriate time of the year for the activity to avoid or minimise loss of sediment to waterways.

(bc) The use of land with a slope greater than 20 degrees for the purpose of renewing or establishing pasture by over-sowing, and/or spraying without the assistance of animals in the pasture establishment period is a permitted activity provided the following conditions are met:

(i) cultivation does not take place within a distance of 20 metres from the outer edge of the bed of a lake, river, or modified watercourse or the edge of a natural wetland; and

(ii) cultivation does not take place more than once in any 5-year period; and

(iii) cultivation is for the purpose of renewing or establishing pasture and is not undertaken to establish a crop used for intensive winter grazing, even as part of a pasture renewal cycle; and

(iv) There is to be no grazing until the pasture is established; and

(v) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and

(vi) critical source areas are:

(a) identified in a farm environment plan ahead of cultivation activies; and

(b) not cultivated with forage crops for intensive winter grazing; and

(c) when cultivating for any other purpose, sediment detention is established prior to cultivation; and

(d) other critical source area management measures are outlined in a farm environment plan are implemented; and

(vii) Farm Environmental Management Plans prepared in accordance with Appendix N must outline paddock specific erosion and[69] sediment control measures, including the most appropriate time of the year for the activity to avoid or minimise loss of sediment to waterways;and

(viii) If the ground remains bare following 10 weeks, the land must not be grazed until pasture is re-established.

(bd) Cultivation within the setback distances specified in (a), (b), (ba), (bb), or (bc) above for the purposes of renewing or establishing pasture ~~within a buffer~~ by direct-drilling, over-sowing, and spraying is a permitted activity provided it:

(i) does not take place more than once in any 5 year period; and

(ii) it occurs after other cultivation activity; and

(iii) established pasture exists on the remainder of the paddock.

(c) The use of land for cultivation, which does not meet one or more of the conditions of Rule 25(a) or Rule 25(b), (ba), (bb), (bc) or (bd) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. compliance with Appendix N and the quality of the Farm Environmental Management Plan for the landholding;

1aa. potential adverse effects of discharges of sediment and other contaminants from the area being cultivated on water quality and biodiversity;

1a. potential adverse effects on the preservation of the natural character of wetlands, lakes, rivers and their margins;

~~21a~~. mitigation measures for addressing adverse effects identified in 1 and 1a.~~; and~~

2a. the management of critical source areas in the area being cultivated;

3. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented.

(d) Despite any other rule in this Plan, the use of land for cultivation at an altitude greater than 800 metres above mean sea level is a non-complying activity.

Slope in Rule 25 is the average slope over any 20 metre distance.

Wastewater, Effluent and Sludge

[69] See 'Rule 25' decision.

Rule 26[70] – Discharges from on-site wastewater systems (CV – fifth Interim Decision)

(a) The discharge of treated domestic wastewater from an existing on-site wastewater system onto or into land in circumstances where a contaminant may enter water is a permitted activity provided the following conditions are met:

(i) the on-site wastewater system had been installed and was operational prior to 3 June 2016;

(ii) the discharge does not exceed 1,250 litres per day, averaged over a period of 31 days;

(iii) the discharge consists only of contaminants normally associated with domestic wastewater;

(iv) the on-site wastewater system is not used for the disposal of wastewater from chemical toilets;

(v) there is no faecal contamination of any take of water for human consumption as a result of the discharge;

(vi) there is no discharge above the soil surface;

(vii) there is no direct discharge to groundwater or a lake, river, artificial watercourse, modified watercourse or natural wetland including discharge via subsurface drainage systems, stormwater drains, artificial free draining areas such as soak holes and overland flow;

(viii) the inflow or infiltration of stormwater, other surface water and groundwater to the system is minimised; and

(ix) the discharge does not occur within the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J.~~; and~~

~~(x) the discharge is not into an established mātaitai or taiāpure reserve.~~

(b) The discharge of treated domestic wastewater from a new on-site wastewater system or a replacement of an existing system onto or into land in circumstances where a contaminant may enter water is a permitted activity provided the following conditions are met:

(ia) the discharge does not exceed 2,000 litres per day, averaged over any consecutive 7-day period;

(i) the treatment and disposal system is designed and installed in accordance with Sections 5 and 6 of New Zealand Standard AS/NZS 1547:2012 – On-site Domestic Wastewater Management;

(ii) the treatment and disposal system is operated and maintained in accordance with the system's design specification for maintenance or, if there is no design specification for maintenance, Section 6.3 of New Zealand Standard AS/NZS 1547:2012 – On-site Domestic Wastewater Management;

(iii) there is no discharge above the soil surface;

(iv) the discharge consists only of contaminants normally associated with domestic wastewater;

(v) the on-site wastewater system is not used for the disposal of wastewater from chemical toilets; and

(vi) the discharge is not within:

(1) 20 metres of a lake, river, artificial watercourse, modified watercourse or natural wetland excluding interception drains constructed to enable the effective operation of the on-site wastewater system; or

(2) 50 metres of the coastal marine area or any natural state waters; or

[70] Appeal to Environment Court by Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

(3) 50 metres of any bore or well; or
(4) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or
(5) 20 metres of any subsurface drainage system, excluding subsurface drainage systems constructed to enable the effective operation of the on-site wastewater system; and

(vii) for any land application system, the bottom of the soil infiltration surface is no less than 900 millimetres above the mean seasonal high groundwater table and any perched water~~; and~~

~~(viii) the discharge is not into an established mātaitai or taiāpure reserve.~~

(c) The discharge of treated domestic wastewater from an on-site wastewater system onto or into land in circumstances where a contaminant may enter water that does not meet the conditions of Rule 26(a) or (b) is a discretionary activity.

(d) The discharge of septage onto or into land, in circumstances where a contaminant may enter water is a permitted activity provided the following conditions are met:

(i) the discharge occurs on the same landholding as the on-site wastewater system is located;
(ii) the discharge consists only of contaminants normally associated with domestic wastewater;
(iii) the on-site wastewater system is not used for the disposal of wastewater from chemical toilets;
(iv) there is no faecal contamination of any take of water for human consumption as a result of the discharge;
(v) the maximum depth of septage application is 7 mm;
(vi) no other effluent is discharged to the septage application area for 28 days before and 28 days after the septage application;
(vii) the discharge onto or into land does not occur at a location where overland flow will result in contaminants reaching a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area;
(viii) the discharge is not within:
(1) 20 metres of a lake, river, artificial watercourse, modified watercourse or natural wetland; or
(2) 50 metres of the coastal marine area or any natural state waters; or
(3) 100 metres of any bore or well; or
(4) 100 metres of any landholding boundary; or
(5) 200 metres of any school, marae, or residential dwelling other than residential dwellings on the landholding; or
(6) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J;
(ix) there is no direct discharge to groundwater or a lake, river, artificial watercourse, modified watercourse or natural wetland including discharge via subsurface drainage systems, stormwater drains, artificial free draining areas such as soak holes, or overland flow; and

~~(x) the discharge is not into an established mātaitai or taiāpure reserve; and~~

(xi) the discharge does not occur on a site less than 100 hectares in area.

(e) The discharge of septage into or onto land that does not meet the conditions of Rule 26(d) is a discretionary activity.

(f) Despite Rule 26(a) to (e), the discharge of untreated domestic wastewater or effluent from mobile toilets, into a lake, river, artificial watercourse, modified watercourse or natural wetland or groundwater is a prohibited activity.

Rule 27 – Discharges from pit toilets

(a) Notwithstanding Rule 26, the discharge of contaminants from a pit toilet onto or into land in circumstances where a contaminant may enter water is a permitted activity provided the following conditions are met:

(i) the discharge does not exceed 320 litres per week;
(ii) the discharge comprises only contaminants normally associated with human excreta;
(iii) the pit toilet is not used for the disposal of wastewater from chemical toilets;
(iv) there is no faecal contamination of any take of water for human consumption as a result of the discharge;
(v) the discharge is not within:
  (1) 20 metres of a lake, river, artificial watercourse, modified watercourse or natural wetland, excluding interception drains which benefit the pit toilet; or
  (2) 50 metres of the coastal marine area or any natural state waters; or
  (3) 50 metres of any bore or well; or
  (4) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or
  (5) a site that is zoned for residential, commercial or industrial purposes in any district plan;
(vi) there is no direct discharge above the soil surface, or to groundwater or to a lake, river, artificial watercourse, modified watercourse or natural wetland, including discharge via subsurface drainage systems, stormwater drains, artificial free draining areas such as soak holes or overland flow;
(vii) the soil type does not comprise gravels, coarse or medium sands, fissured rock, or other such materials likely to permit the free travel of contaminants away from the pit;
(viii) stormwater or other surface water is prevented from entering the pit toilet;
(ix) the discharge does not accumulate within 500 millimetres of the land surface; and
(x) for any new pit toilet that has been installed and was operational on 3 June 2016 or later, the bottom of the pit is not less than 900 millimetres above the mean seasonal high groundwater table.

(b) The discharge of contaminants from a pit toilet onto or into land, in circumstances where a contaminant may enter water that does not meet the conditions of Rule 27(a) is a discretionary activity.

Rule 28[71] – Discharges of liquid from waterless composting toilet systems (CV – Fifth Interim Decision)

(a) Notwithstanding Rule 26, the discharge of liquid from a waterless composting toilet system onto or into land in circumstances where a contaminant may enter water is a permitted activity provided the following conditions are met:

[71] Apeeal to Environment Court by Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

(i) the discharge occurs on the same landholding as the waterless composting toilet is located;
(ii) the volume of the discharge does not exceed 105 litres per week;
(iii) the discharge comprises only contaminants normally associated with human excreta;
(iv) there is no faecal contamination of any take of water for human consumption as a result of the discharge;
(v) the discharge is not within:
  (1) 20 metres of a lake, river, artificial watercourse, modified watercourse, or natural wetland; or
  (2) 50 metres of the coastal marine area or any natural state waters; or
  (3) 50 metres of any bore or well; or
  (4) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J;
(vi) there is no discharge above the soil surface or direct discharge to groundwater or to a lake, river, artificial watercourse, modified watercourse, or natural wetland including discharge via subsurface drainage systems, stormwater drains, artificial free draining areas such as soak holes, or overland flow;
(vii) no stormwater, other surface water or groundwater infiltrates the wastewater treatment unit;
(viii) stormwater, other surface water or groundwater is directed away from the land application system area; and
(ix) for any land application system that has been installed and was operational on 3 June 2016 or later the bottom of the soil infiltration surface is no less than 900 millimetres above the mean seasonal high groundwater table and any perched water.~~; and~~
~~(x) the discharge is not into an established mātaitai or taiāpure reserve.~~

(b) The discharge of liquid from a waterless composting toilet system onto or into land in circumstances where a contaminant may enter water that does meet one or more of the conditions of Rule 28(a) is a discretionary activity.

Rule 29 – Discharges of aerobically composted human excreta[72]

Correction – Sixth Interim Decision

(a) The discharge of aerobically composted human excreta from a waterless composting toilet system onto or into land in circumstances where a contaminant may enter water is a permitted activity provided the following conditions are met:
(i) the discharge occurs on the same landholding that the waterless composting toilet system is located on;
(ii) the discharge comprises only contaminants normally associated with human excreta;
(iii) the waterless composting toilet system is not used for the disposal of wastewater from chemical toilets;
(iv) there is no contamination of any take of water for human consumption as a result of the discharge;

[72] Appeal to Environment Court by Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

(v) the material has been subject to aerobic composting decomposition for at least 12 months from the last addition of raw human excreta and is worked into the soil immediately following the discharge;

(vi) the material is not applied to any food crop for animal or human consumption unless the material has been subject to aerobic composting decomposition and storage for at least 24 months from the last addition of raw human excreta and is worked into the soil immediately following the discharge;

(vii) the discharge onto or into land does not occur at a location where overland flow will result in contaminants reaching a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area;

(viii) the working of the compost into the soil does not encounter any groundwater or perched water; and

(ix) the discharge is not within:

(1) 20 metres of a lake, river, artificial watercourse, modified watercourse or natural wetland; or

(2) 50 metres of the coastal marine area or any natural state waters; or

(3) 50 metres of any bore or well; or

(4) 10 metres of a landholding boundary; or

(5) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J.~~; and~~

~~(x) the discharge is not into an established mātaitai or taiāpure reserve.~~

(b) The discharge of aerobically composted human excreta onto or into land, in circumstances where a contaminant may enter water that does not meet one or more of the conditions of Rule 29(a) is a discretionary activity.

Rule 30 – Discharges from mobile toilets

(a) The discharge of effluent from a mobile toilet into or onto land, or into or onto the beds of lakes or rivers, or into water is a prohibited activity.

Rule 31 – Dump stations

(a) The discharge of effluent into or onto land from an on-site wastewater system that receives effluent from a dump station is a non-complying activity.

Rule 32A – Reconstruction of effluent storage facilities

(a) The reconstruction of an agricultural effluent storage facility is to be assessed as if it were the construction of a new agricultural effluent storage facility under Rule 32B, and the reconstruction of a non-agricultural effluent storage facility is to be assessed as if it were the construction of a new non-agricultural effluent storage facility under Rule 32C.

Rule 32B[73] – Construction, maintenance and use of new agricultural effluent storage facilities ~~(Consent Orders)~~

CV - Sixth Interim Decision

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility, ~~and any incidental discharge of agricultural effluent directly onto or into land from that facility which is, where relevant, within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix~~ is a permitted activity provided the following conditions are met:

(i) the ~~total~~ capacity of any individual agricultural effluent storage structure ~~facility~~ on a landholding, excluding storage authorised by a resource consent, does not exceed 35 cubic metres;

(ii) the agricultural effluent storage facility is constructed using an impermeable concrete or synthetic liner;

(iii) the agricultural effluent storage facility is not within 50 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area;

(iv) the agricultural effluent storage facility is not within 200 metres of any dwelling not on the same landholding, or within 50 metres of the boundary of any other landholding or road;

(v) the agricultural effluent storage facility is not within 100 metres of any authorised drinking water abstraction point; and

(vi) the agricultural effluent storage facility is not located above any known sub-surface drainage systems.

(b) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility, ~~and any incidental discharge of agricultural effluent directly onto or into land from that facility which is, where relevant, within the normal operating parameters of a leak detection system, or the pond drop test criteria set out in Appendix P~~ which does not meet condition (i) or condition (ii) of Rule 32B(a) is a controlled activity provided the following conditions are met:

(i) the design is certified by a Chartered Professional Engineer as being in accordance with IPENZ Practice Note 21: Farm Dairy Effluent Pond Design and Construction (2013) or IPENZ Practice Note 27: Dairy Farm Infrastructure (2013), except in the case of an above ground tank, those Practice Notes only apply to the extent they are relevant to above ground tanks; and

(ii) the application includes an operational management plan prepared by a suitably qualified and experienced person that addresses operational procedures, emergency response, monitoring and reporting requirements, the undertaking of pond drop tests, and installation of monitoring devices; and

(iii) conditions (iii) to (vi) of Rule 32B(a).

[73] Appeal to Environment Court by (i) Fonterra Co-operative Group Limited ENV-2018-CHC-000027
(iii) Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

The Southland Regional Council will reserve its control over the following matters:

1. the design and construction of the new agricultural effluent storage facility including its storage capacity, the nature of effluent it will store, and the anticipated life of the storage facility;
2. methods to be used to protect the agricultural effluent storage facility's embankments from damage by animals and machinery;
3. the potential adverse effects of the construction, maintenance and use of the agricultural effluent storage facility on: lakes, rivers, artificial watercourses, installed subsurface drains, groundwater, bores, registered drinking water supplies, the coastal marine area, stop banks, residential dwellings, places of assembly and urban areas;
4. distance of the agricultural effluent storage facility from landholding or road boundaries;
5. the height of the agricultural effluent storage facility's embankments and placement and orientation of the agricultural effluent storage facility relative to flood flows and stormwater run-off;
6. the quality of, and compliance with, the operational management plan; and
7. adoption and implementation of an Accidental Discovery Protocol.

(c) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility~~, and any incidental discharge of agricultural effluent directly onto or into land from that facility which is, where relevant, within the normal operating parameters of a leak detection system, or the pond drop test criteria set out in Appendix P~~, which meets conditions (i) and (ii) of Rule 32B(a), but which does not meet one or more of conditions (iii) to (vi) of Rule 32B(a), is a discretionary activity.

(d) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility~~, and any incidental discharge of agricultural effluent directly onto or into land from that facility which is, where relevant, within the normal operating parameters of a leak detection system, or the pond drop test criteria set out in Appendix P~~, which meets condition (i) of Rule 32B(b), but which does not meet one or more of conditions (ii) and (iii) of Rule 32B(b), is a discretionary activity.

(e) The use of land for the construction, maintenance and use of a new agricultural effluent storage facility~~, and any incidental discharge of agricultural effluent directly onto or into land from that facility which is within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P~~, which does not meet condition (i) of Rule 32B(b) is a non-complying activity.

Rule 32C – Construction, maintenance and use of new non-agricultural effluent storage facilities

(a) The use of land for the construction, maintenance and use of a new non-agricultural effluent storage facility and ancillary structures (other than an onsite wastewater system, composting toilet system, mobile toilet or agricultural effluent storage facility but including for wastewater, sludge or effluent from industrial or trade processes), and any incidental discharge of effluent directly onto or into land from that facility which is within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P, is a restricted discretionary activity provided the following conditions are met:

(i) the structural design of the effluent storage facility and ancillary structures is certified by a Chartered Professional Engineer;

(ii) the effluent storage facility is not within 50 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area;

(iii) the effluent storage facility is not within 200 metres of any dwelling not on the same landholding, or within 50 metres of the boundary of any other landholding or road;

(iv) the effluent storage facility is not within 100 metres of any authorised water abstraction point; and

(v) the application includes an operational management plan that addresses operational procedures, emergency response, monitoring and reporting requirements, the undertaking of pond drop tests, and installation of monitoring devices.

The Southland Regional Council will restrict its discretion to the following matters:

1. the design and construction of the new non-agricultural effluent storage facility and ancillary structures including its storage capacity, the nature of effluent it will store, and the anticipated life of the storage facility;
2. methods to be used to protect the effluent storage facility embankments from damage by animals and machinery;
3. the potential adverse effects of the construction, maintenance and use of the effluent storage facility on: lakes, rivers, artificial watercourses, modified watercourses, natural wetlands, installed subsurface drains, groundwater, bores, registered drinking-water supplies, the coastal marine area, stop banks, residential dwellings, places of assembly and urban areas;
4. distance of the effluent storage facility from landholding or road boundaries;
5. the height of the effluent storage facility's embankments and placement and orientation of the effluent storage facility relative to flood flows and stormwater run-off;
6. the quality of, and compliance with, the operational management plan; and
7. adoption and implementation of an Accidental Discovery Protocol.

(b) The use of land for the construction, maintenance and use of any new non-agricultural effluent storage facility and ancillary structures (other than an onsite wastewater system, composting toilet system, mobile toilet, or agricultural effluent storage facility but including for wastewater, sludge or effluent from industrial or trade processes), and any incidental discharge of effluent directly onto or into land from that facility which is within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P, that does not meet one or more of conditions (ii) to (v) of Rule 32C(a) is a discretionary activity.

(c) The use of land for the construction, maintenance and use of any new non-agricultural effluent storage facility and ancillary structures (other than an onsite wastewater system, composting toilet system, mobile toilet or agricultural effluent storage facility but including wastewater, sludge or effluent from an industrial or trade processes), and any incidental discharge of effluent directly onto or into land from that facility which is within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P, that does not meet condition (i) of Rule 32C(a) is a non-complying activity.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

CV – Sixth Interim Decision

Rule 32D[74] – Existing agricultural effluent storage facilities ~~(Consent Orders)~~

(a) The use of land for the maintenance and use of an existing agricultural effluent storage facility that was authorised prior to Rule 32D taking legal effect, ~~and any incidental discharge directly onto or into land from that storage facility which is, where relevant, within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P,~~ is a permitted activity provided the following conditions are met:

(i) the construction of the existing agricultural effluent storage facility was authorised by a resource consent; or~~:~~

(ii) the construction of the existing agricultural effluent storage facility was lawfully carried out without a resource consent; and

~~(1) was authorised by a resource consent; or~~

~~(2) was lawfully carried out without a resource consent; and~~

~~(ii)~~(iii) where the construction of the existing agricultural effluent storage facility was lawfully carried out without resource consent, the landholding owner or their agent must provide information to the Southland Regional Council upon request, demonstrating that any ~~the~~ component of an existing agricultural effluent storage facility ~~is~~ either:

(1) has a capacity of 35m^3 or less, is constructed using an impermeable concrete or synthetic liner, and has no defect that would cause leakage; or

~~(1)~~(2) is fully lined with an impermeable synthetic liner, or is of concrete construction~~, or is above ground level,~~ and:

(a) has a leak detection system that underlies the entire agricultural effluent storage facility which is inspected not less than monthly and there is no evidence of any leakage; and

(b) has been ~~is~~ certified by a Suitably Qualified Person in accordance with Appendix P within the last 10 years as meeting the relevant pond drop test criteria in Appendix P; or

(3) ~~(c)~~ is an above ground storage tank constructed in accordance with a building consent and has been certified by a Suitably Qualified Person within the last 5 years, following an external visual inspection, as having no visible cracks, holes or defects in the tank that would allow effluent to leak or visible leakage from the sides or base of the tank; or

(4)~~(2)~~ is certified by a Suitably Qualified Person within the last three years as:

(a) having no visible cracks, holes or defects that would allow effluent to leak from the effluent storage facility; and

(b) meeting the relevant pond drop test criteria in Appendix P.

(b) The use of land for the maintenance and use of an existing agricultural effluent storage facility that was authorised prior to Rule 32D taking legal effect, ~~and any incidental discharge directly onto or into land from that storage facility which is, where relevant, within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P~~ that does not meet one or more conditions of Rule 32D(a) is a discretionary activity.

(c) The use of land for the replacement of an existing agricultural effluent storage facility's impermeable synthetic liner with a new impermeable synthetic liner or the installation of an impermeable synthetic liner in an existing agricultural effluent storage facility that does not

[74] Appeal to Environment Court by Fonterra Co-operative Group Limited ENV-2018-CHC-000027

have an impermeable synthetic liner is a controlled activity provided the following conditions are met:

(i) the construction of the existing agricultural effluent storage facility:

(1) was lawfully carried out without a resource consent; or

(2) was authorised by a resource consent; and

(ii) The design and installation of the impermeable synthetic liner and associated gas venting and leak detection system (if applicable) shall be carried out by a suitably qualified person; and

(iii) The existing agricultural effluent storage facility is not being enlarged or otherwise modified beyond the extent necessary to install the impermeable synthetic liner and associated components.

The Southland Regional Council will reserve its control to the following matters:

1. The design, installation, and certification of the impermeable synthetic liner.
2. The design and installation of a gas venting and leak detection system.
3. Investigations into, and work to ensure, the structural integrity of the pond structure
4. Testing requirements to ensure the impermeable synthetic liner and any associated gas venting and leak detection system has been installed and is operating correctly.

(d) The use of land for the replacement of an existing agricultural effluent storage facility's impermeable synthetic liner with a new impermeable synthetic liner or the installation of an impermeable synthetic liner in an existing agricultural effluent storage facility that does not have an impermeable synthetic liner that does not meet one or more conditions of Rule 32D(c) is a discretionary activity

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

CV – Sixth Interim Decision - Rule 32E (new)

(a) The incidental discharge of agricultural effluent directly onto or into land from an agricultural effluent storage facility that is authorised under Rules 32B or 32D is a permitted activity provided the following conditions are met:

(i) The discharge is directly through the sides or base of the agricultural effluent storage facility; and

(ii) The incidental discharge amount is, where relevant, within the normal operating parameters of a leak detection system or within the pond drop test criteria set out in Appendix P.

(b) The incidental discharge of agricultural effluent directly onto or into land from an agricultural effluent storage facility that is authorised under Rules 32B or 32D that does not meet one or more of the conditions of Rule 32E(a) is a discretionary activity.

CV-Sixth Interim Decision

Rule 33[75] – Community sewerage schemes (discharge to land) ~~(consent orders)~~

(aa) the discharge of effluent or bio-solids onto or into land, from a community sewerage scheme that was constructed before 1 January 2017 in circumstances where contaminants may enter water is a discretionary activity.

[75] Appeal to Environment Court by Gore District Council & others ENV-2018-CHC-000031

(a) The discharge of effluent or bio-solids onto or into land, in circumstances where contaminants may enter water, from a community sewerage scheme is a discretionary activity, provided the following conditions are met for community sewerage schemes constructed after 1 January 2017:

(i) the discharge is not within 20 metres of a river, lake, artificial watercourse, modified watercourse, natural wetland or the coastal marine area;

(ii) the discharge is not within 200 metres of any place of assembly or dwelling not on the same landholding, or 20 metres of the boundary of any other landholding; and

(iii) the discharge is not within 100 metres of any authorised water abstraction point.

(b) The discharge of effluent or bio-solids onto or into land, in circumstances where contaminants may enter water, from a community sewerage scheme constructed after 1 January 2017 that does not meet the conditions of Rule 33(a) is a non-complying activity.

CV – Sixth Interim Decision

Rule 33A[76] – Community sewerage schemes (discharge to water) ~~(Consent Orders)~~

(a) The discharge of effluent or bio-solids from a community sewerage scheme into water in a river, lake, artificial watercourse, modified watercourse or natural wetland where the Appendix E – Receiving Water Quality Standards are met and the discharge does not reduce the water quality below those standards at the downstream edge of the reasonable mixing zone discretionary activity;

(b) The discharge of effluent or bio-solids from a community sewerage scheme into water in a river, lake, artificial watercourse, modified watercourse or natural wetland where Rule 33A(a) is not met the discharge is a non-complying activity.

Rule 34 – Industrial and trade processes

(a) Other than as provided for by Rule 32C, the discharge of wastewater, sludge or effluent from industrial and trade processes, other than agricultural effluent, onto or into land in circumstances where contaminants may enter water is a discretionary activity provided the following condition is met:

(i) any pond, tank or structure used to store the wastewater, sludge or effluent prior to discharge is certified by a Chartered Professional Engineer as having no visible cracks or defects that would allow wastewater, sludge or effluent to leak from the storage.

(b) The discharge of wastewater, sludge or effluent from industrial and trade processes, other than agricultural effluent, onto or into land in circumstances where contaminants may enter water that does not meet the condition of Rule 34(a) is a non-complying activity.

Rule 35[77] – Discharge of agricultural effluent to land

(a) Other than as provided for by Rules 32A, 32B and 32D, the discharge of agricultural effluent or water containing agricultural effluent onto or into land in circumstances where contaminants may enter water is a permitted activity provided the following conditions are met:

(i) the discharge is:

[76] Appeal to Environment Court by Gore District Council & others ENV-2018-CHC-000031

[77] Appeal to Environment Court by Federated Farmers of New Zealand ENV-2018-CHC-000040

(1) from a dairy shed servicing a maximum of 20 cows or 100 of any other animal; or
(2) from piggeries with a maximum of 70 x 50 kg pig equivalents; or
(3) directly from feed pads/lots authorised under Rule 35A; or
(4) from stock underpasses; or
(5) from holding tanks on stock trucks;

(ii) there is no discharge of agricultural effluent or water containing agricultural effluent to a lake, river, artificial watercourse, modified watercourse or natural wetland either directly or by overland flow, run-off, or via a pipe;

(iii) there is no overland flow or ponding of effluent, or application to land when the soil moisture exceeds field capacity;

(iv) the discharge is not within 20 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area;

(v) the discharge is not within 200 metres of any place of assembly or dwelling not on the same landholding, or 20 metres of the boundary of any other landholding or public road;

(vi) the discharge is not within 100 metres of any authorised water abstraction point; (vii) the maximum discharge depth of agricultural effluent or water containing agricultural effluent is 10 millimetres for each individual application;

(viii) the maximum loading rate of nitrogen onto any land area does not exceed 150 kilograms of nitrogen per hectare per year from agricultural effluent or water containing agricultural effluent;

(x) the minimum return period for discharging collected agricultural effluent or water containing agricultural effluent onto or into the site is 28 days;

(xi) the discharge does not occur within the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; and

(xii) the location of any known sub-surface drains within the discharge area, and their outlet position and relative depth, is mapped and provided to the Southland Regional Council upon request.

(b) Other than as provided for by Rules 32A, 32B and 32D, the discharge of agricultural effluent or water containing agricultural effluent onto or into land in circumstances where contaminants may enter water that does not meet one or more conditions of Rule 35(a) is a restricted discretionary activity, provided the following conditions are met:

(i) the discharge is the replacement of an existing discharge consent pursuant to sections 124-124C of the RMA, and

(ii) the existing discharge consent for agricultural effluent specifies a maximum number of animals from which the effluent is collected, and that number is not increasing.

The Southland Regional Council will restrict its discretion to the following matters:

1. application depth or rate, storage requirements, nutrient loading rates (in particular nitrogen), size of the disposal area, timing of the discharge, and contingency plans;
2. the separation distance of the discharge from a river, lake, artificial watercourse, modified watercourse, natural wetland, subsurface drain, the coastal marine area, infrastructure, residential dwellings, places of assembly, urban areas, landholding boundaries, water abstraction points and registered drinking water supplies;
3. measures to avoid, remedy or mitigate adverse effects (including cumulative effects directly related to the discharge of farm dairy effluent) on water quality, taking into account the nature and sensitivity of the receiving environment; and
4. the duration of consent, including in order to implement the outcomes of any Freshwater Management Unit Process to be undertaken in accordance with Policy 47.

(c) Other than as provided for by Rules 32A, 32B and 32D, the discharge of agricultural effluent or water containing agricultural effluent onto or into land in circumstances where contaminants may enter water that does not meet one or more conditions of Rule 35(a) or conditions (i) or (ii) of Rule 35(b) is a discretionary activity, provided the following conditions are met:

(i) the discharge is not within 20 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area;

(ii) the discharge is not within 200 metres of any place of assembly or dwelling not on the same landholding, or 20 metres of the boundary of any other landholding; and

(iii) the discharge is not within 100 metres of any authorised water abstraction point.

(d) Other than as provided for by Rules 32A, 32B and 32D, the discharge of agricultural effluent or water containing agricultural effluent to land in circumstances where contaminants may enter water that does not comply with Rule 35(c) is a non-complying activity.

(e) Other than as provided for by Rules 32A, 32B and 32D, the discharge of untreated agricultural effluent directly into surface water or groundwater is a prohibited activity.

Rule 35A[78] – Feed pads/lots

(a) The use of land for a feed pad/lot is a permitted activity provided the following conditions are met:

(i) if accommodating cattle or deer, each feed pad/lot services no more than 120 adult cattle, or 250 adult deer, or equivalent numbers of young stock at any one time;

(ii) animals do not remain on the feed pad/lot for longer than three continuous months;

(iii) the feed pad/lot is not located:

(1) within 50 metres from the nearest sub-surface drain, lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse, natural wetland, or another feed pad/lot on the same landholding; or

(2) within a microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or

(3) within 200 metres of a place of general assembly or dwelling not located on the same landholding, or

(4) within 20 metres of the boundary of any other landholding; or

(5) within a critical source area;

(iv) the feed pad/lot is constructed with:

(1) a sealed and impermeable base and any liquid animal effluent or stormwater containing animal effluent discharging from the feed pad/lot is collected in a sealed animal effluent storage system authorised under Rule 32B or Rule 32D; or

(2) a minimum depth of 500 millimetres of wood-based material (bark, sawdust or chip) across the base of the feed pad/lot; and

(v) any material scraped from the feed pad/lot, including solid animal effluent, is collected and if applied to land is applied in accordance with Rule 38; and

(vi) the overland flow of stormwater or surface runoff from surrounding land is prevented from entering the feed pad/lot.

[78] Appeal to Environment Court by (i) DairyNZ Limited ENV-2018-CHC-000032
(ii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

(b) The use of land for a feed pad/lot that does not meet one or more of the conditions of Rule 35A(a) is a discretionary activity.

Rule 35A – Feed pads/lots (CV - Fifth Interim Decision)

(a) The use of land for a feed pad/lot is a permitted activity provided the following conditions are met:

~~(i) if accommodating cattle or deer, each feed pad/lot services no more than 120 adult cattle, or 250 adult deer, or equivalent numbers of young stock at any one time;~~

~~(ii) animals do not remain on the feed pad/lot for longer than three continuous months;~~

(iii) the feed pad/lot is not located:

(1) within 50 metres from the nearest sub-surface drain, lake, river ~~(excluding ephemeral rivers),~~ artificial watercourse, modified watercourse, natural wetland, or the coastal marine area ~~or another feed pad/lot on the same landholding~~; or

(2) within a microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or

(3) within 200 metres of a place of general assembly or dwelling not located on the same landholding, or

(4) within 20 metres of the boundary of any other landholding; or

(5) within a critical source area;

(iv) the feed pad/lot is constructed with:

(1) a sealed and impermeable base and any liquid animal effluent or stormwater containing animal effluent discharging from the feed pad/lot is collected in a sealed animal effluent storage system authorised under Rule 32B or Rule 32D; or

(2) a minimum depth of 500 millimetres of wood-based material (bark, sawdust or chip) across the base of the feed pad/lot; and

(v) any material scraped from the feed pad/lot, including solid animal effluent, is collected and if applied to land is applied in accordance with Rule 38; and

(vi) the overland flow of stormwater or surface runoff from surrounding land is prevented from entering the feed pad/lot.

(b) The use of land for a feed pad/lot that does not meet one or more of the conditions of Rule 35A(a) is a discretionary activity.

Rule 35B – Sacrifice Paddocks (CV - Fifth Interim Decision)

(a) The use of land for a sacrifice paddock is a permitted activity provided the following conditions are met:

(i) the use is not to exceed a total of 60 days in any twelve-month period.

~~(ii) the slope of land that is used for a sacrifice paddock must be 10 degrees or less;~~

(iii) the sacrifice paddock must not be in forage crop;

(iv) in any year the sacrifice paddocks do not exceed:

(1) for a landholding 500 ha or less, 5 hectares of the landholding; or

(2) for a landholding greater than 500 ha, 1% or 30 hectares of the landholding (whichever is the lesser).

(v) stock must be separated by a vegetated setback at least:

(1) 20 metres from the bed of any Regionally Significant Wetland or Sensitive Waterbodies listed in Appendix A, nohoanga listed in Appendix B, mātaitai reserve, taiāpure, estuary or the coastal marine area; and

(2) 20 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland, where the slope of the land used as a sacrifice paddock is 10 degrees or more; and

(3) 10 metres from the bed of any other river, lake, artificial watercourse (regardless of whether there is any water in it at the time), modified water course or natural wetland, where the slope of the land used as a sacrifice paddock is 10 degrees or less.

(v) critical source areas within the area being used as a sacrifice paddock must:

(1) be identified in the Farm Environmental Management Plan; and

(2) have stock excluded from them; and

(vi) if the land that is used as a sacrifice paddock requires replanting, this must occur as soon as practicable after stock have been removed from the paddock; and

(vii) A Farm Environment Management Plan for the landholding is:

(1) prepared, certified and audited in accordance with Appendix N; and

(2) implemented by the landholder completing the practices, actions and mitigations specified in the FEMP in accordance with the timeframes set out in the FEMP; and

(viii) no part of the sacrifice paddock is located on land with an altitude greater than 800 metres above mean sea level

(b) The use of land for a sacrifice paddock that does not meet one or more of the conditions of Rule 35B(a) is a discretionary activity.

Rule 36 – Horticulture wash-water

(a) The discharge of water containing contaminants from vegetable or bulb washing to land where contaminants may enter water is a permitted activity, provided that the following conditions are met:

(i) either the discharge complies with Section 2 "Good Practices" of the Horticulture NZ Washwater Discharge Code of Practice 2017; or

(ii) the discharge does not exceed 20 cubic metres per day;

(iii) there is no overland flow; or ponding for more than 24 hours of horticultural washwater, or application of the washwater to land when soil moisture exceeds field capacity;

(iv) the discharge only contains water, soil, or HSNO approved sanitisers that are used in accordance with their label instructions and comply with NZS 8409:2004 Management of Agrichemicals; and

(v) the discharge is not within:

(1) 20 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area; or
(2) 20 metres of any landholding boundary; or
(3) 100 metres of any residential dwelling; or
(4) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J.

Rule 37 – Agricultural dips

(a) The discharge of sludge from stationary agricultural dips, mobile sheep dips and spray dips onto or into land in circumstances where contaminants may enter water is a permitted activity, provided that the following conditions are met:
  (i) there is no discharge of agricultural dip effluent directly to water, including groundwater;
  (ii) there is no overland flow or ponding of agricultural dip effluent, or application onto land when soil moisture exceeds field capacity;
  (iii) the discharge is not within:
    (1) 20 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area; or
    (2) 100 metres from any existing potable water abstraction point; or
    (3) 20 metres of any landholding boundary; or
    (4) 100 metres from any residential dwelling other than residential dwellings on the landholding; and
    (5) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; and
  (iv) the discharge of agricultural effluent from stationary agricultural dips, mobile sheep dips and spray dips occurs on the landholding where the dipping has taken place;
  (v) the discharge is undertaken in accordance with any Hazardous Substances and New Organisms Act 1996 approval for the substances being discharged; and
  (vi) a written record of the chemicals used and the volume and location of the discharge is kept and provided to the Southland Regional Council on request.

Rule 38 – Animal and vegetative waste

(a) The discharge of solid animal waste (excluding any discharge directly from an animal to land), sludge or vegetative material containing animal excrement or vegetative material, including from a high intensity farming process, feed pad/lot or wintering barn or industrial or trade process, into or onto land, or into or onto land in circumstances where a contaminant may enter water is a permitted activity provided the following conditions are met:
  (i) the material does not contain any hazardous substance or hazardous waste;
  (ii) the material does not include any waste from a human effluent treatment process;
  (iii) the maximum loading rate of nitrogen onto any land area does not exceed 150 kilograms of nitrogen per hectare per year; and
  (iv) the material is not discharged:
    (1) onto the same area of land more frequently than once every two months; or
    (2) onto land where solid animal waste, or vegetative material containing animal excrement or vegetative material from a previous application is still visible on the land surface; or
    (3) onto land when the soil moisture exceeds field capacity or when soil temperatures are below 5 degrees in winter and autumn or 7 degrees in spring; or

(4) within 20 metres of the landholding boundary, a bore used for water abstraction, the bed of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area; or

(5) with an average depth of material of greater than 10 millimetres on the land surface.

Rule 39 – Other agricultural effluent disposal

(a) The discharge of agricultural effluent, water containing contaminants from vegetable or bulb washing sludge, stationary agricultural dips, mobile sheep dips and spray dips onto or into land in circumstances where contaminants may enter water, other than as provided for in Rules 32A to 38, is discretionary activity.

Rule 40 – Silage storage

(a) The use of land for a silage storage facility is a permitted activity provided the following conditions are met:

(i) there is no overland flow of stormwater into the silage storage facility;

(ii) no part of the silage storage facility is within:

(1) 50 metres of a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse, natural wetland or any potable water abstraction point; or

(2) 100 metres of any dwelling or place of assembly, on another landholding constructed or in use prior to the silage storage facility being lawfully established; or

(3) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or

(4) a critical source area; and

(iii) no part of the silage storage facility is located within 50 metres of a classified HAIL site under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011;

(iv) no part of the silage storage facility is located on land that is made permanently or intermittently wet by the presence of springs, seepage, high groundwater, ephemeral rivers or flows of stormwater other than from any cover of the silage; and

(v) cattle are not able to graze directly from the silage storage facility, unless the area where the cattle access the silage complies with Rule 35A.

(b) The use of land for a silage storage facility that does not meet the conditions in Rule 40(a) is a restricted discretionary activity provided to the following conditions are met:

(i) no part of the silage storage facility is within:

(1) 20 metres of a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse or natural wetland; or

(2) 50 metres of a dwelling, potable water abstraction point, or place of assembly on another landholding; or

(3) 50 metres of the main stems of the Waiau, Aparima, Ōreti or Mataura rivers, or inside flood banks of the main stems of these rivers (if present); or

(4) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J.

The Southland Regional Council will restrict its discretion to the following matters:

1. measures necessary to prevent noxious, dangerous, offensive, or objectionable effects beyond the boundary of the landholding on which silage is stored;
2. measures necessary to prevent inflows of stormwater, or infiltration from underlying seeps, springs, or groundwater;
3. the physical dimensions and location of the silage storage facility;
4. methods of containing any silage leachate that may be emitted prior to application to land, including the volume of any silage leachate storage.

An application for resource consent under Rule 40(b) will be processed and considered without public or limited notification unless the applicant requests notification or the Southland Regional Council considers that special circumstances exist that warrant notification of the application.

(c) The use of land for a silage storage facility that does not meet one or more of the conditions in Rule 40(b) is a non-complying activity.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

Rule 40 – Silage storage (CV - Fifth Interim Decision)

(a) The use of land for a silage storage facility is a permitted activity provided the following conditions are met:
- (i) there is no overland flow of stormwater into the silage storage facility;
- (ii) no part of the silage storage facility is within:
  - (1) 50 metres of a lake, river ~~(excluding ephemeral rivers)~~, artificial watercourse, modified watercourse, natural wetland or any potable water abstraction point; or
  - (2) 100 metres of any dwelling or place of assembly, on another landholding constructed or in use prior to the silage storage facility being lawfully established; or
  - (3) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or
  - (4) a critical source area; and
- (iii) no part of the silage storage facility is located within 50 metres of a classified HAIL site under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011;
- (iv) no part of the silage storage facility is located on land that is made permanently or intermittently wet by the presence of springs, seepage, high groundwater, ephemeral rivers or flows of stormwater other than from any cover of the silage; and
- (v) cattle are not able to graze directly from the silage storage facility, unless the area where the cattle access the silage complies with Rule 35A.

(b) The use of land for a silage storage facility that does not meet the conditions in Rule 40(a) is a restricted discretionary activity provided to the following conditions are met:
- (i) no part of the silage storage facility is within:
  - (1) 20 metres of a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse or natural wetland; or

(2) 50 metres of a dwelling, potable water abstraction point, or place of assembly on another landholding; or

(3) 50 metres of the main stems of the Waiau, Aparima, Ōreti or Mataura rivers, or inside flood banks of the main stems of these rivers (if present); or

(4) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J.

The Southland Regional Council will restrict its discretion to the following matters:

1. measures necessary to prevent noxious, dangerous, offensive, or objectionable effects beyond the boundary of the landholding on which silage is stored;
2. measures necessary to prevent inflows of stormwater, or infiltration from underlying seeps, springs, or groundwater;
3. the physical dimensions and location of the silage storage facility;
4. methods of containing any silage leachate that may be emitted prior to application to land, including the volume of any silage leachate storage.

An application for resource consent under Rule 40(b) will be processed and considered without public or limited notification unless the applicant requests notification or the Southland Regional Council considers that special circumstances exist that warrant notification of the application.

(c) The use of land for a silage storage facility that does not meet one or more of the conditions in Rule 40(b) is a non-complying activity.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

Rule 41 – Silage leachate

(a) The discharge of silage leachate onto or into land in circumstances where contaminants may enter water is a permitted activity provided the following conditions are met:

(i) the discharge is via an agricultural effluent discharge system authorised under Rule 35; or

(iia) there is no discharge of leachate directly to groundwater via a pipe, soak pit or other soil bypass mechanism and there is no overland flow or ponding of silage leachate outside of the silage storage facility;

(iii) any discharge is not within:

(1) 20 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area; or

(2) 100 metres of a place of assembly or dwelling not on the same landholding, or 20 metres of the boundary of any other landholding; or

(3) 100 metres of any authorised water abstraction point; or

(4) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; and

(iv) any discharge does not result in:

(2) an application depth in excess of 10 millimetres for each individual application; and

(3) a loading rate of nitrogen from the discharge of silage leachate in excess of 150 kilograms of nitrogen per hectare per year.

(b) The discharge of silage leachate onto or into land in circumstances where contaminants may enter water that does not meet one or more of the conditions in Rule 41(a) is a discretionary activity.

Landfills

Rule 42 – Cleanfill sites

(a) The discharge of cleanfill into or onto land at a cleanfill site in circumstances where contaminants may enter water is a permitted activity provided the following conditions are met:

(i) the total amount of cleanfill discharged at all cleanfill sites on a landholding does not exceed 500 cubic metres per calendar year, except for a formed road reserve or a rail corridor in which case no limit applies;

(ii) the discharge does not occur within:

(1) the bed of a lake or river; or

(2) 50 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland, the coastal marine area or landholding boundary; or

(3) 50 metres of the main stems of the Waiau, Aparima, Ōreti or Mataura rivers, or inside flood banks of the main stems of these rivers (if flood banks are present); or

(4) 100 metres of any authorised water abstraction point; and

(iv) stormwater is directed away from the discharge site.

(b) The discharge of cleanfill into or onto land at a cleanfill site in circumstances where contaminants may enter water that does not meet one or more of the conditions of Rule 42(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. prevention of inundation of any other person's landholding, sedimentation in any water body, erosion and land instability, and the restriction or diversion of flood flows;
2. effects on sensitive receiving environments;
4. design, construction and management of the cleanfill site;
5. post-closure management practices and procedures;
6. information and monitoring requirements; and
7. the quantity of cleanfill to be discharged.

An application for resource consent under Rule 42(b) will be processed and considered without public or limited notification unless the applicant requests notification or the Southland Regional Council considers special circumstances exist that warrant notification of the application.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

Rule 43[79] – Farm landfills (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The discharge of a contaminant into or onto land from a farm landfill in circumstances where that contaminant may enter water is a permitted activity provided the following conditions are met:

- (i) carcasses, offal, compost bulking agents or waste is derived from the same landholding on which the farm landfill is situated, or the activity is carried out by a local authority or government agency in the exercise of their statutory powers;
- (ii) the discharge does not include septic tank sludge, dairy farm sludge or a hazardous substance;
- (iii) the discharge does not occur within:
  - (1) the bed of a lake, river, or natural wetland; or
  - (2) a critical source area; or
  - (3) 50 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area; or
  - (4) 50 metres of the main stems of the Waiau, Aparima, Ōreti or Mataura rivers, or inside flood banks of the main stems of these rivers (if flood banks are present); or
  - (5) 100 metres of any authorised water abstraction point, or dwelling, place of assembly, or landholding boundary; or
  - (6) the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or
  - (7) 100 metres of a dwelling, place of assembly, or landholding boundary;
- (iv) stormwater is directed away from the discharge site;
- (v) the farm landfill does not intercept an on-farm sub-surface drain, or a spring, and is not excavated below the seasonal mean groundwater level in that location;
- (vi) as each section of the farm landfill becomes full or unused, the deposited carcasses, offal, compost bulking agents and waste material is covered with soil and the resulting soil surface is restored to a similar state as the surrounding land; and
- (vii) any carcass or offal must not come into contact with naturally formed limestone rock.

(b) The discharge of a contaminant into or onto land in circumstances where that contaminant may enter water at a farm landfill that does not meet one or more of the conditions of Rule 43(a) is a discretionary activity.

(c) Notwithstanding the provisions of Rules 43(a) and (b), the discharge of the carcass of, or offal from, a single animal into or onto land in circumstances where a contaminant may enter water is a permitted activity provided the following conditions are met:

- (i) the carcass or offal cannot be reasonably disposed of in accordance with the conditions of Rule 43(a);
- (ii) the carcass or offal is derived from the same landholding on which the discharge is to occur; and
- (iii) the carcass or offal buried does not occur within:
  - (1) 20 metres of surface water or an authorised water abstraction point; or

[79] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

(2) 20 metres of a dwelling, place of assembly, or landholding boundary.

(d) The discharge of the carcass of, or offal from, a single animal into or onto land in circumstances where that contaminant may enter water that does not meet one or more of the conditions of Rule 43(c) is a discretionary activity.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

Rule 45 – Landfills

(a) Except as provided for elsewhere in this Plan, the discharge of contaminants from a landfill into or onto land in circumstances where that contaminant may enter water is a discretionary activity.

Land Contamination

Rule 46 – Land contaminated by a hazardous substance

(a) The discharge of contaminants from land contaminated by a hazardous substance onto or into land in circumstances which may result in contaminants entering water is a permitted activity provided:

(i) the hazardous substance in the discharge results from an activity authorised by a rule in this Plan or a resource consent granted by the Southland Regional Council; or

(ii) the discharge does not result in a breach of the trigger values for toxicants presented in Table 3.4.1 in the Australia and New Zealand Guidelines for Fresh and Marine Water Quality (ANZECC) 2000 at the level of protection set in those guidelines for 80% of species, except for benzene where the level of protection is 90% of species (i.e. 1 milligram per litre), at the nearest of:

(1) 50 metres from the discharge; or

(2) the landholding boundary; or

(3) any point immediately adjacent to a lake, river, artificial watercourse, modified watercourse, natural wetland, the coastal marine area, or water abstraction bore (excluding monitoring bores); and

(iii) the discharge does not result in a breach of the Drinking Water Standards for New Zealand 2005 (Revised 2008) in any bore utilised for potable supply, except where the ambient water quality naturally breaches those Standards and the discharge does not result in any further degradation of the water quality.

(b) The discharge of soil from land contaminated by a hazardous substance onto or into land in circumstances which may result in those contaminants entering water is a permitted activity provided:

(i) the hazardous substance in the soil results from the application of a fertiliser or agrichemical to the land authorised by a rule in this Plan or a resource consent granted by the Southland Regional Council; or

(ii) the soil is being returned to the excavation or site from which it was taken.

(c) The discharge of contaminants or soil from land contaminated by a hazardous substance onto or into land in circumstances which may result in those contaminants entering water that does not meet one or more of the conditions of Rule 46(a) or (b) is a discretionary activity.

Rule 46A – Site investigations

(a) The use of land for a site investigation to assess concentrations of hazardous substances that may be present in the soil, and any incidental discharges as a result of that investigation, is a permitted activity provided the following conditions are met:

(i) the site investigation is to be undertaken in accordance with Contaminated Land Management Guidelines No. 5: Site Investigation and Analysis of Soils (Ministry for the Environment, 2011) and reported on in accordance with the Contaminated Land Management Guidelines No. 1: Reporting on Contaminated Sites in New Zealand, (Ministry for the Environment, 2011); and

(ii) the person or organisation initiating the site investigation provides a copy of the report of the site investigation to the Southland Regional Council within two months of the completion of the investigation.

(b) The use of land for a site investigation to assess concentrations of hazardous substances that may be present in the soil, and any incidential discharges as a result of that investigation, that does not meet one or more of the conditions in Rule 46A(a) is a discretionary activity.

Rule 47 – Closed landfills

(a) Despite Rule 46, the discharge of contaminants from a closed landfill onto or into land in circumstances which may result in those contaminants entering water is a permitted activity provided the following conditions are met:
   (i) a risk assessment of the closed landfill is carried out in accordance with the risk screening system developed by Ministry for the Environment[80] which demonstrates that the environmental risk is low; and
   (ii) a copy of the risk assessment is lodged with the Southland Regional Council.

(b) Despite Rule 46, the discharge of contaminants from a closed landfill onto or into land in circumstances which may result in those contaminants entering water that does not meet one or more of the conditions of Rule 47(a) is a discretionary activity.

Rule 48 – Cemeteries

(a) The use of land for an existing cemetery and any ancillary discharge of contaminants into or onto land in circumstances where a contaminant may enter water is a permitted activity.

(b) The use of land for a new cemetery or an extension to an existing cemetery and any ancillary discharge of contaminants into or onto land in circumstances where a contaminant or water may enter water is a permitted activity provided the following conditions are met:
   (i) any new cemetery or an extension to an existing cemetery is not located:
      (1) within 20 metres of a lake, river, artificial watercourse, modified watercourse, natural wetland or the coastal marine area; or
      (2) within 50 metres of any authorised water abstraction point; or
      (3) within the microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or
      (4) where the depth to groundwater is less than 2.5 metres.

(c) The use of land for a cemetery, and any ancillary discharge of contaminants into or onto land in circumstances where a contaminant or water may enter water, that does not meet one or more of the conditions in Rule 48(b) is a discretionary activity.

[80] The current risk screening system for closed refuse disposal facilities <15,000 cubic metres MSW is contained in the document Small Landfill Closure Criteria – Risk Assessment for Small Closed Landfills (MfE, 2002) and for closed refuse disposal facilities >15,000 cubic metres MSW in the procedures set out in the document in A Guide to the Management of Closing and Closed Landfills in New Zealand (MfE, 2001)

Taking and Using Water

Note: *Takes for drinking water supplies will also need to comply with other requirements including The National Environmental Standard for Sources of Human Drinking Water Regulations 2007 and the Health (Drinking Water) Amendment Act 2007.*

Rule 49[81] – Abstraction, diversion and use of surface water (Consent Orders)

(a) The take and use of surface water is a permitted activity provided the following conditions are met:

(i) the volume of take does not exceed 2,000 litres per day, plus 250 litres per hectare per day, up to a maximum of 40 cubic metres per landholding per day or per facility per day on public conservation land managed as such under the National Parks Act 1980, Conservation Act 1987 or the Reserves Act 1977;

(ii) the maximum volume of take allowed under this rule and Rule 54(a) are not added together. A maximum of 86 cubic metres of groundwater and surface water combined per landholding per day inclusive of any water taken pursuant to s14(3)(b) of the RMA may be taken;

(iii) the rate of take from a river or modified watercourse does not exceed 30 percent of the instantaneous flow at the time of take;

(iv) the rate of take does not exceed 2 litres per second;

(v) fish are prevented from entering the reticulation system in accordance with Appendix R;

(vi) the following details are supplied to the Southland Regional Council upon request (if applicable):

(1) farming type;

(2) stocking rate;

(3) point of abstraction;

(4) what the water was used for;

(5) maximum instantaneous rate of take; and

(vii) where the volume of the take exceeds 20,000 litres per day, a water meter capable of recording the rate of take and the daily volume of take is used. Water take data must be recorded daily and provided to the Southland Regional Council on request. The accuracy of the water meter must be verified every 12 months.

(ab) Despite Rule 49(a), the take and use of surface water for infrastructure construction, maintenance and repair is a permitted activity provided the following conditions are met:

(i) the rate of take does not exceed 15 litres per second;

(ii) the volume of take does not exceed 100,000 litres per day;

(iii) the bed of the watercourse from where the take occurs is at least 1 metre wide and the depth of flow in the watercourse at that location exceeds 0.5 metres at the time of the take;

(iv) the take does not occur for more than 45 consecutive minutes and multiple takes from the same site on a single day are at least 30 minutes apart;

(v) the point of abstraction is not located within 50 metres of any existing lawfully established surface water take;

(vi) the Southland Regional Council is notified at least three working days prior to the take commencing;

(vii) the take occurs between 1 September and 31 March inclusive; and

(viii) fish are prevented from entering the water intake in accordance with Appendix R.

[81] Appeal to Environment Court by (iii) Federated Farmers of New Zealand ENV-2018-CHC-000040

(b) Except as provided for in Rules 49(a), 49(ab), 50(a), 50(b), 51(a) and 51(b), the taking, diversion and use of surface water is a restricted discretionary activity provided the following conditions are met:

(i) for a lake, river, artificial watercourse, modified watercourse or natural wetland the total surface water allocation is within the secondary allocation specified in Policy 21(3); or

(ii) for non-consumptive takes, the total volume of water taken or diverted is returned within 100 metres of the take or diversion point; or

(iii) for a lake, river, artificial watercourse, modified watercourse or natural wetland the total volume of water taken is greater than 40 cubic metres per landholding per day but is less than 70 cubic metres per landholding per day.

The Southland Regional Council will restrict its discretion to the following matters:

1. the volume, rate, frequency and timing of water to be taken (including any water to be returned to the lake, river, artificial watercourse, modified watercourse or natural wetland and the delay between the taking and returning of this water);
2. any effects on river flows (including effects on minimum flows, flow variability and duration of flows), wetland or lake water levels, aquatic ecosystems, aquifer storage volumes, the availability and reliability of supply for existing users, and water quality;
3. the location of the take or diversion;
4. the efficiency of water use, in accordance with Appendix O;
5. the installation and use of a water meter;
6. information and monitoring requirements;
7. methods to prevent fish from entering the intake in accordance with Appendix R;
8. take cessation in response to minimum flow and level requirements;
9. consistency with any water conservation order;
10. the degree of hydraulic connection to groundwater;
11. any effect on a natural wetland;
12. the proposed method of take and delivery of the water; and
13. any water storage available for the water taken and its volume.

(c) Except as provided for in Rules 49(a), 49(ab), 49(b), 50(a), 50(b), 51(a), 51(b), and 51(c), the taking, diversion and use of surface water where the total rate of authorised surface water abstraction does not exceed the primary allocation specified in Appendix K is a discretionary activity.

(d) Except as provided for in Rules 49(a), 49(ab), 49(b), 49(c), 50(a), 50(b), 51(a), 51(b), 51(c), 52(a), 52(b), 52A(a) and 52A(b), the taking, diversion and use of surface water is a non-complying activity.

(e) Despite Rules 49(b), 49(c), and 49(d) the taking, diversion and use of water from the Cromel Stream is a prohibited activity, unless the application is for the replacement of an expiring water permit pursuant to Section 124 of the Act, the rate of take and volume is not increasing and use of the water is not changing.

Rule 50 – Community water supply

(a) **Existing community water supply**

The taking and use of water for a community water supply is a controlled activity provided:

(i) the application is for the replacement of an expiring water permit pursuant to section 124 of the Act and the rate of take and the volume and use of the water is not changing; and

(ii) a water demand management strategy is lodged as a part of the application.

The Southland Regional Council will reserve its control over the following matters:

1. the quality of and implementation of the water demand management strategy;
2. the rate and volume of water to be taken (including any water to be returned to the lake, river, artificial watercourse, modified watercourse or natural wetland);
3. any effects on river flows (including effects on minimum flows, flow variability and duration), wetland or lake water levels, aquatic ecosystems, and aquifer storage volumes;
4. the availability and reliability of supply for existing users;

4a. water quality;

4b. methods to prevent fish from entering the intake in accordance with Appendix R;

5. information and monitoring requirements;
6. take cessation in response to minimum flow and level requirements;
7. consistency with any water conservation order;
8. the degree of hydraulic connection between groundwater and surface water bodies; and
9. management of the take during water shortages.

(b) **New community water supply**

Except as provided for in Rule 50(a), the taking of water for a community water supply is a discretionary activity.

Rule 51[82] – Minor diversions of water

(a) Despite any other rule in this Plan, the diversion of water within a river or lake bed is a permitted activity provided the following conditions are met:

(i) the diversion is for the purposes of undertaking a permitted activity under Rules 55 to 79, or for the purposes of habitat creation, restoration or enhancement, or hydrologic research; and is carried out in accordance with the following conditions:

(a1) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule;

(ii) the diversion is carried out completely within a river or lake bed (i.e. no water is diverted outside of the river or lake bed);

(iii) the water is returned to its original course after completion of the activity, no later than one month after the diversion occurs;

(iva) the diversion does not occur within 12 metres of a network utility structure, unless the activity is for the purpose of maintaining, upgrading or developing that network utility;

(iv) the diversion does not compromise the ability of any other person to exercise a resource consent or undertake an activity permitted by this Plan; and

(v) the diversion does not result in a net loss of water from the catchment.

(b) Despite any other rule in this Plan, the diversion of water for the purpose of land drainage is a permitted activity provided the following conditions are met:

(i) the diversion and associated discharge does not cause erosion or deposition;

(ii) the diversion does not cause flooding of downstream or adjacent properties; and (iii) the diversion of water is not from a Regionally Significant Wetland or Sensitive Water Body identified in Appendix A or any natural wetland.

(c) Notwithstanding any other rule in this Plan, the diversion of water at the mouth of:

[82] Appeal to Environment Court by Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

(i) a drain known as the North Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CG10 463 308;[83] or

(ii) a drain known as the West Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CG10 457 302;[84] or

(iii) a drain known as the South Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CH10 456 298[85]

is a permitted activity provided the following conditions are met:

(1) the work is carried out under the direct control of the body or person responsible for the maintenance of the drain;

(2) machinery only crosses through a drain to obtain reasonable access to the side of the drain from which the work is to be undertaken;

(3) the diversion is constructed at right angles to the line of the beach;

(4) any excavated spoil is removed from the site and legally disposed of or spread over non-vegetated areas adjacent to the diversion;

(5) the body or person responsible advises the Southland Regional Council of the details of the time and extent of the work to be undertaken, prior to the work commencing; and

(6) in the event of a discovery, or suspected discovery, of a site of cultural, heritage or archaeological value, the operation ceases immediately in that location and the Southland Regional Council is informed. Operations may recommence with the permission of the Southland Regional Council.

(d) Unless controlled by any other rule in this Plan, the diversion of water for the purpose of land drainage that does not meet Rules 51(a) to (c) is a discretionary activity.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S. Due to the high concentration of recorded archaeological sites in the vicinity of the above sites, it is possible that works will require an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014. No work (even if permitted under the rule or authorised by resource consent) should commence without first contacting Heritage New Zealand.*

Rule 51 – Minor diversions of water (CV - Fifth Interim Decision)

(a) Despite any other rule in this Plan, the diversion of water within a river or lake bed is a permitted activity provided the following conditions are met:

(i) the diversion is for the purposes of undertaking a permitted activity under Rules 55 to 79, or for the purposes of habitat creation, restoration or enhancement, or hydrologic research; and is carried out in accordance with the following conditions:

(a1) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule;

(ii) the diversion is carried out completely within a river or lake bed (i.e. no water is diverted outside of the river or lake bed);

[83] The equivalent NZTM2000 coordinates are 1246300 mE 4830800 mN
[84] The equivalent NZTM2000 coordinates are 1245700 mE 4830200 mN
[85] The equivalent NZTM2000 coordinates are 1245600 mE 4829800 mN

(iii) the water is returned to its original course after completion of the activity, no later than one month after the diversion occurs;

(iva) the diversion does not occur within 12 metres of a network utility structure, unless the activity is for the purpose of maintaining, upgrading or developing that network utility;

(iv) the diversion does not compromise the ability of any other person to exercise a resource consent or undertake an activity permitted by this Plan; and

(v) the diversion does not result in a net loss of water from the catchment.

(b) Despite any other rule in this Plan, the diversion of water for the purpose of land drainage is a permitted activity provided the following conditions are met:

(i) the diversion and associated discharge does not cause erosion or deposition;

(ii) the diversion does not cause flooding of downstream or adjacent properties; and (iii) the diversion of water is not from a Regionally Significant Wetland or Sensitive Water Body identified in Appendix A or any natural wetland.

(c) Notwithstanding any other rule in this Plan, the diversion of water at the mouth of:

(i) a drain known as the North Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CG10 463 308;[86] or

(ii) a drain known as the West Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CG10 457 302;[87] or

(iii) a drain known as the South Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CH10 456 298[88]

is a permitted activity provided the following conditions are met:

(1) the work is carried out under the direct control of the body or person responsible for the maintenance of the drain;

(2) machinery only crosses through a drain to obtain reasonable access to the side of the drain from which the work is to be undertaken;

(3) the diversion is constructed at right angles to the line of the beach;

(4) any excavated spoil is removed from the site and legally disposed of or spread over non-vegetated areas adjacent to the diversion;

(5) the body or person responsible advises the Southland Regional Council of the details of the time and extent of the work to be undertaken, prior to the work commencing; and

(6) in the event of a discovery, or suspected discovery, of a site of cultural, heritage or archaeological value, the operation ceases immediately in that location and the Southland Regional Council is informed. Operations may recommence with the permission of the Southland Regional Council.

(d) Unless controlled by any other rule in this Plan, the diversion of water for the purpose of land drainage that does not meet Rules 51(a) to (c) is a discretionary activity.

(e) Notwithstanding Rule 51(b) and Rule 51(d) the diversion of water from a natural wetland for the purpose of land drainage is a non-complying activity.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S. Due to the high concentration of recorded archaeological sites in the vicinity of the above sites, it is possible that works will require an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014. No work (even if permitted under the rule or authorised by resource consent) should commence without first contacting Heritage New Zealand.*

[86] The equivalent NZTM2000 coordinates are 1246300 mE 4830800 mN
[87] The equivalent NZTM2000 coordinates are 1245700 mE 4830200 mN
[88] The equivalent NZTM2000 coordinates are 1245600 mE 4829800 mN

Rule 52[89] – Water abstraction, damming, diversion and use from the Waiau catchment (Consent Orders)

(a) Except as provided in Rules 49(a), 49(ab), 49(b), 49(c), 50(a), 50(b), 51(a), 51(b) and~~,~~ 52A ~~and 52B~~ (including takes authorised by section 14(3) of the Act), any take, damming, diversion or use of water from the Waiau catchment is a discretionary activity provided the following conditions are met:

(i) the application is for the replacement of an expiring water permit pursuant to section 124 of the Act, and the rate of take and volume is not increasing, and use of the water is not changing; or

(ii) the application is for a groundwater take assessed as having a Low degree of hydraulic connection following the methodology specified in Appendix L.2.

(b) Except as provided in Rules 49(a), 49(ab), 49(b), 49(c), 50(a), 50(b), 51(a), 51(b) and~~,~~ 52A ~~and 52B~~ (including takes authorised by section 14(3) of the Act), any take, damming, diversion or use of water from the Waiau catchment that does not meet the conditions of Rule 52(a) is a non-complying activity.

Rule 52A[90] – Manapōuri Hydro-electric Generation Scheme

(a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:

(i) the taking or use of water; or

(ii) the discharge of water into water or onto or into land; or

(iii) the discharge of contaminants into water or onto or into land; or

(iv) the damming or diversion of water;

is a controlled activity provided the following conditions are met:

(1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act;

(2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and

(3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.

The Southland Regional Council will reserve its control to the following matters:

1. the volume and rate of water taken, used, diverted or discharged and the timing of any take, diversion or discharge, including how this relates to generation output;
2. any effects on river flows, wetland and lake water levels, aquatic ecosystems and water quality;
3. mitigation or remediation measures to address adverse effects on the environment; and
4. the benefits of renewable electricity generation.

[89] Appeal to Environment Court by (ii) Meridian Energy Limited ENV-2018-CHC-000038

[90] Appeal to Environment Court by (i) Aratiatia Livestock Limited ENV-2018-CHC-000029
(ii) Meridian Energy Limited ENV-2018-CHC-000038
(iii) Federated Farmers of New Zealand ENV-2018-CHC-000040
(iv) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(v) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

An application for resource consent under Rule 52A(a) will be publicly notified.

(b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new consent for the same activity and is:

(i) the taking or use of water; or
(ii) the discharge of water into water or onto or into land; or
(iii) the discharge of contaminants into water or onto or into land; or
(iv) the damming or diversion of water;

that does not meet one or more of the conditions of Rule 52A(a) is a non-complying activity.

Rule 53[91] – Bores and wells (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The use of land for the drilling or construction of any bore or well is a controlled activity provided the following conditions are met:

(i) the bore or well design and headworks prevent:
  (1) the infiltration of contaminants; and
  (2) the uncontrolled discharge or leakage of water to the ground surface or between aquifers;
(ii) the bore is constructed in accordance with NZS 4411:2001 Environmental Standard for Drilling of Rock and Soil (including the recording and supply of bore logs and other records); and
(iii) for bores to be used for the supply of water from unconfined aquifers, the bore screen fully penetrates the aquifer.

The Southland Regional Council will reserve the exercise of its control to the following matters:

1. the proximity of the bore or well to surface water bodies (including spring-fed streams), potential sources of groundwater contamination and existing bores and wells;
2. the design and depth of the bore or well;
3. the method of drilling or excavation;
4. the design and management of the bore head;
5. the use, maintenance and decommissioning of the bore or well;
6. information and monitoring requirements; and
7. adoption and implementation of an Accidental Discovery Protocol.

An application for resource consent under Rule 53(a) will be processed and considered without public or limited notification unless the applicant requests notification or the Southland Regional Council considers special circumstances exist that warrant notification of the application.

(b) The use of land for the drilling or construction of any bore or well that does not meet the conditions in Rule 53(a) is a discretionary activity.

[91] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

(c) The use, maintenance or decommissioning of any bore or well is a permitted activity provided the following conditions are met:
  (i) the bore or well design and headworks prevent:
    (1) the infiltration of contaminants; and
    (2) the uncontrolled discharge or leakage of water to the ground surface or between aquifers.

(d) The use, maintenance or decommissioning of any bore or well that does not meet the conditions in Rule 53(c) is a discretionary activity.

Rule 54[92] – Abstraction and use of groundwater (Consent Orders)

***Note**: To determine the aquifer type and allocation volume for a proposed groundwater abstraction, Plan users should firstly refer to Map Series 3: Groundwater Management Zones to establish the relevant groundwater zone. Once the relevant groundwater zone has been established, Appendix L can be used to determine the aquifer type.*

(a) The take and use of groundwater is a permitted activity provided the following conditions are met:
  (i) the volume and rate of abstraction does not exceed:
    (1) a maximum of 86 cubic metres per day per landholding; and
    (2) a maximum rate of 5 litres per second; and
    (3) the point of abstraction is not within 50 metres of an existing lawfully established groundwater take;
  (ii) the maximum volume of take allowed under this rule and Rule 49(a) are not added together. A maximum of 86 cubic metres of groundwater and surface water combined per landholding per day, inclusive of any water taken pursuant to section 14(3)(b) of the RMA, is allowed;
  (iii) the following details are supplied to the Southland Regional Council upon request (if applicable):
    (1) farming type; and
    (2) stocking rate; and
    (3) point of abstraction; and
    (4) what the water is used for; and
    (5) the maximum rate of take; and
  (iv) where the volume of the take exceeds 20,000 litres per day, a water meter capable of recording the rate of take and the daily volume of take must be used. Water take data must be recorded ~~daily~~ <u>at least weekly</u> and provided to the Southland Regional Council on request. The accuracy of the water meter must be verified every 12 months.

(b) The non-consumptive take and use of groundwater is a permitted activity provided the following conditions are met:
  (i) the rate and volume of take does not exceed:
    (1) a maximum rate of 10 litres per second; and
    (2) a maximum daily volume of 750 cubic metres;
  (iia) any interference effects are "acceptable" in accordance with Appendix L.3;
  (ii) the same amount of water is returned to the same aquifer within 250 metres of the point at which it was taken; and
  (iii) there is no significant delay between the taking and returning of the water.

[92] Appeal to Environment Court by (i) Fonterra Co-operative Group Limited ENV-2018-CHC-000027

(c) The take and use of groundwater for hydraulic testing and bore development purposes and any associated discharge of groundwater into water or onto or into land is a permitted activity provided the following conditions are met:

(i) the Southland Regional Council is notified at least three days prior to test commencement;
(ii) the rate of take does not exceed 75 litres per second;
(iii) the duration of pumping does not exceed five consecutive days;
(iv) any discharge of water to water is consistent with the water quality requirements of section 70 of the RMA;
(v) water discharged onto land must not contribute to flooding on any other landholding; and
(vi) records of all pumping and recovery tests including the rate and duration of pumping, water levels in the pumped well and any water level observation wells and the time measurements are taken and are provided to the Southland Regional Council within one month of the completion of the test.

(ca) The take and use of groundwater for the purpose of dewatering for carrying out excavation, construction or maintenance and the associated use and discharge of that water is a permitted activity provided the following conditions are met:

(i) the Southland Regional Council is notified at least three days prior to dewatering commencing;
(ii) the take continues only for the time required to carry out the work, and in any event, the take does not exceed a duration of 60 days in any 12-month period;
(iii) the rate of take does not exceed 40 litres per second;
(iv) the taking of water does not cause subsidence of any site not owned by the person undertaking the dewatering;
(v) the water is not taken from the Lumsden, Wendonside or North Range aquifers;
(vi) the take or discharge is not from, into, or onto contaminated or potentially contaminated land;
(vii) the take does not have a Riparian, Direct, Moderate or High stream depletion effect on a surface water body, determined in accordance with Appendix L.2, unless the abstracted groundwater is being discharged to the surface water body to which it is hydraulically connected;
(viii) an assessment of interference effects, undertaken in accordance with Appendix L.3, does not show that any community or private drinking water supply bore will be prevented from taking water;
(ix) at the point and time of any discharge to a river or artificial watercourse, the rate of flow in the water body is at least five times the rate of the discharge;
(x) the concentration of total suspended solids in any discharge to a lake, river, artificial watercourse, modified watercourse or natural wetland does not exceed:
    (1) 100 g/m^3 where the discharge is to any Lowland softbed, Lowland hard bed or Hill river or to an artificial watercourse; or
    (2) 50 g/m^3 where the discharge is to any other lake, river or natural wetland;
(xi) the point of discharge is not within a Drinking Water Protection Zone as set out in Appendix J; and
(xii) records of the rate and duration of pumping are taken and are provided to the Southland Regional Council within three months.

(d) Other than as provided by Rules 54(a), 54(b), 54(c) and 54(ca) the take and use of groundwater from groundwater management zones listed in Appendix L.5 is a discretionary activity provided the following conditions are met:

(i) the total volume of authorised groundwater abstraction is within the primary allocation limits established in Appendix L.5;

(ii) if the degree of hydraulic connection, calculated in accordance with Appendix L.2 Table L.2. is Riparian, Direct, High or Moderate the relevant surface water minimum flows and allocation limits specified in Table L.2 are complied with;

(iii) any interference effects are 'acceptable' in accordance with Appendix L.3; and

(iv) minimum groundwater level cut-offs and seasonal recovery triggers are established in accordance with criteria outlined in Appendix L.6.

(e) Other than as provided by Rules 54(a), 54(b), 54(c) and 54(ca) the take and use of groundwater from a confined aquifer is a discretionary activity provided the following conditions are met:

(i) the total volume of authorised groundwater abstraction is within the primary allocation limits (including minimum water level cut-offs and seasonal recovery triggers) established in Appendix L.5 or following the methodology outlined in Appendix L.6; and

(ii) any interference effects are 'acceptable' in accordance with Appendix L.3.

(f) Other than as provided by Rules 54(a), 54(b) and 54(c) and 54(ca) the take and use of groundwater outside the groundwater management zones listed in Appendix L.5 is a discretionary activity provided the following conditions are met;

(i) the total volume of authorised groundwater abstraction is within the primary allocation limit established following the methodology outlined in Appendix L.7; and

(ii) any interference effects are 'acceptable' in accordance with Appendix L.3.

(g) The take and use of groundwater that does not otherwise comply with Rules 54(b) to 54(f) is a non-complying activity.

Structures in river and lake beds and wetlands

Rule 55A – General conditions for activities in river and lake beds

(a) Fish passage is not impeded as a result of the activity;

(b) There is no disturbance of roosting and nesting areas of the black fronted tern, black billed gull, banded dotterel or black fronted dotterel;

(c) Any activity in the water is kept to a minimum to avoid, as much as possible, discoloration of the water in the water bodies listed in the chapeau[93] of the rule, including from any temporary sediment release;

(d) Any bed disturbance is kept to the minimum necessary to undertake the activity and the bed is returned as near as practicable to its original channel shape, area, depth, and gradient on completion of the activity (with the exception of revegetation);

(e) No fuel storage or machinery refuelling occurs on any area of the bed;

(f) No contaminants, other than sediment released from the bed, are discharged to water as a result of use of the structure unless allowed by a relevant permitted activity rule in this Plan or a resource consent;

(g) Before any equipment, machinery, or operating plant is moved to a new activity site it is effectively cleaned to prevent the spread of "pests" or "unwanted organisms" as defined by the Biosecurity Act 1993;

(h) All equipment, machinery, operating plant and debris associated with the structure or bed disturbance activity is removed from the site on completion of the activity;

(i) The structure or bed disturbance activity does not cause significant erosion of, or deposition on, the surrounding bed or banks;

(j) Any build-up of debris against the structure which may adversely affect flood risk, drainage capacity or bed or bank stability is removed as soon as practicable;

(k) The structure is maintained in a state of good repair; and

(l) From the beginning of November until the end of May, there is no disturbance of whitebait spawning habitat.

Rule 55 – Monitoring and sampling structures[94] (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The use, placement, erection or reconstruction (and any associated bed disturbance and discharge) of any equipment, measuring apparatus or similar devices in, on, under or over the bed of a lake, river, modified watercourse or wetland for the purpose of carrying out inspections, surveys, investigations, tests, measurements, or taking samples is a permitted activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (k) and (l) of that Rule.

(b) The use, placement, erection or reconstruction (and any associated bed disturbance and discharge) of any equipment, measuring apparatus or similar devices in, on or over the bed of a lake, river, modified watercourse or wetland that does not meet one or more of the conditions of Rule 55(a) is a discretionary activity.

[93] "Chapeau" means the words at the start of the rule that appear directly under the rule number and heading.

[94] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

Rule 56 – Boat ramps, jetties, wharves and slipways

(a) The placement, erection or reconstruction of any boat ramp, jetty, wharf or slipway in, on or over the bed of a lake, river, modified watercourse or wetland and any associated bed disturbance and discharge resulting from carrying out the activity is a discretionary activity.

(b) The use of any boat ramp, jetty, wharf or slipway in, on or over the bed of a lake, river, modified watercourse or wetland is a permitted activity provided the following conditions are met:
- (ai) general conditions (a), (f), (i), (j) and (k) set out in Rule 55A; and
- (i) the structure is lawfully established.

(c) The use of any boat ramp, jetty, wharf or slipway in, on or over the bed of a lake, river, modified watercourse or wetland that does not meet one or more of the conditions of Rule 56(b) is a discretionary activity.

Rule 57[95] – Bridges (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The placement, erection or reconstruction of any bridge in, on or over the bed of a lake, river, modified watercourse or wetland and any associated bed disturbance and discharge resulting from the carrying out of the activity is a permitted activity provided the following conditions are met:
- (ia) the general conditions set out in Rule 55A;
- (i) there are no support structures (for example, piles) in the bed;
- (ii) the bridge and its abutments do not increase the risk of flooding to surrounding land;
- (iii) the bridge and its bank abutments do not impede the flow of water within the river channel; and
- (iv) the structure is not within any mātaitai, nohoanga, or taiāpure.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The placement, erection or reconstruction of any bridge in, on or over the bed of a lake, river, modified watercourse or wetland and any associated bed disturbance and discharge resulting from the carrying out of the activity that does not meet one or more of the conditions of Rule 57(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:
1. the design and location of the bridge;
2. effects on flood risk, river morphology and dynamics (including erosion and deposition), aquatic and riverine ecosystems and habitats, the spiritual and cultural values and beliefs of the tangata whenua, taonga species, natural character and amenity values, outstanding natural features, public access and navigational safety; and

[95] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

3. any conditions in Rule 57(a) that cannot be met.

(c) The use of any bridge in, on or over the bed of a lake, river, modified watercourse or wetland is a permitted activity provided the following conditions are met:
(ai) general conditions (a), (f), (i), (j) and (k) set out in Rule 55A; and
(i) the structure is lawfully established.

(d) The use of any bridge in, on or over the bed of a lake, river, modified watercourse or wetland and any associated bed disturbance and discharge resulting from the carrying out of the activity that does not meet one or more of the conditions of Rule 57(c) is a discretionary activity.

Rule 58[96] – Cables, wires and pipes (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The placement, erection or reconstruction of any cable, wire, pipe or pipeline (including any intake or discharge pipe or temporary gauging system) and associated safety signs or markers in, on, under or over the bed of a lake, river, modified watercourse or wetland and any associated bed disturbance and discharge resulting from the carrying out of the activity is a permitted activity provided the following conditions are met:
(ia) the general conditions set out in Rule 55A;
(i) the structure does not have any support structures (for example, stays or piles) in the bed (other than if it is attached to a pre-existing structure, such as a bridge);
(ii) the structure does not cause a hazard to boating/navigation, or aircraft/aviation;
(iii) where the structure crosses over the bed, and is not a temporary structure, it does not impede the flow of water within the river channel;
(iv) where the structure crosses over the bed, and is designed to carry contaminants, it complies with the relevant construction standards imposed by a territorial authority under the Building Act;
(v) where the structure crosses under the bed it is completely buried and remains buried, with the depth of burial being indicated on markers on either bank;
(vi) where the structure is an intake pipe, it has a screening device to prevent fish from entering the pipe in accordance with Appendix R;
(vii) where the structure is a discharge pipe, any discharge from the pipe does not cause significant erosion of, or deposition on, the surrounding bed or banks; and
(viii) the structure is not within any mātaitai, nohoanga, or taiāpure.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The placement, erection or reconstruction of any cable, wire, pipe or pipeline (including any intake or discharge pipe or temporary gauging system) and associated safety signs or markers in, on, under or over the bed of a lake, river, modified watercourse or wetland and any associated bed disturbance and discharge resulting from the carrying out of the activity that

[96] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

does not meet one or more of the above conditions of Rule 58(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. the design and location of the structure;
2. effects on river morphology and dynamics (including erosion and deposition), aquatic and riverine ecosystems and habitats, the spiritual and cultural values and beliefs of the tangata whenua, taonga species, landscape, natural character and amenity values, navigation and aviation hazards, public access and recreation values; and
3. any conditions in Rule 58(a) that cannot be met.

(c) The use of any cable, wire, pipe or pipeline (including any intake or discharge pipe or temporary gauging system) and associated safety signs or markers in, on or over the bed of a lake, river, modified watercourse or wetland is a permitted activity provided the following conditions are met:

(ai) general conditions (f), (i), (j) and (k) set out in Rule 55A; and

(i) the structure is not used to store hazardous substances.

(d) The use of any cable, wire, pipe or pipeline (including any intake or discharge pipe or temporary gauging system) and associated safety signs or markers in, on or over the bed of a lake, river, modified watercourse or wetland that does not meet one or more of the conditions of Rule 58(c) is a discretionary activity.

Rule 59[97] – Culverts (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The placement, erection or reconstruction of any culvert including any associated inlet or outlet protection structure in, on, under or over the bed of a river, modified watercourse or wetland (excluding natural wetlands), and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:

(ia) the general conditions set out in Rule 55A;

(i) the maximum diameter of any single culvert is 1,200 millimetres;

(iii) any culvert is positioned so that its alignment is the same as the river;

(iv) any culvert is designed to pass flood flows (either through, around or over the culvert) and does not increase the risk of flooding to neighbouring properties;

(v) the invert (or bottom) of any culvert is installed to a depth of either 300 millimetres below the natural bed level or one-third of the diameter of the culvert, whichever is the lesser;

(vi) any culvert is purpose built for the passage of water (i.e. not a drum, container or other item not designed as a culvert);

(viii) fill over any culvert is not greater than 4 metres (the vertical distance measured from the crest of the fill to the natural bed at the downstream invert of the structure); and

(ix) any structure is not within any mātaitai, nohoanga, or taiāpure.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the*~~

[97] Appeal to Environment Court by (ii) Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

~~*archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The placement, erection or reconstruction of any culvert including any associated inlet or outlet protection structure in, on, under or over the bed of a river, modified watercourse or wetland, and any associated bed disturbance and discharge resulting from carrying out the activity, that does not meet one or more of the conditions of Rule 59(a) is a controlled activity.

The Southland Regional Council will exercise control over the following matters:

1. the design and location of the culvert;
2. any effects on flood risk, river morphology and dynamics (including erosion and deposition), aquatic and riverine ecosystems and habitat (including fish passage), taonga species, the spiritual and cultural values and beliefs of the tangata whenua, landscape, natural character and amenity values, navigational safety and public access; and
3. any conditions in Rule 59(a) that cannot be met.

(c) The use, repair and maintenance of any culvert including any associated inlet or outlet protection structure in, on, under or over the bed of a lake, river, modified watercourse or wetland is a permitted activity provided the following conditions are met:

(ai) general conditions (f), (i), (j) and (k) set out in Rule 55A.

(d) The use, repair and maintenance of any culvert including any associated inlet or outlet protection structure in, on, under or over the bed of a lake, river, modified watercourse or wetland that does not meet one or more of the conditions of Rule 59(c) is a discretionary activity.

Rule 59A[98] – On-farm sediment traps (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The construction, excavation, modification or maintenance of an on-farm sediment trap in, on, under or over the bed of any intermittent or ephemeral river and any associated bed disturbance, removal of aquatic weeds and plants and associated discharge resulting from carrying out the activity is a permitted activity provided the following conditions are met:

(i) general conditions (e), (f), (g), (h) and (i) set out in Rule 55A;

(ii) the construction, excavation, modification or maintenance of the sediment trap is undertaken solely for sediment control purposes or maintaining the capacity and effective functioning of the sediment trap;

(iii) the sediment trap is not within any mātaitai, nohoanga, or taiāpure;

(iv) the sediment trap has:

(1) fencing to prevent stock access; and

(2) bank batter slope no less than 3 horizontal:1 vertical; and

(v) the construction, excavation, modification or maintenance of the sediment trap does not result in the destabilisation of any lawfully established structure;

(vi) any build-up of sediment within the sediment trap which may adversely affect flood risk, drainage capacity, or bed or bank stability is removed as soon as practicable.

[98] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

(b) The construction, excavation, modification or maintenance of an on-farm sediment trap in, on, under or over the bed of any intermittent or ephemeral river and any associated bed disturbance, removal of aquatic weeds and plants, and associated discharge resulting from carrying out the activity that is not permitted by Rule 59A(a) is a discretionary activity.

Rule 60[99] – Dams and weirs (Consent Orders)

Note 1: *The Building Act 2004 specifies obligations on the owner of a dam as defined in that Act regarding classification, certification and other matters of safety. Plan users should contact the Southland Regional Council to inquire about these requirements in each case.*

Note 2: *This rule manages dam and weir structures. Any associated take, diversion, use or discharge of water is covered by other rules.*

Note 3: *This rule does not apply to weirs constructed for erosion control purposes under Rule 61.*

Note 4: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The placement, erection or reconstruction of any dam or weir in, on or over the bed of a lake, river, modified watercourse and the associated damming of water (either inside or outside the bed), and any associated bed disturbance and discharge resulting from the carrying out of the activity, is a permitted activity provided the following conditions are met:

(ia) the general conditions set out in Rule 55A;

(i) if the maximum height of the dam or weir exceeds 4 metres or the impoundment volume exceeds 20,000 cubic metres of water or other fluid, a building consent is obtained for the dam or weir prior to its construction commencing;

(iii) the dam or weir is located below a catchment area of less than 500 hectares; and

(iv) the dam or weir is not located upstream of any railway, formed public road, or residence where these are likely to be affected by any failure of the structure;

(v) the dam or weir has a spillway, or an auxiliary spillway, that is capable of safely conveying flood flows;

(vi) the dam or weir does not impound water or adversely affect drainage beyond the landholding on which it is constructed, unless agreed to in writing by the affected landowner;

(vii) the discharge from the dam or weir is to the original channel, and does not cause significant erosion of, or deposition on, the downstream bed or banks;

(viii) the dam or weir is not in the Mataura, Ōreti or Waikaia River;

(ix) For the purposes of Rule 60(a) the height of a dam or weir is the vertical distance from the crest of the dam or weir and must be measured:

(1) in the case of a dam or weir across a river, from the natural bed of the stream at the lowest downstream outside limit of the dam or weir; or

(2) in the case of a dam or weir not across a river, from the lowest elevation at the outside limit of the dam or weir; or

(3) in the case of a canal, from the invert of the canal; and

(x) the structure is not within any mātaitai, nohoanga, or taiāpure.[100]

[99] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

[100] Mātaitai and taiāpure defined in the introduction at page 10.

(ab) The use of any dam or weir is a permitted activity provided the following conditions are met:
(i) general conditions (f), (i), (j) and (k) set out in Rule 55A; and
(ii) the structure is lawfully established.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The use, placement, erection or reconstruction of any dam or weir in, on or over the bed of a lake, river, modified watercourse and the associated damming of water (either inside or outside the bed), and any associated bed disturbance and discharge resulting from the carrying out of the activity, that does not meet one or more of the conditions of Rule 60(ab) or Rule 60(a) respectively and is not a non-complying activity under Rule 60(c) or a prohibited activity under Rule 60(d) is a discretionary activity.

(c) The use, placement or erection of any dam or weir on the main stems of the Aparima River, downstream of the Aparima Forks at NZ Topo 50 CE09 051 299[101], and the Ōreti River, downstream of Rocky Point at NZ Topo 50 CE09 274 327[102] is a non-complying activity.

(d) The placement or erection of dams or weirs in the Mataura or Waikaia River and in the Ōreti River main stem from Rocky Point at NZ Topo 50 CE09 274 327[103] upstream to the forks at NZ Topo 50 CC09 245 832[104] is a prohibited activity.

Rule 61[105] – Erosion control structures (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) Notwithstanding any other rule in this Plan, the placement or reconstruction of rock rip rap, gabion baskets or anchored or layered trees in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity, is a permitted activity provided the following conditions are met:
(ai) the general conditions set out in Rule 55A;
(i) the work is not in a lake bed, national park, reserve or land in respect of which there is a covenant under the Conservation Act 1987, Queen Elizabeth the Second Trust Act 1977 or Reserves Act 1977;
(ii) any anchored or layered trees are anchored to the bed or banks so that they will not wash away in a 2% Annual Exceedance Probability flood event;
(iii) there is no planting of pest plant species as identified in the Regional Pest Management Strategy for Southland 2013 or any replacement plan prepared under the Biosecurity Act, or Biosecurity NZ Register of Unwanted Organisms, in circumstances where the planting of those pest plant species is restricted under the Biosecurity Act; and
(iv) the structure is not within any mātaitai, nohoanga, or taiāpure.

[101] The equivalent NZ260 map reference is D44 151 919 and the equivalent NZTM2000 coordinates are 1205134 mE 4929948 mN
[102] The equivalent NZ260 map reference is E44 373 946 and the equivalent NZTM2000 coordinates are 1227364 mE 4932686 mN
[103] The equivalent NZ260 map reference is E44 373 946 and the equivalent NZTM2000 coordinates are 1227364 mE 4932686 mN
[104] The equivalent NZ260 map reference is E42 345 450 and the equivalent NZTM coordinates are 1224494 mE 4983155 mN
[105] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

~~**Note:** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The placement or reconstruction of preformed concrete in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity, is a permitted activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A;

(i) the river is less than 3 metres wide on average over the area of construction;

(ii) the placement of the concrete is for the sole purpose of remedying or mitigating erosion;

(iii) the work is not in a lake bed, national park, reserve or land in respect of which there is a covenant under the Conservation Act 1987, Queen Elizabeth the Second Trust Act 1977 or Reserves Act 1977;

(iv) any individual concrete piece has a minimum length of 300 millimetres;

(v) there is no concrete that has not set or loose cement present;

(vi) the concrete has not been used in direct contact with chemicals that are toxic to aquatic life;

(vii) the concrete does not contain asbestos pipe or asbestos cement mixtures; and

(viii) reinforcing steel does not protrude from the completed works.

~~**Note:** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(c) The placement, erection or reconstruction of rock rip rap, gabion baskets or anchored or layered trees or pre-formed concrete in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity, that does not meet one or more of the conditions listed in Rule 61(a) or Rule 61(b) is a discretionary activity.

Rule 62[106] – Fords (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The excavation of the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity for the purpose of constructing a ford is a permitted activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A.

~~**Note:** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

[106] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

(b) The excavation of the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity for the purpose of constructing a ford that does not meet one or more of the conditions in Rule 62(a), or the placement and erection of any ford involving a structure such as a concrete pad in, on or over the bed of a river or lake, is a discretionary activity.

(c) The use of any ford in, on or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity is a permitted activity provided the following conditions are met:

(ai) general conditions (f), (i), (j) and (k) set out in Rule 55A;

(i) the ford is lawfully established; and

(ii) where the ford is used as a vehicle crossing, the activity meets the conditions set out in Rule 62(a).

(d) The use of any ford in, on or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity that does not meet one or more of the conditions in Rule 62(c) is a discretionary activity.

Rule 63 – Moorings and signs

Note: *The installation of moorings within the National Parks will require a Department of Conservation Concession.*

(a) The placement, erection or reconstruction of any mooring or stand-alone sign in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from carrying out the activity is a permitted activity provided the following conditions are met:

(ai) general condition (k) set out in Rule 55A;

(i) the mooring or stand-alone sign is located in Fiordland National Park (including lakes Te Anau, Manapōuri, Monowai and Hauroko);

(ii) in the case of a mooring, the mooring block is free of contaminants including oil and grease;

(iii) in the case of a mooring, the use of the mooring does not interfere with the use of existing lawful moorings;

(iv) where the mooring or stand-alone sign has been moved to the site from any other area, it is effectively cleaned to prevent the spread of pest species; and

(vi) the mooring or stand-alone sign is not within any mātaitai, nohoanga, or taiāpure.

(b) The placement, erection or reconstruction of any mooring or stand-alone sign in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from carrying out the activity that does not meet one or more of the conditions of Rule 63(a) is a restricted discretionary activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A.

The Southland Regional Council will restrict its discretion to the following matters:

1. the location of the mooring or stand-alone sign; and
2. any effects on natural character and amenity values, the spiritual and cultural values and beliefs of the tangata whenua, taonga species, existing users and navigational safety, suitability of the mooring for its purpose, and maintenance requirements.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(c) The use of any mooring or stand-alone sign in, on, under or over the bed of a lake, river or modified watercourse is a permitted activity provided the following conditions are met:

(ai) general conditions (f), (i), (j) and (k) set out in Rule 55A;

(i) the mooring or stand-alone sign is located in Fiordland National Park (including lakes Te Anau, Manapōuri, Monowai and Hauroko); and

(ii) in the case of a mooring, the use of the mooring does not interfere with the use of existing lawful moorings.

(d) The use of any mooring or stand alone sign in, on or over the bed of a lake, river or modified watercourse that does not meet one or more of the conditions of Rule 63(c) is a discretionary activity.

Rule 63A[107] – Navigational aids and health and safety signs (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The placement, erection or reconstruction of a navigational aid or health and safety sign in, on, under or over the bed of a lake, river or modified watercourse, and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:

(i) where the navigational aid or health and safety sign has been moved to the site from any other area, it is effectively cleaned to prevent the spread of pest species; and

(ii) the navigational aid or health and safety sign is maintained in a state of good repair.

(b) The placement, erection or reconstruction of a navigational aid or health and safety sign in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance that does not meet one or more of the conditions of Rule 63A(a) is a discretionary activity.

(c) The use of a navigational aid or health and safety sign in, on, under or over the bed of a lake, river or modified watercourse is a permitted activity provided the following conditions are met:

(i) general conditions (f), (i), (j) and (k) as set out in Rule 55A.

(d) The use of a navigational aid or health and safety sign in, on or over the bed of a lake, river or modified watercourse that does not meet one or more of the conditions of Rule 63A(c) is a discretionary activity.

[107] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

Rule 64[108] – Temporary canoe gate or ski lane markers (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The use, placement, erection or reconstruction of any temporary canoe gate or ski lane marker in, on or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from carrying out the activity is a permitted activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (a), (b), (c), (d) and (e) of that Rule;

(i) the structure remains in place no longer than two weeks;[109] and

(ii) the structure does not cause a hazard to boating/navigation.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The use, placement, erection or reconstruction of any canoe gate or ski lane marker in, on or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity that cannot meet one or more of the above conditions, is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. the location of the structure;
2. any effects on natural character and amenity values, the spiritual and cultural values and beliefs of the tangata whenua and navigational safety; and
3. any conditions in Rule 64(a) that cannot be met.

Rule 65 – Whitebait stands

(a) The use of any lawfully established whitebait stand in, on, under or over the bed of a river or modified watercourse is a controlled activity provided the following conditions are met:

(i) the stand is secure against fluvial and coastal processes;

(ii) the stand is located so that it does not deflect flow into the bank or increase water velocities near the bank, if the stand is either on piles or is a floating pontoon construction; and

(iii) no stand exceeds more than one third of the width of the river or modified watercourse at that place at that time.

The Southland Regional Council will exercise its control over the following matters:

1. any effects on amenity values, river morphology and dynamics (including erosion and deposition), public safety and public access.

(b) The maintenance and repair of any lawfully established whitebait stand in, on, under or over the bed of a river or modified watercourse (including the placement, erection and use of a

[108] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

[109] The "two weeks" can include three consecutive weekends

replacement for a lawfully established whitebait stand) is a permitted activity provided the following conditions are met:

(i) the nature, scale and dimensions of the stand are unchanged;
(ii) the bed is not disturbed or any disturbance is corrected within 24 hours;
(iii) no debris from maintenance of the stand enters the river or modified watercourse or bed;
(iv) for a replacement stand, the original stand has been destroyed or it is necessary to move the stand due to natural alterations to the course of the river or modified watercourse, or bank erosion, or high water mark alterations;
(v) the replacement stand is located as close as practicable to the site of the original stand and at least 20 metres distant from any other existing stand;
(vii) the replacement stand does not impede public access to or along the bed of the river or modified watercourse; and
(viii) any debris from the original stand is removed in accordance with Rule 65(d).

(c) The alteration or reconstruction of any lawfully established whitebait stand on the existing site in, on, under or over the bed of a river or modified watercourse is a permitted activity provided the following conditions are met:

(i) the nature, scale and dimensions of the stand are unchanged; and
(ii) the bed beneath, above or beyond the structure is not disturbed or any disturbance is corrected within 24 hours.

(d) The removal of any whitebait stand in, on, under or over the bed of a river or modified watercourse is a permitted activity provided all debris from the stand is removed from the bed.

(f) The placement or erection of any replacement whitebait stand in, on or over the bed of a lake, river or modified watercourse that does not comply with the conditions of Rule 65(b) is a prohibited activity.

Rule 65A – Maimai

(a) The erection, placement, use, maintenance or alteration of any maimai in, on, or over the bed of a lake, river, modified watercourse or wetland is a permitted activity provided the following conditions are met:

(i) the general conditions in Rule 55A other than conditions (c), (d), (e), (g) and (h) of that Rule;
(ii) the maimai does not exceed 10 square metres in area;
(iii) the erection or placement does not impede any legal access to the lakes, rivers, modified watercourse or wetland;
(iv) the maimai is on piles; and
(v) the maimai is secure against fluvial processes.

(b) The erection, placement, use, maintenance or alteration of any maimai in, on, or over the bed of a lake, river, modified watercourse or wetland that does not meet one or more of the conditions of Rule 65A(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. any effects on flood risk, river morphology and dynamics (including erosion and deposition), aquatic and riverine ecosystems and habitats (including fish passage), the spiritual and cultural values and beliefs of the tangata whenua, taonga species,

landscape, natural character and amenity values, navigation hazard, public access and recreation values;

2. the actual and potential environmental effects of not meeting the condition or conditions of Rule 65A(a).

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

Rule 66[110] – Maintenance of structures (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) Unless otherwise stated in this Plan, the maintenance of any structure in, on, under or over the bed of a lake, river, modified watercourse or wetland and any associated bed disturbance, gravel extraction and discharge resulting from the carrying out of the activity, is a permitted activity provided the following conditions are met:

(ai) the general conditions in Rule 55A other than conditions (d), (j) and (k) of that Rule;

(i) the structure is lawfully established; and

(v) any bed disturbance is the minimum necessary to undertake the activity and returned as near as practicable to its original channel shape, area, depth, or gradient on completion of the activity (with the exception of revegetation or where gravel is required to be moved).

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) Unless otherwise stated in this Plan, the maintenance of any structure in, on, under or over the bed of a lake, river, modified watercourse or wetland and any associated bed disturbance, gravel extraction and discharge from carrying out the activity that does not meet one or more of the conditions of Rule 66(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. any conditions in Rule 66(a) that cannot be met; and
2. any effects on taonga species amenity values, natural character and outstanding natural features.

Rule 67[111] – Alteration or extension of structures (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological*

[110] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041
[111] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.

(a) Unless otherwise stated in the Plan, the alteration or extension of any structure in, on, under or over the bed of a lake, river or modified watercourse, and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A;

(i) the structure is lawfully established; and

(iii) the alteration or extension does not involve an increase in the number or area of any support structures in the bed of the lake, river or modified watercourse.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) Unless otherwise stated in this Plan, the alteration or extension of any structure in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity that does not meet one or more of the conditions of Rule 67(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. any effects on the morphology and dynamics (including erosion and deposition) of the lakes, rivers or modified watercourses, natural character and amenity values, the spiritual and cultural values and beliefs of the tangata whenua and taonga species; and
2. any conditions in Rule 67(a) that cannot be met.

Rule 68[112] – Demolition or removal of structures (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) Unless otherwise stated in this Plan, the demolition or removal of any structure in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from carrying out the activity is a permitted activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule; and

(xii) demolition or removal of the structure does not cause significant erosion of, or deposition on, the surrounding bed or banks.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

[112] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

(b) Unless otherwise stated in this Plan, the demolition or removal of any structure in, on, under or over the bed of a lake, river or modified watercourse and any associated bed disturbance and discharge resulting from the carrying out of the activity that does not meet one or more of the conditions of Rule 68(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. any effects on the spiritual and cultural values and beliefs of the tangata whenua, taonga species, natural character values and outstanding natural features and amenity values; and
2. any conditions in Rule 68(a) that cannot be met.

Rule 69 – Structures not covered by, or not complying with, rules

Any use, erection, maintenance, reconstruction, placement, replacement, alteration, extension, removal or demolition of any structure in, on, under or over the bed of a lake, river, modified watercourse or wetland, and any associated bed disturbance and discharge resulting from carrying out the activity, that is not provided for by a rule in this Plan, or that does not meet one or more of the conditions set out by a rule, is a discretionary activity (unless the Plan specifically provides that an activity that fails to meet the conditions set out by a rule is a controlled activity or a restricted discretionary activity).

Bed disturbance activities in river and lake beds and wetlands (Consent Orders)

Rule 70[113] – Stock exclusion from water bodies

(a) From 1 July 2020, the disturbance of roosting and nesting areas of the black fronted tern, black billed gull, banded dotterel or black fronted dotterel located in the bed of a lake, river (including an ephemeral river), modified watercourse, or natural wetland by stock including cattle, deer, pigs or sheep is a prohibited activity.

(b) From 1 July 2020, the disturbance of the bed of a Regionally Significant Wetland or Sensitive Water Body listed in Appendix A by stock including cattle, deer, pigs or sheep is a prohibited activity.

(c) The disturbance of the bed of a river (excluding ephemeral rivers where stock access is permitted under Rule 20(aa)) or modified watercourse for the purposes of moving stock including cattle, deer, pigs or sheep (but excluding dairy cattle on a dairy platform or on land used for dairy support) is a permitted activity provided the stock are being supervised and are actively driven across the water body in one continuous movement.

(d) Bed disturbance activities that do not comply with Rule 70(c) are a non-complying activity.

(e) Other than as provided for by Rules 70(c) and 70(d), the disturbance of the bed of a lake, river (excluding ephemeral rivers where stock access is permitted under Rule 20(aa)), modified watercourse or natural wetland by cattle, deer or pigs is a permitted activity prior to the dates set out in Table 1 for the land having listed land slopes after which time it is respectively a discretionary activity on that land.

Table 1: Timetable for stock exclusion from water bodies

<table>
<tr><th></th><th colspan="3">Land slope (as classified by the LRI slope dataset)</th></tr>
<tr><th>Farm/stock type</th><th>Plains (0-3°)</th><th>Undulating/rolling land (>3-15°)</th><th>Steeper land (>15° and over)</th></tr>
<tr><td>Dairy cattle (on dairy platforms) and pigs</td><td colspan="3">All water bodies that are:
· over 1 metre wide from 1 July 2017 on all slopes
· less than 1 metre wide from 1 July 2020 on the plains and undulating/rolling land</td></tr>
<tr><td>Dairy support (on either land owned/leased by the dairy farmer or third party land)</td><td>All water bodies from 1 July 2022</td><td>All water bodies over 1 metre wide from 1 July 2022</td><td>All water bodies where break feeding occurs from 1 July 2022</td></tr>
<tr><td rowspan="2">Beef cattle and deer</td><td>All water bodies from 1 July 2025</td><td colspan="2">All water bodies over 1 metre wide from 1 July 2030, unless the average stocking rate on the land directly adjacent to the water body is less than 6 stock units per hectare</td></tr>
<tr><td colspan="3">All water bodies where break feeding occurs from 1 July 2022</td></tr>
</table>

[113] Appeal to Environment Court by (i) Beef + Lamb New Zealand ENV-2018-CHC-000034, 000035
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

CV – fifth Interim Decision (ephemeral rivers)
CV – Sixth Interim Decision (the balance)

Rule 70 – Stock exclusion from water bodies

(a) ~~From 1 July 2020,~~ The disturbance of roosting and nesting areas of the black fronted tern, black billed gull, banded dotterel or black fronted dotterel located in the bed of a lake, river, (including an ephemeral river), or modified watercourse~~, or natural wetland~~ by stock including cattle, deer, pigs or sheep is a prohibited activity.

(b) ~~From 1 July 2020,~~ The disturbance of the bed of a Regionally Significant Wetland or Sensitive Water Body listed in Appendix A by stock including cattle, deer, pigs or sheep is a prohibited activity.

(c) The disturbance of the bed of a river ~~(excluding ephemeral rivers where stock access is permitted under Rule 20(aa))~~ or modified watercourse for the purposes of moving stock including cattle, deer, pigs or sheep (but excluding dairy cattle on a dairy platform or on land used for dairy support) is a permitted activity provided the stock are being supervised and are actively driven across the water body in one continuous movement.

(ca) The disturbance of the bed of a lake, river or modified watercourse by sheep, other than as regulated by Rule 70(a), 70(b) and 70(cb), is a permitted activity, provided the following conditions are met:

(i) the waterbody is not already fenced to prevent sheep access;

(ii) the sheep are not being break fed or intensively winter grazed;

(iii) there is no significant de-vegetation leading to exposure of soil of the bed and banks, pugging or alteration to the profile of the bed and banks, other than at fords or stock crossings; and

(iv) A Farm Environmental Management Plan that includes identification of how access by sheep will be managed is:

(A) prepared, and certified, and ~~implemented~~[114] compliance with it is audited, in accordance with Appendix N; and

(B) implemented by the landholder completing the practices, actions, and mitigations specified in the Farm Environmental Management Plan in accordance with the timeframes set out in that Plan; and

(ca1) The disturbance of the bed of a waterbody within a natural wetland for grazing by sheep is a discretionary activity.

(cb) Other than as provided for in Rule 70(ca1), ~~T~~the use of land within a natural wetland or the disturbance of the bed of a water body within a natural wetland for access or grazing stock is a non-complying activity.

(d) Bed disturbance activities that do not comply with Rule 70(c) are a non-complying activity.

(e) Other than as provided for by Rules 70(c), 70(ca), 70(cb) and 70(d), the disturbance of the bed of a lake, river ~~(excluding ephemeral rivers where stock access is permitted under Rule 20(aa)),~~ modified watercourse, open drain, or ~~natural wetland~~ by cattle, deer or pigs is a permitted activity prior to the dates set out in Table 1 for the listed land slopes after which time it is respectively a discretionary activity on that land.

Table 1: Timetable for stock exclusion from waterbodies (other than wetlands)

	Land slope (as classified by the LRI slope dataset)		
Farm/stock type	**Plains (0-3°)**	**Undulating/rolling land (>3-15°)**	**Steeper land (>15° and over)**

[114] Fifth Interim Decision (redundant term)

Dairy cattle (on dairy platforms) and pigs	All water bodies <u>(including open drains)</u> that are: • over 1 metre wide from 1 July 2017 on all slopes • less than 1 metre wide from 1 July 2020 on the plains and undulating/rolling land		
Dairy support ~~(on either land owned/leased by the dairy farmer or third party land)~~	All water bodies, <u>and open drains</u> from 1 July 2022	All water bodies, <u>and open drains</u> over 1 metre wide from 1 July 2022	All water bodies, <u>and open drains</u> where break feeding occurs from 1 July 2022
Beef cattle and deer	All water bodies <u>(including open drains)</u> from 1 July 2025	All water bodies <u>(including open drains)</u> over 1 metre wide from 1 July 2030, unless the average stocking rate on the land directly adjacent to the water body is less than 6 stock units per hectare	
	All water bodies <u>(including open drains)</u> where break feeding <u>or supplementary feeding</u> occurs from 1 July 2022.		

Rule 71 – Channel realignment, widening or deepening

(a) Except as provided for elsewhere in this Plan, the excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of realigning, widening or deepening any channel within the bed is a discretionary activity.

Rule 72[115] – Dry cuts (Consent Orders)

Note: *<u>In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.</u>*

(a) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of making a dry cut is a restricted discretionary activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (c), (i), (j) and (k) of that Rule.

The Southland Regional Council will restrict its discretion to the following matters:

1. the design and location of the work; and
2. any effects on lakes, rivers or modified watercourses, morphology and dynamics (including erosion and deposition), aquatic and riverine ecosystems and habitat, public access, the spiritual and cultural values and beliefs of the tangata whenua, landscape, natural character and amenity values, outstanding natural features, and navigation hazards.

~~Note:~~ *~~In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.~~*

[115] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

(b) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of making a dry cut that does not comply with the conditions of Rule 72(a) is a discretionary activity.

Rule 73[116] – Gravel extraction (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel or aggregate is associated with the maintenance of structures which is otherwise authorised under Rule 66) is a restricted discretionary activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule;

(i) the quantity of gravel removed is less than 120 cubic metres per year;

(ii) there is no extraction from flowing water; and

(iii) the area is left level and tidy on completion of the activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. the quantity of material extracted and location of the extraction; and
2. any effects on infrastructure, river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character and amenity values, navigation hazard, public access, recreation values and the spiritual and cultural values and beliefs of the tangata whenua.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel is associated with the maintenance of structures which is otherwise authorised under Rule 66) for flood or erosion control or the protection of infrastructure is a restricted discretionary activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule.

The Southland Regional Council will restrict its discretion to the following matters:

1. the quantity of material extracted and location of the extraction; and
2. the design of the works ~~and the quantity of material extracted~~; and
3. any effects on infrastructure, flood risk, river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character, navigation hazard, public access, recreational values and the spiritual and cultural values and beliefs of the tangata whenua.

[116] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(c) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel is associated with the maintenance of structures which is otherwise authorised under Rule 66) that cannot meet the conditions in Rules 73(a) or 73(b) and is a discretionary activity.

Rule 74[117] – Wetlands (Consent Orders)

(a) The use of land within a wetland for the purposes of:

(i) maintaining or enhancing the wetland, or

(ii) maintaining existing authorised structures within the wetland; or

(iii) removing plant matter for the purposed of mahinga kai undertaken in accordance with Tikanga Māori;

is a permitted activity provided the following conditions are met:

(1) there is no destruction or removal of any indigenous vegetation from any natural wetland, unless the activity is for the purpose of mahinga kai undertaken in accordance with Tikanga Māori;

(2) there is no reduction in the size of the wetland;

(3) there is no flooding or ponding caused on any land owned or occupied by another person; and

(4) there is no establishment of pest plant species that:

(A) are listed in the Regional Pest Management Strategy for Southland 2013 or any replacement plan prepared under the Biosecurity Act, or Biosecurity NZ Register of Unwanted Organisms, in circumstances where the planting of those pest plant species is restricted under the Biosecurity Act; or

(B) may damage existing biodiversity values of the wetland; or

(C) will form the dominant vegetation type in the wetland.

~~(ab) The use of land within a wetland for commercial peat harvesting is a discretionary activity provided the following conditions are met:~~

~~(i) the applicant can show, by way of aerial photographs or other documentary evidence, that a commercial peat harvesting operation occurred within the wetland at some time during the period between 30 June 2006 and 30 June 2016; and~~

~~(ii) there is no establishment of pest plant species that:~~

~~(1) are listed in the Regional Pest Management Strategy for Southland 2013 or any replacement plan prepared under the Biosecurity Act, or Biosecurity NZ Register of Unwanted Organisms, in circumstances where the planting of those pest plant species is restricted under the Biosecurity Act; or~~

~~(2) may damage existing biodiversity values of the wetland; or~~

~~(3) will form the dominant vegetation type in the wetland.~~

(b) The use of land within a wetland (excluding a natural wetland) that is for one or more of the purposes listed in Rule 74(a) but which does not comply with the conditions of Rule 74(a), or the use of land within a wetland that is not a natural wetland that is not for one or more of the purposes listed in Rule 74(a), is a discretionary activity.

[117] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(ii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

(c) The use of land within a natural wetland that is not for one or more of the purposes listed in Rule 74(a) ~~or 74(ab)~~ is a non-complying activity.

Rule 75[118] – Vegetation flood debris[119] removal (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The removal of vegetation flood debris obstructing water flow, including plants dislodged and transplanted during flood flows, from the bed of a lake, river or modified watercourse, and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (d), (i), (j) and (k) of that Rule;

(i) the removal of the material is for the purpose of flood or erosion control or maintaining the integrity of infrastructure; and

(ii) following the removal of material, the bed of the lake, river or modified watercourse which has been disturbed is returned as near as practicable to its original channel shape, area, depth and gradient.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The removal of vegetation flood debris obstructing water flow, including plants dislodged and transplanted during flood flows, from the bed of a lake, river or modified watercourse, and any associated bed disturbance and discharge resulting from the carrying out of the activity, that does not meet one or more of the conditions of Rule 75(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. any effects on flood risk, rivers, modified watercourses, or lake morphology and dynamics (including erosion or deposition), and aquatic and riverine ecosystems and habitat; and
2. any conditions in Rule 75(a) that cannot be met.

Rule 76 – Vegetation planting

(a) The introduction or planting of any plant, or part of any plant, in the bed or margins of a lake, river, modified watercourse or wetland is a permitted activity, provided the following conditions are met:

(i) the planting is undertaken pursuant to a Farm Environmental Management Plan prepared in accordance with Appendix N, or is for the purposes of soil conservation or river control, or for enhancing biodiversity, or for enhancing mahinga kai or taonga species identified in Appendix M;

[118] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041
[119] Refer to the Glossary for the definition of "Vegetation flood debris"

(ia) the planting does not restrict access to the lake, river, modified watercourse or wetland that is necessary for giving effect to Rule 78(a) or (b);

(ii) the planting is not production forestry (excluding forestry species planted pursuant to the Soil Conservation and Rivers Control Act 1941); and

(iii) no plants listed in the Regional Pest Management Strategy for Southland 2013 or any replacement plan prepared under the Biosecurity Act, or Biosecurity NZ Register of Unwanted Organisms, are introduced or planted in circumstances where the planting of those pest plant species is restricted under the Biosecurity Act.

(c) The introduction or planting of any plant, or part of any plant, in the bed or margins of a lake, river, modified watercourse or wetland not provided for under Rule 76(a) is a discretionary activity.

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

Rule 77[120] – Vehicles and machinery (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The entry into or passage across the bed of a lake, river or modified watercourse by any wheeled or tracked vehicle or machine and any associated bed disturbance and discharge resulting from carrying out the activity is a permitted activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (a), (i), (j) and (k) of that Rule;

(i) there is no alteration to the original profile of the bed; and

(ii) the activity is necessary for the purposes of crossing over the bed, or carrying out another permitted or consented activity within the bed.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The entry into or passage across the bed of a lake, river or modified watercourse by any wheeled or tracked vehicle or machine, and any associated bed disturbance and discharge resulting from the carrying out of the activity, that does not meet one or more of the conditions of Rule 77(a) is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. the location, type of vehicle or machine, and frequency and duration of the activity;
2. any effects on water quality, river morphology and dynamics (including erosion or deposition), taonga species, and aquatic and riverine ecosystems and habitat; and
3. the conditions in Rule 77(a) that cannot be met.

[120] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

Rule 78[121] – Weed and sediment removal for drainage maintenance (Consent Orders)

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(a) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall, and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:

(ai) general conditions (e), (f), (g), (h) and (l) set out in Rule 55A;

(i) the activity is undertaken solely to maintain or restore the drainage capacity of a modified watercourse that has previously been modified or maintained for drainage maintenance or restoration purposes at that location;

(ii) the activity is restricted to the removal of aquatic weeds and plants or sediment deposits;

(iia) the removal of river bed material other than aquatic weeds, plants, mud or silt is avoided as far as practicable;

(iii) any incidental bed disturbance is only to the extent necessary to undertake the activity and must not result in lowering of the bed below previously modified levels;

(iv) upon completion of the activity, fish passage is not impeded as a result of the activity;

(v) the operator takes all reasonable steps to return any fish captured or stranded by the activity to water immediately;

(vi) between the beginning of June and the end of October, there is no disturbance of the spawning habitat of trout; and

(xiii) where the modified watercourse is spring-fed, removal of aquatic weeds and plants is only to the extent that is necessary to undertake the activity and is kept to the absolute minimum.

~~***Note:*** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*~~

(b) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall and any associated bed disturbance and discharge resulting from the carrying out of the activity that cannot meet one or more of the conditions of Rule 78(a) is a discretionary activity.

Southland Regional Council (final):

Rule 78 – Weed and sediment removal <u>from modified watercourses</u> ~~for drainage maintenance~~

[121] Appeal to Environment Court by (i) Director-General of Conservation ENV-2018-CHC-000036
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041
(iv) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047
(v) Royal Forest and Bird Protections Society of New Zealand Incorporated ENV-2018-CHC-000050

(a) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall, and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:

(ai) general conditions (e), (f), (g), (h) and (l) set out in Rule 55A;

(i) the activity is undertaken solely to maintain or restore the drainage capacity of a modified watercourse that has previously been modified or maintained for drainage maintenance or restoration purposes at that location;

(ii) the activity is restricted to the removal of aquatic weeds and plants or sediment deposits, provided that at least 95% of the sediment removed shall have a grain size of less than 2mm;

(iia) the removal of river bed material other than aquatic weeds, plants, mud or silt is avoided as far as practicable;

(iii) any incidental bed disturbance is only to the extent necessary to undertake the activity and must not result in lowering of the bed below previously modified levels;

(iv) upon completion of the activity, fish passage is not impeded as a result of the activity;

(v) the operator takes all reasonable steps to return any fish captured or stranded by the activity to water immediately preferably to a location upstream of the activity;

(vi) between the beginning of June and the end of October, there is no disturbance of the spawning habitat of trout; and

(xiii) where the modified watercourse is spring-fed, removal of aquatic weeds and plants is only to the extent that is necessary to undertake the activity and is kept to the absolute minimum; and

(xiv) the modified watercourse is not shown in Map Series 8 as a habitat of threatened non-diadromous galaxias.

(b) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall and any associated bed disturbance and discharge resulting from the carrying out of the activity that cannot meet one or more of the conditions of Rule 78(a) is a discretionary activity.

Rule 79 – High country burning

(b) The use of land for the burning of vegetation in Zone B of the Fire Hazard Zones (Map Series 5) between 1 May and 30 September in any one year is a permitted activity.

(c) The use of land for the burning of vegetation in Zone A, or in Zone B between 1 October and 30 April in any one year, of the Fire Hazard Zones (Map Series 5) is a restricted discretionary activity provided the following conditions are met:

(i) one of the following has been obtained, which covers the proposed burning of vegetation on land:

(2) a permit for burning in the hill and high country from the Fire and Emergency New Zealand; or

(3) a consent from the Commissioner of Crown Lands for burning on Crown pastoral leasehold land; or

(4) a resource consent or permit for burning from the relevant territorial local authority as determined by their district plans and/or bylaws.

(ii) the burning does not occur above 800 metres above mean sea level.

The Southland Regional Council will restrict its discretion to the following matters:

(1) Soil conservation and sediment control practices to be undertaken;
(2) Adverse effects on areas of significant indigenous vegetation and habitat that is in proximity to wetlands, and lakes and rivers and their margins.

(d) The use of land for the burning of vegetation within Zones A or B of the Fire Hazard Zones that does not comply with Rule 79(c) is a discretionary activity.

Financial Contributions

Introduction

Where the Southland Regional Council grants a resource consent under the rules in this Plan, it may impose a condition requiring that a financial contribution be made for the purposes specified in the Plan.

The term "financial contribution" is defined in section 108(9) of the RMA to mean a contribution of:

(a) money; or
(b) land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Māori land within the Meaning of the Te Ture Whenua Maori Act 1993 unless that Act provides otherwise; or
(c) a combination of money and land.

Under section 109(10) of the RMA a consent authority must not include a condition in a resource consent requiring a financial contribution unless:

(a) the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effects); and
(b) the level of contribution is determined in the manner described in the plan or proposed plan.

The following provisions reflect the requirements of the RMA and set out:

(a) the purposes of financial contributions;
(b) the manner in which the level of contribution will be determined; and
(c) matters to be considered by Southland Regional Council when deciding whether to impose a financial contribution.

Purposes of financial contributions
A financial contribution may be imposed as a condition of consent for the following:

Public access to and along rivers (excluding ephemeral rivers) and lakes
A financial contribution may be imposed as a condition of consent for any type of activity that will restrict or prevent public access to or along a river (excluding ephemeral rivers) or lake. The purpose of the financial contribution would be to provide for alternative public access in the vicinity of the activity or at another similar location or to otherwise compensate for the loss or reduction in access.

Beds of lakes, rivers and modified watercourses
A financial contribution may be imposed as a condition of consent for any type of activity that is likely to have adverse effects on the bed of a lake, river or modified watercourse in circumstances where such adverse effects will not be adequately avoided, remedied or mitigated.

The purpose of the financial contribution would be to offset the adverse effects by providing for the protection, restoration or enhancement of the beds of lakes, rivers or modified watercourses in the general area affected by the activity or, where this is not practical or desirable, in another location. This could include, but is not limited to, maintenance and planting of vegetation, sediment replenishment, erosion protection works and fencing.

Aquatic ecosystems and habitats
A financial contribution may be imposed as a condition of consent for any type of activity that is likely to have adverse effects on aquatic ecosystems and habitats, in circumstances where such adverse effects will not be adequately avoided, remedied or mitigated.

The purpose of the financial contribution would be to offset the adverse effects by providing for the protection, restoration or enhancement of aquatic ecosystems and habitats in the general area affected by the activity or, where this not practical or desirable, in another location.

Cultural and amenity values
A financial contribution may be imposed as a condition of consent for any type of activity that is likely to have adverse effects on amenity values or cultural values.

The purpose of the financial contribution would be to offset the adverse effects by providing for the protection, restoration or enhancement of cultural and amenity values in the general area affected by the activity or, where this is not practical or desirable, in another location. This could include, but is not limited to:

- Protection, restoration or enhancement of a place, area, building or feature;
- Landscaping or replanting to offset or compensate for the adverse effects of land clearance, land disturbance or the erection of structures.

General environmental compensation
A financial contribution may be imposed as a condition of consent for any type of activity that is likely to have adverse effects that will not be adequately avoided, remedied or mitigated, and where those effects can be offset or compensated for by positive effects elsewhere.

The purpose of the financial contribution would be to fund the works required to offset or compensate for the adverse effects.

Determination of Amount
The amount of contribution will be determined by reference to the matters set out below and will be an amount that is determined by the Southland Regional Council to be fair and reasonable in order to:

- Provide for alternative public access in the vicinity of the activity or at another similar location or to otherwise compensate for the loss or reduction in access. This may include the vesting of land or an interest in land, or the costs associated with the acquisition and vesting of land or an interest in land;
- Fund the works required to protect, restore or enhance the beds for lakes, rivers or modified watercourses, aquatic ecosystems and habitats, cultural and amenity values; or
- Otherwise fund the works required to offset or compensate for the adverse effects.

The amount will not exceed the actual and reasonable costs of measures required to offset the residual adverse effects likely to be caused by the activity that are not otherwise avoided, remedied or mitigated.

Matters to be Considered
Southland Regional Council will take into account the following matters when making decisions about the imposition of financial contributions:

(a) The purpose of the financial contributions is to offset or compensate for adverse effects likely to be caused by the activity and not otherwise avoided, remedied or mitigated by the consent holder.
(b) The extent to which adverse effects will be otherwise avoided, remedied or mitigated.
(c) The extent to which there will be positive effects of the activity which offset adverse effects.
(d) Whether the adverse effects of the activity are such that to allow the activity would be contrary to the objectives and policies in the Plan, and the purpose of the RMA.
(e) The circumstances and extent of any financial contributions previously imposed in relation to the activity.
(f) Whether granting a resource consent and requiring a financial contribution would be more effective in achieving the objectives and policies of the Plan and the purpose of the RMA (including recognition of the economic, social and cultural benefits of the activity), than declining consent or granting a consent without requiring a financial contribution.
(g) Financial contributions shall relate to the effects of the activity for which consent is granted.
(h) Financial contributions may not be appropriate in every case, even where there are adverse effects.
(i) The Southland Regional Council does not intend that adverse effects must be fully offset or compensated in every case by way of a financial contribution.

Glossary

This glossary is included to assist in the understanding of terms used in this Plan. Other sources, where used, are indicated accordingly.

The words in this Plan have the same meaning as in the Resource Management Act 1991, unless otherwise defined in this Plan or unless the context clearly requires otherwise.

Abstraction

Removing groundwater or removing water from a lake, river, artificial watercourse, modified watercourse or natural wetland.

Agrichemical

Any substance, whether inorganic or organic, man-made or naturally occurring, modified or in its original state, that is used to eradicate, modify or control flora and fauna. For the purposes of this Plan, it includes agricultural compounds, but excludes fertilisers, vertebrate pest control products and oral nutrition compounds.

Agricultural effluent

Effluent that is derived from livestock farming, but excludes excreta from individual animals, fertiliser application and non-point source discharges from normal farming practices.

Agricultural effluent storage

A pond, tank or structure, including ancillary structures, used for the containment, storage or treatment of agricultural effluent.

Allocation

The provisions of this Plan or any Water Conservation Order relating to the quantities of water available for abstraction or diversion.

Aquifer

Saturated rock or soil material capable of transmitting and yielding water in sufficient quantities for abstraction.

Artificial watercourse

Means a watercourse that is created by human action. It includes an irrigation canal, water supply race, canal for the supply of water for electricity power generation, a constructed duck pond (that is not part of an existing natural or modified watercourse or natural wetland), and a farm drainage channel. It does not include natural or modified natural watercourses, or artificial swales, kerb and channelling or other watercourses designed to convey stormwater, or subsurface drainage systems or ephemeral rivers.

Biodiversity

Means biological diversity.

Bore or well

Any structure or hole, regardless of the method of formation, that has been constructed to provide access to groundwater, excluding test pits and stormwater soakholes.

Catchment

The land area that contributes to the river's flow.

Cleanfill

Any material that when discharged into or onto land will have no or minimal adverse environmental effects, and includes virgin natural matter (e.g. clay, soil, sand, gravel or rock) and other inert products from construction or demolition activities (e.g. concrete or brick) that are free of:

(a) combustible, putrescible, degradable, compostable or leachable components (e.g. animal carcasses, green/garden waste, timber, bark, cork, tree roots, new asphalt);
(b) hazardous substances (e.g. coal tar, or asbestos);
(c) products or materials derived from the treatment, stabilisation or disposal of hazardous waste;
(d) materials of risk to human or animal health (e.g. medical or clinical waste); and
(e) liquid waste (including sludges).

Cleanfill site

Land used for the permanent disposal of cleanfill and no other type of material but excludes earthworks on the same landholding, earthworks associated with any road, driveway or track, and any area within a road reserve containing a formed road that is used for the deposition of roading material.

Closed landfill

A landfill containing 15,000 cubic metres or more of industrial or community waste that ceased to operate between 1970 and 2012 and remains closed but excludes farm landfills.

Community sewerage scheme

A scheme that collects and treats sewage from more than one landholding which is predominantly from residential housing, but may include a component of industrial and trade process effluent.

Community water supply

A permanent reticulated supply of potable water for use by 25 or more people for at least 60 days per annum.

Composting Toilet

A toilet system that uses a predominantly aerobic processing system that treats human excreta, typically with no water, via composting or managed aerobic decomposition which is often assisted by the addition of sawdust and straw or other carbon rich materials. The operation of some composting toilet systems may involve the transfer of the waste to a hot compost heap while other systems include a specially built tank in which waste is decomposed by aerobic bacteria.

Confined aquifer

An aquifer which is overlain by a low permeability or impermeable layer where water in the aquifer is under pressure.

Conspicuous change in clarity

Means more than a 20% reduction in clarity in all lakes, rivers, modified watercourses and wetlands, except for Lowland soft bed rivers where it means more than a 33% reduction in clarity.

Crest

In relation to a dam, means the uppermost surface of a dam, not taking into account any camber allowed for settlement, or any curbs, parapets, guard rails, or other structures that are not part of the water-retaining structure.

Critical infrastructure

Means infrastructure that provides services which, if interrupted, would have a significant effect on the wellbeing and health and safety of people and communities and would require reinstatement, and includes all strategic facilities.

Critical source area (CV – Fifth Interim Decison)

(a) a landscape feature like a gully, swale or a depression (including ephemeral flow paths) that accumulates runoff (sediment and nutrients) from adjacent flats and slopes, and delivers it to surface water bodies (including lakes, rivers, artificial watercourses and modified watercourses) or subsurface drainage systems; and

(b) a non-landscape feature that has high levels of contaminant losses, such as silage pits, fertiliser storage areas, stock camps and laneways.

Cultivation[122] (Consent Orders)

Preparing land for growing pasture or a crop by mechanical tillage, direct drilling, herbicide spraying, or herbicide spraying followed by over-sowing for pasture or forage crops (colloquially referred to as 'spray and pray'), but excludes: ~~excluding~~ ~~any~~

a. herbicide spraying undertaken solely for the control of pest plant species.

b. herbicide spraying for the establishment or maintenance of plantation forestry; and

c. stick raking or slash raking associated with a plantation forest

Damming

The impounding of all or part of the natural flow of any water that may involve an associated temporary or permanent structure.

Dairy farming of cows

The farming, including grazing, of milking cows on land during the milking season.

Dairy platform

An area of a landholding where dairy cows being milked on a daily basis are kept during the milking season.

Deposition

The laying down of solid material which has been carried by some natural agency (for example, rivers, wind, etc).

Diadromous

[122] Appeal to Environment Court by (iii) Southwood Export Limited & others ENV-2018-CHC-000046
(iv) Rayonier New Zealand Limited ENV-2018-CHC-000049

Fish that make migrations between the sea and freshwater. These migrations may be in either direction and not necessarily related to spawning.

Diversion

The redirecting of water flow from its existing direction of flow.

Domestic wastewater

Domestic wastewater is limited to effluent derived from dwellings, business buildings, institutions and the like, and consisting of toilet wastes and wash waters from kitchens, bathrooms and laundries.

Drawdown

The reduction in hydraulic head adjacent to a pumping bore or well that occurs in response to groundwater abstraction.

Dry cut

An artificial channel constructed on the dry bed of a river for the purposes of temporarily or permanently diverting water during a flood event.

Dump station

A dump station is a facility designed to receive effluent from mobile toilets.

Ecosystem

A dynamic complex of plant, animal and micro-organism communities and their non-living environment, interacting as a functional unit.[123]

Effluent

A liquid that may include solid components discharged as a waste that originates from:

(a) on-site wastewater systems, composting toilet systems and mobile toilets;
(b) community sewerage schemes;
(c) agricultural activities;
(d) an industrial or trade process; and
(e) but excludes solid waste.

Ephemeral rivers

Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.

CV – Fifth Interim Decision

~~**Ephemeral rivers**~~

~~Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.~~

Erosion control structures

Structures that control erosion for the purpose of preventing damage to people and their property and any significant adverse effects to the environment.

Feed pad/lot[124]

[123] United Nations Convention on Biological Diversity, 1992
[124] Appeal to Environment Court by Federated Farmers of New Zealand ENV-2018-CHC-000040

A fenced in or enclosed area located on production land used for feeding or loafing of cattle or deer to avoid damage to pasture when soils are saturated, and which can be located either indoors or outdoors. It includes 'sacrifice paddocks', wintering pads, stand-off pads, calving pads, loafing pads, and self-feed silage storage facilities.

Feed pad/lot (CV – Fifth Interim Decision)

A fenced in or enclosed area located on production land used for feeding or loafing of cattle or deer to avoid damage to pasture when soils are saturated, and which can be located either indoors or outdoors. It includes ~~'sacrifice paddocks'~~, wintering pads, stand-off pads, calving pads, loafing pads, and self-feed silage storage facilities.

Fertiliser

Means a substance or biological compound or mix of substances or biological compounds that is described as or held out to be for, or suitable for sustaining or increasing the growth, productivity or quality of plants or animals through the application of the following essential nutrients to plants or soils: nitrogen, phosphorus, potassium, sulphur, magnesium, calcium, chloride, sodium as major nutrients; or manganese, iron, zinc, copper, boron, cobalt, molybdenum, iodine, selenium as minor nutrients or fertiliser additives, and includes non-nutrient attributes of the materials used in fertiliser; but does not include substances that are plant growth regulators that modify the physiological functions of plants.

Field capacity

Means the moisture content of soil when the addition of further water would result in saturation or drainage from the soil.

Ford

Any modification of the bed to establish a crossing by which any vehicle, livestock or persons may traverse through any water body.

Galaxiid

Small freshwater fish including kōkopu and inanga. Many galaxiids spend their whole lives in freshwater but several species (diadromous species) spend part of their lives in the sea.

Good management practices

Include, but are not limited to, the practices set out in the various Good Management Practices factsheets available on the Southland Regional Council's webpage.

Gravel[125]

Fluvial inorganic aggregate or river bed material of any size.

Groundwater

Subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated.

Habitat

The area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle or as part of its seasonal feeding or breeding pattern.

[125] Appeal to Environment Court by Southland Fish and Game Council ENV-2018-CHC-000037

Headworks

All materials used at the ground surface to complete the bore. Includes pipework, valves, gauges and access points, concrete pads and/or cellars.

See definition of pasture-based wintering below (CV – Fifth Interim Decision)

~~**High Risk Pasture Winter Grazing**~~

~~Break-feeding stock, other than lactating dairy cows, on pasture between 1 May and 30 September inclusive where supplementary feed offered is more than 10,000 kgDM/ha.~~

Intensive winter grazing[126] (CV – Fifth Interim Decision)

Grazing of stock between May and September (inclusive) on forage crops (including brassica, beet and root vegetable crops), excluding pasture and cereal crops.

Interference effects

The effect of pumping a bore or well on the drawdown and yield of neighbouring pumping bores and wells.

Intermittent river

A river which does not contain permanently flowing or standing water and where the bed is predominantly devoid of terrestrial vegetation and comprises sand, gravel, boulders, or similar material or aquatic vegetation.

Land application system

The system used to apply effluent from an on-site wastewater system into or onto the soil for further treatment and absorption or evaporation. [From AS/NZS 1547:2012 On-site domestic wastewater management.] Also known as a "disposal field".

Landfill

A site that is used for the permanent disposal of waste but excludes a cleanfill site, earthworks associated with any road, driveway or track, and any area within a road reserve containing a formed road that is used for the deposition of roading material.

Landholding

(a) Any area of land, including land separated by a road or river or modified watercourse, held in one or more than one ownership, that is utilised as a single operating unit, and may include one or more certificates of title; except

(b) For land with a residential, commercial, industrial, infrastructural or recreational zoning or designation in the relevant district plan means any area of land comprised wholly of one Certificate of Title or any Allotment as defined by Section 218 of the RMA.

Note: *for the purposes of this definition, a "single operating unit" may include, but is not limited by, the following features:*

(a) It has effective control by any structure of ownership of the same group of people (for example, land that is controlled by a family trust, or beneficiaries of that family trust or a related group of companies, or an estate, or partner, or individual/s or a combination of); and

(b) It is operated as a single business entity.

[126] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037

Lawfully established

Established in accordance and compliance with any relevant legislation at the time of establishment.

Leaching

Movement through soil of dissolved or suspended substances in water.

Loading

Amount of a substance entering the environment (soil, water, or air).

Low flow

Periods of reduced river flow when potential ecological effects need to be assessed and managed. Generally they occur less than 5% of the time.

Mahinga kai

The customary gathering of food and natural materials, the health of the resource and its associated habitat, and the places where those resources are gathered.

Main stem

The principal course of a river (i.e. does not include tributaries).

Maintenance

Work on a structure necessary to maintain that structure in good order and repair, including repainting, that does not materially alter its dimensions.

Mauri

Essential life force or principle; a metaphorical quality inherent in all things, both animate and inanimate.

Mean sea level

The mean sea level as determined in accordance with the New Zealand Vertical Datum 2016 (NZVD2016) and LINZS25009 (Standard for New Zealand Vertical Datum 2016).

Mean seasonal high groundwater

The 95th percentile of the measured high groundwater table over the period of the available record.

Median flow

The flow that is exceeded fifty percent of the time (Q50).

Method

The practical action by which a policy is implemented. It is what can be done to put a policy into effect. Includes rules and non-regulatory methods.

Minimise (CV – Fifth Interim Decision)[127]

To reduce to the smallest amount reasonably practicable.

[127] See Policy 16 decsion.

Minimum flow

The flow at which the holder of any resource consent to abstract water must cease abstraction.

Mitigate

To reduce or moderate the severity of an effect.

Mobile toilet

Includes portable toilets and those used on various forms of transport such as motor homes, campervans or boats.

Modified watercourse

A water carrying channel that was existing in some form prior to land development but has been modified or straightened for drainage or other purposes and excludes ephemeral rivers.

Mooring

Any weight, post or other structure placed in, or on, the bed of a river or lake for the prime purpose of securing a vessel, raft, aircraft or floating structure. It does not include the anchors of a vessel.

National Park

As defined by the National Parks Act 1980.

Nationally significant infrastructure

Means infrastructure which contributes to the development and wellbeing and health and safety of people and communities extending beyond the region.

Natural character values

The qualities of the environment that give it recognisable character. Embraces ecological, physical, spiritual, cultural, intrinsic and aesthetic values, and includes modified and managed environments.

Natural mean flow

The total flow[128] divided by the duration of the record.

Natural state (for water quantity purposes)

Water within conservation areas, reserves and national parks administered by, or on behalf of, the Department of Conservation for conservation purposes under the Conservation Act 1987, Reserves Act 1977 and National Parks Act 1980 with the exception of water within the Upper Waiau and Monowai Rivers and Lakes Te Anau, Manapōuri and Monowai (these water bodies are excluded due to their modified flow and level regimes resulting from the Manapōuri and Monowai Power Schemes) and groundwater within the Tiwai groundwater zone (this groundwater zone is excluded due to its long term use for the supply of water for industrial purposes).

Natural state waters (for water quality purposes)

Waters within:

[128] Naturalised though the incorporation of the total volume of water allocated through current resource consents. It includes the stream depletion effect of each consented groundwater abstraction greater than 2 litres per second with a direct, high or moderate degree of hydraulic connection in accordance with Policy 23 "Stream Depletion Effects".

(a) areas defined as National Park managed under the National Parks Act 1980 (including land for the time being administered as if it was a national park pursuant to any statute or written agreement with the owners); and
(b) public conservation land managed under the Conservation Act 1987 and the Reserves Act 1977 as detailed in Table 1 "Natural State Waters outside National Parks" in Appendix I "Natural State Waters outside National Parks" of this Plan.

Natural wetland

Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions, but excludes:
(a) wet pasture, damp gully heads, or where water temporarily ponds after rain or pasture containing patches of rushes;
(b) effluent ponds;
(c) artificial storage facilities and detention dams;
(d) artificial watercourses such as conveyance and drainage canals;
(e) reservoirs for firefighting, domestic or community water supply; and
(f) engineered soil conservation structures.

CV – Sixth Interim Decision (no decision is required)

Natural wetland

Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions, but excludes:
(a) wet pasture, damp gully heads, or where water temporarily ponds after rain or pasture containing patches of rushes;
(b) effluent ponds;
(c) artificial storage facilities and detention dams;
(d) artificial watercourses such as conveyance and drainage canals;
(e) reservoirs for firefighting, domestic or community water supply; and
(f) engineered soil conservation structures.

Ngāi Tahu indicators of health

A tool for Papatipu Rūnanga to facilitate monitoring and provide long term data that can be used to assess land, water and taonga species health over time.

Note (not part of the definition):

Based on mātauranga Māori (Māori based knowledge systems) the indicators link long term aspirations for Papatipu Rūnanga to mahinga kai and the realisation of the Ngāi Tahu Treaty Settlement. Page 150 of Te Tangi a Tauira – The Cry of the People: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 provides indicators used by Papatipu Rūnanga to assess stream health. The overall measurement of cultural health, mahinga kai and site status would use a Cultural Health Index (Tipa G and Teirney L, 2006).[129]

Non-consumptive take

Any take of fresh water where the associated use or discharge of that water returns water to the same general location; and does not adversely affect the spatial or temporal availability; or

[129] Tipa G and Teirney L. 2006. A Cultural Health Index for streams and waterways: A tool for nationwide use. April 2006. A report prepared for the Ministry for the Environment. Publication number ME710. http://www.mfe.govt.nz/publications/cultural-health-index-streams-and-waterways-tech-report-apr06

the physical, chemical or biological quality of; the water resource into which the water is discharged.

Non-point source discharges

Water contamination derived from diffuse sources where there is no single identifiable discharge point.

Nohoanga

Nohoanga entitlements are created and granted by the Crown for the purpose of permitting members of Ngāi Tahu Whānui to occupy temporarily land close to waterways on a non-commercial basis, so as to have access to waterways for lawful fishing and gathering of other natural resources. The Crown may create and grant to Te Rūnanga o Ngāi Tahu renewable entitlements over Crown-owned land in the Ngāi Tahu claim area which meets the criteria set out in Section 258 of the Ngai Tahu Claims Settlement Act 1998, other than land in:

(a) a national park;
(b) a marginal strip;
(c) a nature reserve;
(d) an esplanade reserve;
(e) a scientific reserve; and
(f) or that part of an unformed legal road (including a road reserve) within 20 metres of a waterway.

Nutrient

An element or compound essential for the growth and development of life forms. The major plant nutrients are nitrogen, phosphorus, potassium, sulphur, magnesium and calcium but there are also a number of minor nutrients which are required in small quantities.

Nutrient budget

A calculation of the total nutrient balance for a farming activity, taking into account as far as is practicable all nutrient inputs to and outputs from the activity.

On-site wastewater system

The collection, treatment and disposal/reuse of wastewater from dwellings or commercial facilities on the same landholding as it is generated.

Organism

Any living animal or plant including any bacterium or virus.

Pasture-based wintering (CV – Fifth Interim Decisions)

Break feeding cattle ~~stock~~, other than lactating dairy cows, on pasture between 1 May and 30 September inclusive where supplementary feed offered is more than 10,000 kgDM/ha.

Perched water

Perched water is a subsurface layer of water that is located above true groundwater. It occurs because of confining layers in the soil such as hard gravel pans. Perched water is nearly always periodic or seasonal.

Pest species

Pest species as defined in a Regional Pest Management Plan.

pH

Value taken to represent the acidity or alkalinity of water.

Pit toilet

A toilet which discharges to a hole in the ground. Also known as a pit latrine, long-drop or privy.

Physiographic zone

A physiographic zone represents areas of the landscape with common attributes that influence water quality, such as climate, topography, geology and soil type. Zones differ in the way sediment, microbes and nutrients such as nitrogen and phosphorus accumulate and are transferred through the soil, aquifers and into water bodies.

The zones are individually described in Part A of this Plan.

Place of assembly

Any building or land used for public or private assembly or meeting of people and includes libraries, churches, halls, marae, clubrooms, community centres, conference centres, recreational facilities, chartered clubs, premises with a club license, and other similar establishments.

Point source discharges

Discharges from specific and identifiable sources (such as pipes or drains) concentrated at a given point.

Potable water

Water suitable, on the basis of both health and aesthetic considerations, for drinking and food preparation.

Potentiometric head

The level to which water will rise in a bore or well penetrating a confined aquifer.

Properly constructed and operated bore

A bore that is drilled and developed to an adequate depth and with a pumping system to efficiently utilise groundwater from an aquifer, including as determined by assessing information from other bores in the area.

Q95

The naturalised flow that is exceeded 95% of the time during the year.

Radius of influence

The calculated distance from a pumping well at which there is no lowering of the water table or potentiometric head.

Raw sewage

Sewage that has not undergone any chemical or biological changes prior to disposal. Raw sewage may have undergone some solids separation in a storage facility such as a pond or sump.

Reasonable mixing zone

A zone within which relevant water quality standards may be exceeded but which shall not be larger than:

(a) for river, artificial watercourse and modified watercourse locations with flowing water present at all times:
  (i) no longer than 10 times the width of the wetted channel or 200 metres along the longest axis of the zone (whichever is the lesser), and
  (ii) occupies no greater than two-thirds of the wetted channel width at the estimated Q95 for that location;
(b) for river, artificial watercourse and modified watercourse locations with intermittent flows, no longer than 20 metres at times of flow and 0 metres at no flow;
(c) when within a drinking water supply zone, or within 250 metres upstream of a drinking water supply site sourced from surface water, identified in Appendix J, 0 metres; or
(d) a distance determined through a resource consent process, having regard to (a) to (c) of this definition.

Receiving waters

Bodies of water that receive run-off or wastewater discharges, such as lakes, rivers, modified watercourses, wetlands and groundwater.

Reconstruction

The complete rebuilding or complete replacement of a structure to its original dimensions, on the same site.

Regionally significant infrastructure

Means infrastructure in the region which contributes to the wellbeing and health and safety of the people and communities of the region, and includes all critical infrastructure.

Reticulated system

The means by which water is collected and delivered prior to discharge. In relation to stormwater discharge, a piped or channelled network for collecting stormwater from a number of landholdings with a single common discharge point.

Rip rap

Rock protection work along the bank of a lake, river or modified watercourse.

Riparian area/margins

Land situated along the bank of a lake, river, wetland or other water body.

RMA

The Resource Management Act 1991 (including any amendments thereto), unless expressly stated.

Sediment trap

A facility designed and constructed for the primary purpose of slowing water flow to allow sediments to drop from the water column.

Septage

The pumpout contents of a septic tank (or primary compartment of an aerated wastewater treatment system) during desludging operations, which includes scum, sludge and septic tank liquid.

Sewage

The contents of sewers carrying the waterborne wastes of a community. This is sometimes called "wastewater" or "foul sewage" to distinguish it from stormwater.

Silage

Silage is any plant material harvested while green for fodder and kept succulent by partial fermentation, but does not include baleage or hay.

Silage leachate

Silage leachate refers to the liquids generated from the biological processes that occur when wilted grass is preserved as silage, or when soluble components are dissolved out of silage by percolating or infiltrating rainwater, surface water or groundwater. Leachate that results from the making of baleage or hay is not considered silage leachate for the purpose of this plan.

Silage storage facility

Silage storage facility refers to land or structures on which silage is stored, processed or directly utilised. Bales of plant material completely encapsulated in plastic are not considered a "silage storage facility".

Sludge

The solid residues from effluent.

Soil infiltration surface

The surface where effluent from the land application system passes into soil. In the case of land application systems comprising of trenches or beds which include distribution aggregate or filter cloth the soil infiltration surface is the bottom of that material. In the case of land application systems comprising of distribution pipes such as shallow subsurface drip emitters which are laid directly on soil the soil infiltration surface is the pipe invert.

Spring-fed

In addition to lakes, rivers, modified watercourses or natural wetlands that are classed as spring-fed on Map Series 1: Water Quality, a lake, river, modified watercourse or natural wetland is spring-fed if it:

(a) has a mean annual flow less than 2,000 litres per second; and

(b) always has an instantaneous flow greater than or equal to 5 litres per second, at a point immediately before the first downstream confluence; and

(c) meets one or more of the following conditions as measured by the Southland Regional Council:

  (i) the ratio of the December to March median flow to the mean annual low flow is less than or equal to 1.5; or

  (ii) in July, the mean monthly water temperature is at least 1.5°C higher than the mean monthly water temperature in a nearby run-off dominated stream; or

  (iii) in July, the mean monthly water temperature is at least 2°C higher than the mean monthly ambient air temperature in the vicinity.

Stick raking or slash raking (Consent Orders)

means the use of machinery to clear slash from harvested plantation forest to enable the replanting of trees. It does not include breaking up of the soil profile or the disturbance of the stumps of the harvested plantation forest trees.

Stock

Farm animals kept for use or profit such as horses, dairy cows, cattle, deer, pigs, goats and sheep.

CV – Sixth Interim Decision

Stock unit

The equivalent of one 55 kilogram breeding ewe, bearing a single lamb, consuming 550 kilograms DM average quality feed over a year.

Stormwater

Surface water run-off subsequent to precipitation.

Subsurface drainage systems

An artificial permeable subsurface conduit constructed for the purposes of draining agricultural soil water/moisture. An installed subsurface drainage system includes tile, mole, concrete and clay drains, wooden box drains and plastic subsurface drainage pipes. Stormwater systems, drainage by use of sumps, and on-site wastewater systems are not included in this definition.

Suitably qualified person (SQP)

A person that has been assessed and approved by the Southland Regional Council as being appropriately qualified, experienced and competent in the relevant field of expertise.

Tangata whenua

In relation to a particular area, means the iwi or hapu, that holds mana whenua over that area, and for the Southland region this is Ngāi Tahu.

Total groundwater allocation

The total volume of water allocated at the date a resource consent application for a new take is lodged. This includes the water that is allocated through current resource consents, the water that is proposed to be taken under consent applications that have been lodged and the additional water proposed to be taken by the consent applicant. It excludes non-consumptive takes; the stream depletion effect of each groundwater take with a Riparian or Direct degree of hydraulic connection; and the stream depletion component of groundwater takes with a High or Moderate degree of hydraulic connection where the stream depletion component exceeds 2 litres per second in accordance with Table L.2 in Appendix L.2.

Total surface water allocation

The total volume of water allocated at the date a resource consent application for a new take is lodged. This includes the water that is allocated through current resource consents, the water that is proposed to be taken under consent applications that have been lodged and the additional water proposed to be taken by the consent applicant. It also includes the stream depletion components of groundwater takes that are excluded from the definition of "total groundwater allocation", but excludes non-consumptive takes.

Unconfined aquifer

An aquifer with no upper confining layer so the system is not under pressure, and its water table levels fluctuate both seasonally and from year to year.

Unwanted organisms

As defined by the Biosecurity Act 1993.

Values

The worth, desirability, or utility of a thing, or the qualities on which these depend.

Vegetation flood debris

Vegetation, including entire trees, that have been dislodged during flood or storm events.

Wāhi taonga

Treasured resources.

Wāhi tapu

Sacred place. Typically includes burial grounds and sites of historical importance to the tribe.

Water demand management strategy

A water demand management strategy is a document required to accompany a water permit application for a community water supply. It must contain the following information in sufficient detail to enable Council to be reasonably informed on the nature and extent of the activity and any effects of that activity on the environment:

(a) a description of the water supply system including:
  (i) system operation;
  (ii) distribution extent;
  (iii) level of service;
  (iv) water use measurement methods; and
  (v) maintenance and asset management procedures;

(b) an assessment of existing and future demand for water to meet:
  (i) reasonable domestic needs;
  (ii) public health needs;
  (iii) the responsibilities of municipal water supply authorities under the Local Government Act 2002 with respect to the supply of water;
  (iv) the needs of other users, including rural, commercial and industrial needs; and
  (v) any increase in allocation that may be sought during the term of the water permit to meet these demands;

(c) water conservation and efficiency measures including:
  (i) regulatory or non-regulatory methods;
  (ii) a plan to implement methods identified;
  (iii) performance targets to measure the effectiveness of the methods implemented; and
  (iv) a timeframe for review of the actions and implementation plan;

(d) any existing or proposed water pricing procedures and any linkages with wastewater pricing or management;

(e) plans and management measures to minimise water losses from the water reticulation network as far as practicable;

(f) plans to mitigate the potential impacts of climate change on the community water supply;

(g) an assessment of alternative water sources available or alternative means of sourcing water, including both general water harvesting and roof water harvesting, seasonal storage or water reclamation;

(h) a drought management plan that includes:

(i) methods to reduce consumption during water shortage conditions particularly consumption by non-essential[130] agricultural, residential, industrial or trade processes;
(ii) public education programmes; and
(iii) enforcement procedures;

(i) any external auditing or benchmarking procedures that have been adopted;
(j) any consultation undertaken and the outcomes of such consultation; and
(k) details of a strategy review process, including consultation.

Wetland

Includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions. [See also definition of "Natural Wetland"].

Whitebait stand

Any structure used in association with whitebaiting.

[130] For all uses of water that are considered to be essential refer to Policy 24. In this context, "non- essential" is considered to be water uses for all other purposes.

Appendix A[131] – Regionally Significant Wetlands and Sensitive Water Bodies in Southland (CV – Sixth Interim Decision)

Locations of the wetlands and water bodies listed in this Appendix can be found in Map Series 7: Regionally Significant Wetlands and Sensitive Water Bodies.

Awarua Plains - Southland Estuaries including:

- Waituna Scientific Reserve
- Seaward Moss
- Wetlands adjoining Awarua Bay
- Wetlands adjoining Bluff Harbour
- Wetlands adjoining New River Estuary
- Fortrose Harbour (including lower Mataura River)

Balloon Loop oxbow lake

Bayswater Bog

Big Bay – Waiuna

Big Lagoon

Blue Bottle Peatland

Bog Lake (and adjacent wetlands)

Borland Mire

Borland Saddle-Mt Burns

Braxton Burn Bog

Brydone West tussockland

Campbell's Creek Wetlands

Castle Downs (Hamilton Burn)

Chocolate Swamp – Dean Forest

College Stream Swamp

Cross Road Swamp

Dale Bog Pine Wetland

[131] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

Dawson City/Mt Prospect Wetlands

Deer Flat Wetland

Downs Road North tussockland

Downs Road tussockland

Drummond Peat Swamp (Isla Bank)

Dunearn Wetland

Ewe Burn Wetlands

Feldwick Wetlands

Ferry Road/Oreti Beach lagoon

Fiordland National Park (World Heritage site) including:
- Back Valley
- Grebe Valley
- Lower Hollyford
- Sutherland Sound

Five Mile Swamp (wetland in ancient Lake Wakatipu lake outlet)

Freshwater Valley including:
- Freshwater Flats
- Ruggedy Flat

The following wetlands in the Garvie Mountains:
- Blue Lake Wetland
- Gow Lake Wetland
- Scott Lake Wetland

Glenary Station Alpine Wetlands

Grove Bush peatlands

Haldane Estuary and Reservoir

Henry Creek Wetland

Hindley Burn Wetland

Hokonui South-East peatland

Jacobs River Estuary

Lake George

Lake Hauroko Wetland

Lake Manapōuri

Lake Mistletoe

Lake Murihiku

Lake Te Anau

Lake Thomas and wetland

Lake Vincent, near Fortrose

Lake Brunton, Otara

Lakes on Stewart Island

Lookout Hill Wetland

Lower Hodgkinson Road peatland

Makarewa peatland

Martins Bay Wetlands

Mavora Lakes (and associated wetlands)

Morley Stream Wetland

Mount Tennyson string bog

New River Estuary

Old Man Swamp

Oreti Beach coastal turf/wetland

Oreti Beach gravel pits

Pebbly Hills Swamp

Pleasant Bay Wetland

Pukerau Red Tussock Scientific Reserve

Pyke Valley (including Lake Alabaster and Lake Wilmot)

Rainbow Reach oxbow lake

Rakehua Valley Wetlands

Ramparts Scenic Reserve

Redcliff Reserve

Retford Stream Wetland

Sharp Ridge Wetland

So Big Swamp

Silver Lagoon

Sinclair Road Wetlands

Southdowns Swamp

Spurhead Swamp

Table Hill

Taramoa peatland

Taylor Road Wetland

Te Anau Basin wetland complex including:

- Kepler Mire
- Dome Mire - Dismal Swamp
- Dunton Swamp
- Tekaro Wetland
- Amoeboid Swamp
- Kākāpō Swamp
- Snowdon Forest
- Dale Lake
- Lake Luxmore
- Lagoon Creek

Te Anau Downs Wetland

The Reservoir (lake)

Thornbury peatland

Toetoes Flats

Toitoi Flat

Transit Valley Wetlands

Waiau River - Te Waewae Lagoon

Waiau Terrace Wetland

Waiau Valley/Borland Burn Wetlands

Waihopai River rushland

Waikawa Estuary

Waimatuku Estuary

Waimatuku Wetland

Waipapa Beach dune slack wetlands

Wairaki Lagoon (Waiau River)

Waituna Lagoon

Wash Creek Wetland

Waterloo Burn wetlands (Aparima River)

Weydon Burn

Wrights Bush peatland

Waiau River from Lake Manapōuri to Mararoa Weir

Note 1: *For wetlands, this appendix only identifies those which ~~are~~ have been formally assessed and found to be of regional significance. There are also rules in this plan that manage activities in relation to all wetlands, not only those identified in this appendix.*

Note 2: *A plan change process may identify additional wetlands to be included in this appendix.*

Appendix B – Ngāi Tahu Statutory Acknowledgement Areas

Information for Plan users, and resource consent applicants

Introduction

Ngāi Tahu Claims Settlement Act 1998 (the Settlement Act) gives effect to the Deed of Settlement signed by the Crown and Te Rūnanga o Ngāi Tahu on 21 November 1997 to achieve a final settlement of Ngāi Tahu's historical claims against the Crown.

The Settlement Act includes a new instrument called a Statutory Acknowledgement. Statutory Acknowledgements recognise Ngāi Tahu's mana in relation to a range of sites and areas in the South Island, and provide for this to be reflected in the management of those areas. Statutory Acknowledgements impact upon Resource Management Act 1991 (RMA) processes concerning these areas.

What are Statutory Acknowledgements?

A Statutory Acknowledgement is an acknowledgement by the Crown of Ngāi Tahu's special relationship with identifiable areas, namely Ngāi Tahu's particular cultural, spiritual, historical, and traditional association with those areas (known as statutory areas). The statutory areas are named on the map (printed on the reverse).

What are the Purposes of Statutory Acknowledgements?

The purposes of Statutory Acknowledgements are:

- to ensure that Ngāi Tahu's particular association with certain significant areas in the South Island are identified, and that Te Rūnanga o Ngāi Tahu is informed when a proposal may affect one of these areas;
- to improve the implementation of RMA processes, in particular by requiring consent authorities to have regard to Statutory Acknowledgements when making decisions on the identification of affected parties.

Who may be Affected by Statutory Acknowledgements?

You may be affected by a Statutory Acknowledgement if you are applying for a resource consent for an activity that is within, adjacent to, or impacting directly upon a statutory area.

What happens when you apply?

If you are applying for a resource consent for an activity within, adjacent to, or impacting directly upon a statutory area:

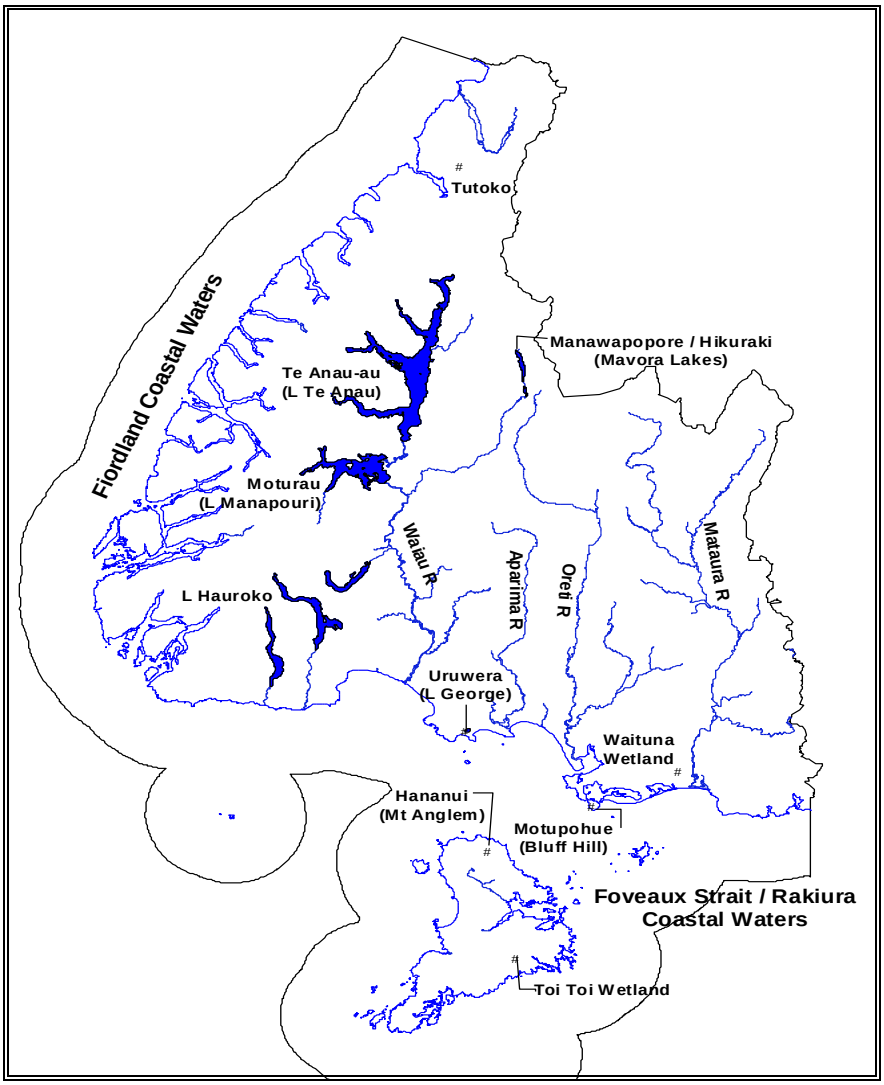
- the Council must send a summary of your resource consent application to Te Rūnanga o Ngāi Tahu;
- the Council must have regard to the Statutory Acknowledgement in going through the process of making a decision on whether Te Rūnanga o Ngāi Tahu is an affected party in relation to the resource consent application.

More Information

The following pages set out the Statutory Acknowledgements as they relate to the Southland region. You can obtain further information on Statutory Acknowledgements from:

- Policy and Planning Division, Environment Southland, Cnr Price Street and North Road, Private Bag 90116, Invercargill 9840
- Kaitiaki Taiao (Natural Resources) Unit, Office of Te Rūnanga o Ngāi Tahu, PO Box 13-046, Christchurch 8141

- Te Ao Mārama Inc, PO Box 7078, South Invercargill 9844
- Ministry for the Environment, PO Box 1345, Christchurch 8140.



Statutory Acknowledgement for Aparima River

(From Schedule 15 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the river known as Aparima, the location of which is shown on Allocation Plan MD 126 (SO 12265).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to the Aparima River, as set out below.

Ngāi Tahu Association with the Aparima River

The mouth of the Aparima was the site of a permanent settlement, with associated urupā nearby. Urupā are the resting places of Ngāi Tahu tūpuna and, as such, are the focus for whānau traditions. These are places holding the memories, traditions, victories and defeats of Ngāi Tahu tūpuna, and are frequently protected by secret locations.

The river was an important source of mahinga kai, with shellfish, mussels, paua, tuna (eels) and inaka (whitebait) all being taken from the river and its estuary. An eel weir was constructed at the narrows where the Pourakino River enters the Aparima, and was an important source of tuna.

The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka (landing places), places for gathering kai and other taonga, ways in which to use the resources of the Aparima, the relationship of people with the river and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

The mouth of the Aparima was a tauranga waka, from which sea voyages were launched to and from a variety of locations in and around Te Ara a Kiwa (Foveaux Strait), Rakiura and the tītī islands. A carved tauihu (canoe prow) found in the estuary of the river attests to this.

The tūpuna had an intimate knowledge of navigation, river routes, safe harbours and landing places, and the locations of food and other resources on the Aparima. The river was an integral part of a network of trails which were used in order to ensure the safest journey and incorporated locations along the way that were identified for activities including camping overnight and gathering kai. Knowledge of these trails continues to be held by whānau and hapū and is regarded as a taonga. The traditional mobile lifestyle of the people led to their dependence on the resources of the river.

The mauri of the Aparima represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the river.

Statutory Acknowledgement for Hananui (Mount Anglem)

(From Schedule 18 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the area known as Hananui (Mt Anglem), as shown on Allocation Plan MS 264 (SO 12249).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Hananui, as set out below.

Ngāi Tahu Association with Hananui

As with all principal maunga (mountains), Hananui is imbued with the spiritual elements of Raki and Papa, in tradition and practice regarded as an important link to the primeval parents.

The name Hananui is derived from an event involving the tūpuna (ancestor) Rakitamau, a chief of Te Taumutu, and son of Tū Te Kawa. Rakitamau became a widower through the unfortunate death of his wife. Rakitamau journeyed to Motunui (as Rakiura was called then) seeking the hand of a tribally renowned wahine (woman) to take her place, as in his view she would increase his standing due to her mana, reflected in her connections to the land and important people of Rakiura.

On his arrival at her village, Rakitamau asked for the woman by name, only to be told by a laughing group of women she was tāpui (betrothed or set apart). At this, Rakitamau blushed deeply. When he then asked for her sister the people laughed loudly, as they told him she was tāpui also. This news made him blush further so that his cheeks flamed. He left the island never to return and the women were so amused that they named the highest point on the island Hananui, referring to the great glow of Rakitamau, in memory of the event. Rakiura itself takes its name from the glowing skies of this region, the aurora lights.

For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations, and document the events which shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

Pūtātāra was an old settlement under the lee of Hananui, a place to which an Otago rangātira (chief, Tukiauau, retired to seek refuge.

The mauri of Hananui represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with Hananui.

Statutory Acknowledgement for Lake Hauroko

(From Schedule 29 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the Lake known as Hauroko, the location of which is shown on Allocation Plan MD 41 (SO 12258).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Lake Hauroko, as set out below.

Ngāi Tahu Association with Lake Hauroko

Hauroko is strongly associated with urupā in the immediate vicinity, including one on an island in the lake, known to Pākehā as Mary Island. In particular, Ngāti Rakiamoa and Ngāti Ruahikihiki have several traditions about their dead laying in this region.

Urupā are the resting places of Ngāi Tahu tūpuna and, as such, are the focus for whānau traditions. These are places holding the memories, traditions, victories and defeats of Ngāi Tahu tūpuna, and are frequently protected by secret locations. It is because of its proximity to these urupā that Hauroko is considered tapu by Ngāi Tahu.

The mauri of Hauroko represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the lake.

Statutory Acknowledgement for Manawapōpōre/Hikuraki (Mavora Lakes)

(From Schedule 39 – refer to Sections 205 and 206)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the Wetland known as Manawapōpōre/Hikuraki (Mavora Lakes), the location of which is shown on Allocation Plan MD44 (SO 12235).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Manawapōpōre/Hikuraki, as set out below. Ngāi Tahu Association with Manawapōpōre/Hikuraki Manawapōpōre and Hikuraki are part of one of the most significant catchments in Murihiku. The wetland also lies in the path of the important trail from the mouth of the Ōreti River onward, via the Greenstone Valley, to the head of Whakatipu-wai-Māori (Lake Wakatipu), or alternatively continuing along the Greenstone Valley and out via the Hollyford to the West Coast. These were important trading routes, to gather pounamu for exchange with northern iwi for materials and foods unavailable in the south.

The wetland area was, therefore, an integral part of a network of trails which were used in order to ensure the safest journey and incorporated locations along the way that were identified for activities including camping overnight and gathering kai. Knowledge of these trails continues to be held by whanau and hapū and is regarded as taonga. The traditional mobile lifestyle of the people led to their dependence on the resources of the area.

In addition, the trails were part of summer time pursuits such as kai-hau-kai, whānaungatanga (the renewal and strengthening of family links) and arranging marriages with hapū from the neighbouring region of Otago and further afield.

Such strategic marriages between hapū strengthened the kupenga (net) of whakapapa and thus rights to use the resources of the area. Manawapōpōre (Lower Mavora) is noted for eel weirs, which were constructed on the lake edges for catching eels, utilising flat stones, built in a loop out from the lake edge, with gaps at either end and one in the middle. Construction of the eel weir recreates the type of environment that eels like to congregate in, hence reliable catches are made.

The tūpuna had considerable knowledge of such techniques, places for catching and gathering kai and other taonga, ways in which to use the resources of the area, the relationship of people with the area and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

The mauri of Manawapōpōre/Hikuraki represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the area.

Statutory Acknowledgement for Mataura River

(From Schedule 42 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the River known as Mataura, the location of which is shown on Allocation Plan MD 125 (SO 12264).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to the Mataura River, as set out below.

Ngāi Tahu Association with the Mataura River

The area of the Mataura River above the Mataura Falls was traditionally used by the descendants of the Ngāti Mamoe chief, Parapara Te Whenua. The descendants of Parapara Te Whenua incorporate the lines of Ngāti Kuri from which the Mamaru family of Moeraki descend. Another famous tūpuna associated with the river was Kiritekateka, the daughter of Parapara Te Whenua. Kiritekateka was captured by Ngāi Tahu at Te Anau and her descendants make up the lines of many of the Ngāi Tahu families at Ōtākou

For Ngāi Tahu, histories such as these reinforce tribal identity and solidarity, and continuity between generations, and document the events which shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

The Mataura was an important mahinga kai, noted for its indigenous fishery. The Mataura Falls were particularly associated with the taking of kanakana (lamprey). The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Mataura, the relationship of people with the river and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

The mauri of the Mataura represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the river.

Statutory Acknowledgement (Bluff Hill) For Motupōhue

(From Schedule 44 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the area known as Motupōhue (Bluff Hill), as shown on Allocation Plan MS 8 (SO 12233).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Motupōhue as set out below.

Ngāi Tahu Association with Motupōhue

The name Motupōhue is an ancient one, brought south by Ngāti Mamoe and Ngāi Tahu from the Hawkes Bay region where both tribes originated. The name recalls a history unique to the Ngai Tuhaitara and Ngāti Kuri hapū that is captured in the line, `Kei korā kei Motupōhue, he pāreka e kai ana, nā tō tūtae' (`It was there at Motupōhue that a shag stood, eating your excrement').

Oral traditions say that the Ngāti Mamoe leader, Te Rakitauneke, is buried upon this hill. Te Rakitauneke's saying was: `Kia pai ai tāku tītīro ki Te Ara a Kiwa' (`Let me gaze upon Foveaux Strait'). Some traditions also place another Ngāti Mamoe leader, Tū Te Mokohu, on this hill.

For Ngāi Tahu, histories such as this represent the links and continuity between past and present generations, reinforce tribal identity and solidarity, and document the events which shaped Ngāi Tahu as an iwi. The mauri of Motupōhue represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with Motupōhue.

Statutory Acknowledgement for Moturau (Lake Manapōuri)

(From Schedule 45 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the Lake known as Moturau (Lake Manapōuri), the location of which is shown on Allocation Plan MD 40 (SO 12257).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Moturau, as set out below.

Ngāi Tahu Association with Moturau

Moturau (or Motu-ua) is one of the lakes referred to in the tradition of `Ngā puna Wai Karikari o Rakaihautu' which tells how the principal lakes of Te Wai Pounamu were dug by the rangātira (chief) Rakaihautu. Rakaihautu was the captain of the canoe, Uruao, which brought the tribe, Waitaha, to New Zealand. Rakaihautu beached his canoe at Whakatū (Nelson). From Whakatū, Rakaihautu divided

the new arrivals in two, with his son taking one party to explore the coastline southwards and Rakaihautu taking another southwards by an inland route. On his inland journey southward, Rakaihautu used his famous kō (a tool similar to a spade) to dig the principal lakes of Te Wai Pounamu, including Moturau. Rakaihautu named the lake Motu-ua, a reference to the persistent rain which troubled his party here.

Tamatea and his party passed this way in their journey back to their homeland after their waka, Takitimu, broke its back at the mouth of the Waiau River. It was Tamatea who named the lake Moturau (possibly a woman's name but more likely to relate to the many islands found in the lake). Tamatea's party established a camp on the edge of the lake, which is probably under water now, and called it Whitiaka-te-rā (the shining of the sun), indicating that they enjoyed a very different experience of the lake from Rakaihautu. Other traditional names associated with the lake include Te Māui (North Arm), Te Tukeroa (Beehive), Manapōuri (north-eastern reach), Wairoa River (upper Waiau River), Te Rakatū (Garnock Burn), Te Konuotu-te-Makohu (Monument), and Huatea (South Arm).

For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations and document the events which shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

A number of wāhi taonga and nohoanga associated with the lake are now under its waters. Eel weirs have been found at the Monument and Hope Arm of the lake, and there was a canoe manufacturing site at Pigeon Island. Such wāhi taonga are places holding the memories, traditions, victories and defeats of Ngāi Tahu tūpuna.

As a mahinga kai, the lake was important for the fowling it offered Murihiku coastal settlements in summer. The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka (landing places), places for gathering kai and other taonga, ways in which to use the resources of Moturau, the relationship of people with the lake and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

The mauri of Moturau represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the lake.

Statutory Acknowledgement for Ōreti River

(From Schedule 50 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the River known as Ōreti, the location of which is shown on Allocation Plan MD 123 (SO 12262).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to the Ōreti River, as set out below.

Ngāi Tahu Association with the Ōreti River

The Ōreti River traverses a significant area of Murihiku, stretching from its mouth at Invercargill almost to the edge of Whakatipu-wai-Māori (Lake Wakatipu). As such, it formed one of the main trails inland from the coast, with an important pounamu trade route continuing northward from the headwaters of the Ōreti and travelling, via the Mavora or Von River Valley, to the edge of Wakatipu and onto the Dart and Routeburn pounamu sources. Indeed, pounamu can be found in the upper reaches of the Ōreti itself.

The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Ōreti, the relationship of people with the river and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

The kai resources of the Ōreti would have supported numerous parties venturing into the interior, and returning by mōkihi (vessels made of Raupō), laden with pounamu and mahinga kai. Nohoanga (temporary campsites) supported such travel by providing bases from which the travellers could go water fowling, eeling and catching inaka (whitebait), and were located along the course of Ōreti River.

There were a number of important settlement sites at the mouth of the Ōreti, in the New River estuary, including Ōmāui, which was located at the mouth of the Ōreti, where it passes the New River Heads. Ōue, at the mouth of the Ōreti River (New River estuary), opposite Ōmāui, was one of the principal settlements in Murihiku. Honekai who was a principal chief of Murihiku in his time was resident at this settlement in the early 1820s, at the time of the sealers. In 1850 there were said to still be 40 people living at the kaik at Ōmāui under the chief Mauhe. As a result of this pattern of occupation, there are a number of urupā located at the lower end of the Ōreti, in the estuarine area. Urupā are the resting places of Ngāi Tahu tūpuna and, as such, are the focus for whānau traditions. These are places holding the memories, traditions, victories and defeats of Ngāi Tahu tūpuna, and are frequently protected by secret locations.

The mauri of the Ōreti represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the river.

Statutory Acknowledgement for Te Ana-Au (Lake Te Anau)

(From Schedule 58 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the Lake known as Te Ana-au (Lake Te Anau), the location of which is shown onAllocation Plan MD 42 (SO 12259).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Te Ana-au, as set out below.

Ngāi Tahu Association with Te Ana-au

Te Ana-au is one of the lakes referred to in the tradition of `Ngā puna Wai Karikari o Rakaihautu,' which tells how the principal lakes of Te Wai Pounamu were dug by the rangātira (chief) Rakaihautu. Rakaihautu was the captain of the canoe, Uruao, which brought the tribe, Waitaha, to New Zealand. Rakaihautu beached his canoe at Whakatū (Nelson). From Whakatū, Rakaihautu divided the new arrivals in two, with his son taking one party to explore the coastline southwards and Rakaihautu

taking another southwards by an inland route. On his inland journey southward, Rakaihautu used his famous kō (a tool similar to a spade) to dig the principal lakes of Te Wai Pounamu, including Te Ana-au.

For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations, and document the events which shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

Te Ana-au figures in Ngāi Tahu histories as one of the last places where Ngāi Tahu and Ngāti Mamoe came into conflict after the peace established between Rakiihia and Te Hautapunui o Tū. After Rakiihia had died, his bones were stripped of flesh and were buried in a cave on a cliff facing the seaside near Dunedin. However, a landslip led to the bones being uncovered. The bones were found by Ngāi Tahu fishermen and made into fish hooks, an act designed to insult. Among Māori it was a practice to take the bones of enemy leaders who had recently died, fashion them into fish hooks and present fish caught with them to the enemy as a gift. Once the fish had been eaten, the enemy would be told they had feasted on fish that had in turn feasted on their dead.

While Ngāi Tahu were fishing with their Ngāti Mamoe relations, one of the Ngāi Tahu fisherman referred to the fish biting the bones of Rakiihia. The Ngāti Mamoe fisherman recognised the insult and checked the cave in which their leader had been interred. Finding that the cave had been desecrated, the Ngāti Mamoe found and killed the son of a senior Ngāi Tahu rangātira (chief). Before Ngāi Tahu could retaliate, the Ngāti Mamoe were warned that they should leave the coast for the inland lakes where they would not be found. Ngāti Mamoe headed to Te Ana-au. Among this Ngāti Mamoe party was Rakiihia's brother, Pukutahi. Pukutahi fell sick along Te Anau's shoreline and rested while his followers explored the lake to find a safer place.

Approaching the lakes, Te Hau, the leader of the Ngāi Tahu party, observed that the fugitives had divided in two, and unfortunately for Pukutahi decided to follow the trail up to Te Ana-au. The Ngāti Mamoe camp was found and in the morning the chiefs of Ngāti Mamoe, including Pukutahi, were killed. This was to be one of the last battles between the tribes.

The lake was an important mahinga kai in the interior. The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Te Ana-au, the relationship of people with the lake and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

The mauri of Te Ana-au represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the lake.

Statutory Acknowledgement for Toi Toi Wetland, Rakiura

(From Schedule 63 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the Wetland known as Toi Toi, the location of which is shown on Allocation Plan MD 135 (SO 12266).

Preamble
Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Toi Toi, as set out below.

Ngāi Tahu Association with Toi Toi
Toi Toi wetland is particularly significant to Ngāi Tahu as a kākāpō habitat. The kākāpō, once a prized mahinga kai for Ngāi Tahu, used the wetland as a feeding ground. The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Toi Toi, the relationship of people with the wetland and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

Much of Toi Toi's value lies in its pristine and unmodified character. The mauri of Toi Toi represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the wetland.

Statutory Acknowledgement for Tutoko

(From Schedule 66 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area
The statutory area to which this statutory acknowledgement applies is the mountain known as Tutoko, as shown on Allocation Plan MS 3 (SO 24747 (Otago Land District) and SO 12231 (Southland Land District)).

Preamble
Under Sections 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Tutoko as set out below.

Ngāi Tahu Association with Tutoko
The Fiordland area, within which Tutoko stands, represents, in tradition, the raised up sides of Te Waka o Aoraki, after it foundered on a submerged reef and its occupants, Aoraki and his brothers, were turned to stone. These people are now manifested in the highest peaks in Ka Tiritiri o Te Moana (the Southern Alps). The fiords at the southern end of the Alps were carved out of the raised side of the wrecked Waka o Aoraki by Tū Te Rakiwhānoa, so as to make the waka (canoe) habitable by humans. The deep gorges and long waterways that are the fiords were provided as safe havens on this rugged coast, and stocked with fish, forest and birds to sustain humans.

For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations, and document the events that have shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

Tutoko is not, in fact, the original name of the maunga (mountain), but was applied by Dr J Hector in 1863 after he met the old rangātira (chief) Tutoko and his two daughters, Sara and May. The hills to the north of the Kōtuku River are named the Sara Hills, and those to the south May Hills, after these daughters. The use of this name is seen as appropriate to Ngāi Tahu, as Tutoko was an important rangātira of this region at that time, and is represented by the mountain.

Tutoko is the kaitiaki of Whakatipuwaitai, the westernmost creation of Rakaihautu and the

southernmost kāinga (settlement) of Te Tai Poutini (West Coast) pounamu trails, which provides access to koko-takiwai (a type of pounamu) at Piopiotahi (Milford Sound) and Poison Bay further to the south. The kāinga was also an important staging post for travel into the Lake Wakatipu area via the Hollyford Valley. All of these trails, whether by land or by sea, lie under the shadow of Tutoko.

The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the land, the relationship of people with the land and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

Mountains such as Tutoko are linked in whakapapa to the gods, and being the closest earthly elements to Raki the sky father, they are likened to the children of Raki and Papa, reaching skyward. The mauri of Tutoko represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the land.

Statutory Acknowledgement for Uruwera (Lake George)

(From Schedule 68 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the Wetland known as Uruwera (Lake George), the location of which is shown on Allocation Plan MD 59 (SO 12261).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Uruwera, as set out below.

Ngāi Tahu Association with Uruwera

Lake George is known to Ngāi Tahu as Uruwera, named after a descendant of the Waitaha rangātira (chief), Rakaihautu. Uruwera's descent lines lead to Te Ropuake, the wife of Mako, a leading chief of Ngāti Irakehu of Banks Peninsula. Te Ropuake's mother was Hine Te Awheka, wife of Te Rakiwhakaputa, another leading Ngāi Tahu chief who eventually occupied Rapaki on Banks Peninsula. Both Mako and Te Rakiwhakaputa migrated to Canterbury with the Ngāi Tahu hapū, Ngai Tuhaitara. Examples such as this demonstrate the interconnected nature of Ngāi Tahu whakapapa.

For Ngāi Tahu, histories such as this reinforce tribal identity and solidarity and continuity between generations, and document the events which shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

Foods taken from this mahinga kai included tuna (eels), inaka (whitebait) and water fowl. Uruwera has been in continual use by Ngāi Tahu as a mahinga kai for many generations. The lake is a particularly important resource for Ngāi Tahu from Ōraka, Awarua and Ruapuke.

The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Uruwera, the relationship of people with the lake and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

As a result of this history of use, there a number of urupā associated with Uruwera. Urupā are the resting places of Ngāi Tahu tūpuna and, as such, are the focus for whānau traditions. These are places holding the memories, traditions, victories and defeats of Ngāi Tahu tūpuna, and are frequency protected by secret locations.

The mauri of Uruwera represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the lake.

Statutory Acknowledgement for Waiau River

(From Schedule 69 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the River known as Waiau, the location of which is shown on Allocation Plan MD 124 (SO 12263).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to the Waiau, as set out below.

Ngāi Tahu Association with the Waiau

The Waiau River features in the earliest of traditional accounts, and was a place and resource well known to the earliest tūpuna (ancestors) to visit the area. Rakaihautu and his followers traced the Waiau from its source in Te Ana-au (Lake Te Anau) and Motu-ua or Moturau (Lake Manapōuri), to its meeting with the sea at Te Wae Wae Bay.

The waka Takitimu, under the command of the rangātira (chief) Tamatea, was wrecked near the mouth of the Waiau River and the survivors who landed at the mouth named the river "Waiau" due to the swirling nature of its waters. Tamatea and his party made their way up the river to Lake Manapōuri where they established a camp site. The journey of Tamatea was bedevilled by the disappearance of Kaheraki who was betrothed to Kāhungunu, a son of Tamatea, Kaheraki strayed away from the party, and was captured by the Maeroero (spirits of the mountain).

For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations, and document the events which shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

The Waiau has strong links with Waitaha who, following their arrival in the waka Uruao, populated and spread their influence over vast tracts of the South Island. They were the moa hunters, the original artisans of the land. There are remnants of Waitaha rock art associated with the river. Surviving rock art remnants are a particular taonga of the area, providing a unique record of the lives and beliefs of the people who travelled the river.

There is also a strong Ngāti Mamoe influence in this area of the country. Ngāti Mamoe absorbed and intermarried with the Waitaha and settled along the eastern coast of Te Wai Pounamu. The arrival of Ngāi Tahu in Te Wai Pounamu caused Ngāti Mamoe to become concentrated in the southern part of the island, with intermarriage between the two iwi occurring later than was the case further north. The result is that there is a greater degree of Ngāti Mamoe influence retained in this area than in other parts of the island. These are the three iwi who, through conflict and alliance, have merged in the whakapapa (genealogy) of Ngāi Tahu Whānui.

Numerous archaeological sites and wāhi taonga attest to the history of occupation and use of the river. These are places holding the memories traditions, victories and defeats of Ngāi Tahu tūpuna. The main nohoanga (occupation site) on the Waiau was at the mouth and was called Te Tua a Hatu. The rangātira (chief) Te Wae Wae had his kāinga nohoanga on the left bank of the Waiau River mouth.

The Waiau, which once had the second largest flow of any river in New Zealand, had a huge influence on the lives and seasonal patterns of the people of Murihiku, over many generations. The river was a major mahinga kai: aruhe (fernroot), tī root, fish, tuna (eels), shellfish and tutu were gathered in the

summer, a range of fish were caught in the autumn, kanakana (lamprey) were caught in the spring, while the people were largely reliant during winter on foods gathered and preserved earlier in the year. Rauri (reserves) were applied to the mahinga kai resources, so that people from one hapū or whānau never gathered kai from areas of another hapū or whānau. Some 200 species of plants and animals were utilised by Ngāi Tahu as a food resource in and near the Waiau.

The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the Waiau, the relationship of people with the river and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

Place names provide many indicators of the values associated with different areas, including Waiharakeke (flax), Papatōtara (tōtara logs or bark), Kirirua (a type of eel found in the lagoon), Te Rua o te Kaiamio (a rock shelter that was a 'designated meeting place' for the local Māori, similar to a marae) and Ka Kerehu o Tamatea — ("charcoal from the fire of Tamatea" — black rocks near old Tuatapere ferry site).

The Waiau River was a major travelling route connecting Murihiku and Te Ara a Kiwa (Foveaux Strait) to Te Tai Poutini (the West Coast), and as such was a important link between hapū and iwi. Pounamu on the West Coast, and summer expeditions to Manapōuri (Motu-ua or Moturau) for mahinga kai were the main motivations for movement up and down the Waiau. Mōkihi (vessels made from Raupō) were utilised for travel down the river and were a very effective and common mode of travel, making transportation of substantial loads of resources possible.

The tūpuna had an intimate knowledge of navigation, river routes, safe harbours and landing places, and the locations of food and other resources on the Waiau. The river was an integral part of a network of trails which were used in order to ensure the safest journey and incorporated locations along the way that were identified for activities including camping overnight and gathering kai. Knowledge of these trails continues to be held by whānau and hapū and is regarded as a taonga. The traditional mobile lifestyle of the people led to their dependence on the resources of the river.

The Waiau was once a large and powerful river, up to 500m across at the mouth, narrowing to 200 m further upstream. The water flow from the Waiau River was an important factor in the ecological health and bio-diversity of the coastal resources.

The mauri of the Waiau represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the river.

Statutory Acknowledgement for Waituna Wetland

(From Schedule 73 – refer to Sections 205 and 206 Ngāi Tahu Claims Settlement Act 1998)

Statutory Area

The statutory area to which this statutory acknowledgement applies is the wetland known as Waituna, the location of which is shown on Allocation Plan MD 58 (SO 12260).

Preamble

Under Section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to Waituna, as set out below.

Ngāi Tahu Association with Waituna

Intermittently open to the sea, Waituna wetland (with the western end, where the lagoon breaks out to sea known as Kā-puna-wai) was a major food basket utilised by nohoanga and permanent settlements located in the immediate vicinity of the wetlands, and further away, for its wide variety of reliable mahinga kai. The great diversity of wildlife associated with the complex includes several breeds of ducks, white heron, gulls, spoonbill, kōtuku, oyster- catcher, dotterels, terns and fernbirds. The wetlands are important kōhanga (spawning) grounds for a number of indigenous fish species. Kaimoana available includes giant and banded kōkopu, varieties of flatfish, tuna (eels), kanakana (lamprey), inaka (whitebait), waikākahi (freshwater mussel) and waikōura (freshwater crayfish). Harakeke, Raupō, manuka, tōtara and tōtara bark, and Pīngao were also regularly harvested cultural materials. Paru or black mud was available, particularly sought after as a product for making dyes.

The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of Waituna, the relationship of people with the lake and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

As a result of this history of use and occupation of the area, there are wāhi tapu and wāhi taonga all along its shores. It is also possible that particular sections of the wetland were used for waiwhakaheketūpāpāku (water burial).

Urupā and wāhi tapu are the resting places of Ngāi Tahu tūpuna and, as such, are the focus for whānau traditions. These are places holding the memories, traditions, victories and defeats of Ngāi Tahu tūpuna, and are frequency protected by secret locations.

The mauri of Waituna represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the area.

Purposes of Statutory Acknowledgements

Pursuant to Section 215, and without limiting the rest of this schedule, the only purposes of these statutory acknowledgements are—

(a) to require that consent authorities forward summaries of resource consent applications to Te Rūnanga o Ngāi Tahu as required by regulations made pursuant to Section 207 (clause 12.2.3 of the deed of settlement);
(b) to require that consent authorities, the Historic Places Trust, or the Environment Court, as the case may be, have regard to these statutory acknowledgements, as provided in Sections 208 to 210 (clause 12.2.4 of the deed of settlement);
(c) to empower the Minister responsible for management of these statutory acknowledgement areas or the Commissioner of Crown Lands, as the case may be, to enter into a Deed of Recognition as provided in Section 212 (clause 12.2.6 of the deed of settlement); and
(d) to enable Te Rūnanga o Ngāi Tahu and any member of Ngāi Tahu Whānui to cite these statutory acknowledgements as evidence of the association of Ngāi Tahu to these statutory acknowledgement areas as provided in Section 211 (clause 12.2.5 of the deed of settlement).

Limitations on Effect of Statutory Acknowledgements

Except as expressly provided in Sections 208 to 211, 213, and 215,—

(a) these statutory acknowledgements do not affect, and are not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
(b) without limiting paragraph (a), no person or entity, in considering any matter or making any decision or recommendation under statute, regulation, or bylaw, may give any greater or lesser weight to Ngāi Tahu's association to these statutory acknowledgement areas (as described in these statutory acknowledgements) than that person or entity would give under the relevant statute, regulation, or bylaw, if these statutory acknowledgements did not exist.

Except as expressly provided in this Act, these statutory acknowledgements do not affect the lawful rights or interests of any person who is not a party to the deed of settlement.

Except as expressly provided in this Act, these statutory acknowledgements do not, of themselves, have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, these statutory acknowledgement areas.

Other mechanisms relevant to this Plan

The Ngāi Tahu Claims Settlement Act also sets up a range of other sites and information that may be relevant to any applicant or consent holder, or to the public generally. These are Nohoanga which are camp sites at specified places on rivers within the region; Tōpuni which are landscape features of special importance or value to Ngāi Tahu; and taonga species which are a range of flora and fauna that culturally valued by Ngāi Tahu.

The following set out the basic detail on the location and types of places and species referred to in the Schedules to the Act.

Nohoanga (Camp Sites)

Sites over which Nohoanga Entitlements to be Granted in Southland
(From Schedule 95 – refer to Section 246 Ngāi Tahu Claims Settlement Act 1998)

45	Lake Manapōuri	Lake Manapōuri Lake Manapōuri - 1 hectare approximately, being Part Manapōuri Lakebed. Subject survey, as shown on Allocation Plan MN 73 (SO 12234).
46	Lake Te Anau	Lake Mistletoe - 1 hectare approximately, being Part Section 6, Block III, Eglington Survey District (SO 6989). Subject to survey, as shown on Allocation Plan MN 446 (SO 12254).
47	Lake Te Anau	Lake Te Anau – (91 hectares approximately Mile Creek) being Part Run 301B (SO 4685). Subject to survey, as shown on Allocation Plan MN 486 (SO 12256).
48	Mataura River	Ardlussa - 1 hectare, approximately, being Parts Crown Land, Mataura Riverbed and unformed legal, road, BlockIII,

		Wendonside Survey District. Subject to survey, as shown on Allocation Plan MN 475 (SO 12255).
49	Mavora Lakes	Mavora Lakes - 1 hectare, approximately, being Part Run 568 (SO 6800). Subject to survey, as shown on Allocation Plan MN 77 (SO 12235).

50	Ōreti River	Junction of 1 hectare, approximately, Ōreti River and being Part Section 136, Irthing Stream Eyre Survey District (SO 1). Subject to survey, as shown on Allocation Plan MN 263 (SO 12248).
51	Waiua River and Lagoon	Waiau River - 1 hectare, approximately, (No 1) being Part Section 10 and Part Waiau Riverbed, Block I, Alton Survey District (SO 2840) Subject to survey, as shown on Allocation Plan MN 90(SO 12236).
52	Waiau River and Lagoon	Waiau River -1 hectare, a proximately, (No 2) being Part Sections 7 and 7A, Block XV, Longwood Survey District (SOs 2021 and 3726) Subject to survey, as shown on Allocation Plan MN 444 (SO 12253).
53	Waiua River and Lagoon	Queen's Reach - 1 hectare, approximately, being Part Section 25, Block II, Manapōuri Survey District (SO 10887). Subject to survey as shown on Allocation Plan MN 258 (SO 12245).
54	Waikaia River	Piano Flat - 5800 m2, approximately, being Sections 8, 9, 10, 11 and Part Section 7, Block VI, Gap Survey District (SO 6837) Subject to survey, as shown on Allocation Plan MN 259 (SO 12246).
55	Waikawa River and Harbour	Waikawa River - 3085 m2 approximately (Public access to the river along track to continue) being Part Section 42, Town of Niagara Comprised in existing Document 084684.1. Subject to survey, as shown on Allocation Plan MN 260 (SO 12247).

Tōpuni

Tōpuni for Motupōhue (Bluff Hill)

(From Schedule 85 – refer to Sections 238 and 239 Ngāi Tahu Claims Settlement Act 1998)

Description of Area

The area over which the Tōpuni is created is the area known as Motupōhue, as shown on Allocation Plan MS 8 (SO 12233).

Preamble

Under Section 239 (clause 12.5.3 of the deed of settlement), the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional values relating to Motupōhue as set out below.

Ngāi Tahu Values Relating to Motupōhue

The name Motupōhue is an ancient one, brought south by Ngāti Mamoe and Ngāi Tahu from the Hawkes Bay region where both tribes originated. The name recalls a history unique to the Ngai Tuhaitara and Ngāti Kuri hapū that is captured in the line, `Kei korā kei Motupōhue, he pāreka e kai ana, nā tō tūtae' (`It was there at Motupōhue that a shag stood, eating your excrement').

Oral traditions say that the Ngāti Mamoe leader, Te Rakitauneke, is buried upon this hill. Te Rakitauneke's saying was: `Kia pai ai tāku tītīro ki Te Ara a Kiwa' (`Let me gaze upon Foveaux Strait').

Some traditions also place another Ngāti Mamoe leader, Tū Te Mokohu, on this hill.

For Ngāi Tahu, histories such as this represent the links and continuity between past and present generations, reinforce tribal identity and solidarity, and document the events which shaped Ngāi Tahu as an iwi.

The mauri of Motupōhue represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with Motupōhue.

Tōpuni for Takitimu Range, Southland

(From Schedule 89 – refer to Sections 238 and 239 Ngāi Tahu Claims Settlement Act 1998)

Description of Area

The area over which the Tōpuni is created is the area known as Takitimu Range located in Murihiku (Southland), as shown on Allocation Plan MS 5 (SO 12232).

Preamble

Under Section 239 (clause 12.5.3 of the deed of settlement), the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional values relating to Takitimu as set out below.

Ngāi Tahu Values Relating to Takitimu

The Takitimu maunga (mountains) were named by Tamatea, the captain of the Takitimu waka (canoe) in memory of the waka after it struck trouble in Te Waewae Bay, and was eventually wrecked near the mouth of the Waimeha Stream.

Tradition states that the Takitimu waka was overtaken by three large waves known as O-te-wao, Ō-roko and Ō-kākā, followed by a cross wave, which resulted in the Takitimu being hurled well inland, with its cargo being strewn about. In some accounts the ranges inland from Te Waewae Bay are likened to the huge waves that caused the demise of the waka Takitimu. In other accounts the Takitimu maunga are considered to be the upturned hull of the waka.

For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations, and document the events that have shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

Tamatea and his crew made their way overland from the site of the wreck. Tamatea likened the majestic and upright Takitimu maunga when he viewed them from the south coast, to the crew of the Takitimu struggling to control the waka in adverse conditions. During the overland journey past the Takitimu maunga Tamatea lost one of his party, a woman named Kaheraki who strayed away from the party and was captured by the maeroero (spirits of the mountain) and never seen again. Kaheraki had been betrothed to Kāhungunu, who was a son of Tamatea.

The Takitimu maunga are, therefore, a symbolic reminder of the famous exploits of Tamatea in the south, and a reminder forever locked into the landscape, of the tūpuna (ancestral) waka Takitimu, adding lustre to the noted spiritual values of the western Southland landscape. The Takitimu maunga are visible from all points of the Murihiku landscape, and are also a noted weather indicator.

The mauri of Takitimu represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the land.

Tōpuni for Tutoko

(From Schedule 93 – refer to Sections 238 and 239 Ngāi Tahu Claims Settlement Act 1998)

Description of Area

The area over which the Tōpuni is created is the area known as Tutoko located in Fiordland National Park, as shown on Allocation Plan MS 3 (SO 24747 (Otago Land District) and SO 12231 (Southland Land District)).

Preamble

Under Section 239 (clause 12.5.3 of the deed of settlement), the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional values relating to Tutoko, as set out below.

Ngāi Tahu Values Relating to Tutoko

The Fiordland area, within which Tutoko stands, represents, in tradition, the raised up sides of Te Waka o Aoraki, after it foundered on a submerged reef and its occupants, Aoraki and his brothers, were turned to stone. These people are now manifested in the highest peaks in Ka Tiritiri o Te Moana (the Southern Alps). The fiords at the southern end of the Alps were carved out of the raised side of the wrecked Waka o Aoraki by Tū Te Rakiwhānoa, so as to make the waka (canoe) habitable by humans. The deep gorges and long waterways that are the fiords were provided as safe havens on this rugged coast, and stocked with fish, forest and birds to sustain humans.

For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations, and document the events that have shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

Tutoko is not, in fact, the original name of the maunga (mountain), but was applied by Dr J Hector in 1863 after he met the old rangātira (chief) Tutoko and his two daughters, Sara and May. The hills to the north of the Kōtuku River are named the Sara Hills, and those to the south, May Hills, after these daughters. The use of this name is seen as appropriate to Ngāi Tahu, as Tutoko was an important rangātira of this region at that time, and is represented by the mountain.

Tutoko is the kaitiaki of Whakatipuwaitai, the westernmost creation of Rakaihautu and the southernmost kāinga (settlement) of Te Tai Poutini (West Coast) pounamu trails, which provides access to koko-takiwai (a type of pounamu) at Piopiotahi (Milford Sound) and Poison Bay further to the south. The kāinga was also an important staging post for travel into the Lake Wakatipu area via the Hollyford Valley. All of these trails, whether by land or by sea, lie under the shadow of Mt Tutoko.

The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the land, the relationship of people with the land and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

Mountains such as Tutoko are linked in whakapapa to the gods, and being the closest earthly elements

to Raki the sky father, they are likened to the children of Raki and Papa, reaching skyward. The mauri of Tutoko represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the land.

Appendix C – ANZECC Sediment Guidelines

Assessment of Contaminants in Sediments

The table is an extract from the national guidelines for sediment quality (Australia New Zealand Environment and Conservation Council - ANZECC 2000).

The levels referred to in the table represent guidelines, based on overseas biological effects data due to the lack of local data. Values are expressed as concentrations on a dry weight basis. For organics, values are normalised to 1% organic carbon, rather than expressing as mg/kg organic carbon as is sometimes done. This requires that if the sediment organic carbon content is markedly higher than 1%, the guideline value should be adjusted accordingly.

If the lower sediment quality guideline (ISQG-Low) for a particular contaminant is not exceeded, the chemical is unlikely to cause any biological impact on organisms inhabiting that sediment.

If chemical concentrations exceed the ISQG-Low levels, they may be toxic and further investigation is recommended to determine whether they pose a threat.

Recommended sediment quality guidelines[a]

These guidelines apply to the sediment after reasonable mixing.

Contaminant	**ISQG-Low**
Metals (mg/kg dry wt.)	
Antimony	2
Cadmium	1.5
Chromium	80
Copper	65
Lead	50
Mercury	0.15
Nickel	21
Silver	1
Zinc	200
Metalloids (mg/kg dry wt.)	
Arsenic	20
Organometallics (µSn/kg dry wt.)	
Tributyltin	5
Organics (µg/kg dry wt.) [b]	
Acenapthene	16
Acenaphthalene	44
Anthracene	85
Fluorene	19
Naphthalene	160
Phenanthrene	240
Low Molecular Weight PAHs	552

Contaminant	ISQG-Low
Benzo(a)pyrene	430
Dibenzo(a,h)anthracene	63
Chrysene	384
Fluoranthene	600
Pyrene	665
High Molecular Weight PAHs [c]	1700
Total PAHs	4000
Total DDT	1.6
p.p'-DDE	2.2
o,p'- + p,p'-DDD	2
Chlordane	0.5
Dieldrin	0.02
Endrin	0.02
Lindane	0.32
Total PCBs	23

a Primarily adapted from Long et al (1995)
b Normalised to 1% organic carbon
c Low molecular weight PAHs are the sum of concentrations of acenaphthene, acenaphthalene, anthracene, fluorene, 2-methylnaphthalene, naphthalene and phenanthrene; high molecular weight PAHs are the sum of concentrations of benzo(a)anthracene, benzo(a)pyrene, chrysene, dibenzo(a, h) anthracene, fluoranthene and pyrene.

CV – Sixth Interim Decision

Appendix E[132] – Receiving Water Quality Standards

These standards apply to the effects of discharges following reasonable mixing with the receiving waters, unless otherwise stated. They do not apply to waters within artificial storage ponds such as effluent storage ponds or stock water reservoirs or to temporarily ponded rainfall.

The standard for a given parameter will not apply in a lake, river, artificial watercourse or modified watercourse or natural wetland where:

(a) due to natural causes, that parameter cannot meet the standard; or

(b) due to the effects of the operation of the Manapōuri hydro-electric generation scheme that alters natural flows, that parameter cannot meet the standard.

Plan users should contact the Southland Regional Council for guidance on standard methodologies for collecting water quality data. Monitoring requirements imposed as consent conditions require sample collection, preservation and analysis to be carried out in accordance with the most recent edition of American Public Health Association (APHA) "Standard Methods for the Examination of Water and Wastewater" or National Environmental Monitoring Standard (NEMS) and analyses to be carried out by a laboratory with International Accreditation New Zealand (IANZ) registration or equivalent.

Surface water bodies classified as "Natural State Waters"

The natural quality of the water shall not be altered.

Surface water bodies classified as "Lowland soft bed"

The temperature of the water:

- shall not exceed 23°C
- the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water shall be within the range 6.5 to 9, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community abundance and composition.

~~The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.~~

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The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured immediately upstream of the discharge~~%~~.

[132] Appeal to Environment Court by (i) Aratiatia Livestock Limited ENV-2018-CHC-000029
(ii) Southland Fish and Game Council ENV-2018-CHC-000037
(iv) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

The concentration of dissolved oxygen in water shall exceed 80% of saturation concentration.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

When the flow is at or below the median flow, the visual clarity of the water shall not be less than 1.3 metres.[133]

There shall be no more than a 33% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

The concentration of total ammonia shall not exceed the values specified in Table 1 "Ammonia standards for Lowland and Hill surface water bodies".

The concentration of faecal coliforms shall not exceed 1,000 coliforms per 100 millilitres, except for popular bathing sites, defined in Appendix G "Popular Bathing Sites" and within 1 km immediately upstream of these sites, where the concentration of Escherichia coli shall not exceed 130 E. coli per 100 millilitres.

The Macroinvertebrate Community Index shall exceed ~~80~~90 and the ~~Semi-~~Quantitative Macroinvertebrate Community Index shall exceed ~~3.5~~ 4.5.[134]

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Lowland hard bed"

The temperature of the water:

- shall not exceed 23°C
- shall not exceed 11°C in trout spawning areas during May to September inclusive
- the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water shall be within the range 6.5 to 9, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community composition.

~~The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.~~

CV – Sixth Interim Decision

The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured immediately upstream of the discharge~~%~~.

The concentration of dissolved oxygen in water shall exceed 80% of saturation concentration.

[133] Visual clarity is assessed using the black disc method or other comparable method employed by Environment Southland.

[134] MCI and SQMCI indices to be determined using Environment Southland's SOE sampling protocol and MfE's Protocol P2 for sample processing (Stark et al. 2001)

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

When the flow is at or below the median flow, the visual clarity of the water shall not be less than 1.6 metres, except where the water is naturally low in clarity as a result of high concentrations of tannins, in which case the natural colour and clarity shall not be altered.[135]

There shall be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

The concentration of total ammonia shall not exceed the values specified in Table 1 "Ammonia standards for Lowland and Hill surface water bodies".

The concentration of faecal coliforms shall not exceed 1,000 coliforms per 100 millilitres, except for popular bathing sites, defined in Appendix G "Popular Bathing Sites" and within 1 km immediately upstream of these sites, where the concentration of Escherichia coli shall not exceed 130 E. coli per 100 millilitres.

For the period 1 November through to 30 April, filamentous algae of greater than 2 cm long shall not cover more than 30% of the visible stream bed. Growths of diatoms and cyanobacteria greater than 0.3 cm thick shall not cover more than 60% of the visible stream bed.[136]

Biomass shall not exceed 35 grams per square metre for either filamentous algae or diatoms and cyanobacteria.[137]

Chlorophyll a shall not exceed 120 milligrams per square metre for filamentous algae and 200 milligrams per square metre for diatoms and cyanobacteria.[138]

The Macroinvertebrate Community Index shall exceed a score of 90 and the ~~Semi-~~Quantitative Macroinvertebrate Community Index shall exceed a score of 4.5.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Hill"

The temperature of the water:

- shall not exceed 23°C
- shall not exceed 11°C in trout spawning areas during May to September inclusive
- the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water shall be within the range 6.5 to 9, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community composition.

[135] Visual clarity is assessed using the black disc method or other comparable method employed by Environment Southland.
[136] Applies to the part of the bed that can be seen from the bank during summer low flows or walked on.
[137] Expressed in terms of reach biomass per unit of exposed strata (i.e., tops and sides of stones) averaged across the full width of the stream or river
[138] Expressed in terms of reach biomass per unit of exposed strata (i.e., tops and sides of stones) averaged across the full width of the stream or river

~~The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.~~

CV – Sixth Interim Decision

The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured immediately upstream of the discharge~~%~~.

The concentration of dissolved oxygen in water shall exceed 80% of saturation concentration.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

When the flow is at or below the median flow, the visual clarity of the water shall not be less than 1.6 metres.[139]

There shall be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

The concentration of total ammonia shall not exceed the values specified in Table 1 "Ammonia standards for Lowland and Hill surface water bodies".

The concentration of faecal coliforms shall not exceed 1,000 coliforms per 100 millilitres, except for popular bathing sites, defined in Appendix G "Popular Bathing Sites" and within 1 km immediately upstream of these sites, where the concentration of Escherichia coli shall not exceed 130 E. coli per 100 millilitres.

Filamentous algae of greater than 2 cm long shall not cover more than 30% of the visible stream bed. Growths of diatoms and cyanobacteria greater than 0.3cm thick shall not cover more than 60% of the visible stream bed.

Biomass shall not exceed 35 grams per square metre for filamentous algae.

Chlorophyll a shall not exceed 120 milligrams per square metre for filamentous algae.

The Macroinvertebrate Community Index shall exceed a score of 100 and the ~~Semi-~~Quantitative Macroinvertebrate Community Index shall exceed a score of 5.5.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Mountain"

The temperature of the water:

- shall not exceed 21°C
- shall not exceed 11°C in trout spawning areas during May to September inclusive
- the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the

[139] Visual clarity is assessed using the black disc method or other comparable method employed by Environment Southland.

natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water shall be within the range 7.2 to 8, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community composition.

~~The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.~~

CV – Sixth Interim Decision

The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured immediately upstream of the discharge~~%~~.

The concentration of dissolved oxygen in water shall exceed 99% of saturation concentration.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

When the flow is at or below the median flow, the visual clarity of the water shall not be less than 3 metres.

There shall be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

The concentration of total ammonia shall not exceed 0.32 milligrams per litre.

The concentration of Escherichia coli shall not exceed 130 *E. coli* per 100 millilitres in any sample.

Filamentous algae of greater than 2 cm long shall not cover more than 30% of the visible stream bed.

Biomass shall not exceed 35 milligrams per square metre for filamentous algae.

Chlorophyll a shall not exceed 50 milligrams per square metre for filamentous algae.

Growths of diatoms and cyanobacteria greater than 0.3 cm thick shall not cover more than 60% of the visible stream bed.

The Macroinvertebrate Community Index shall exceed a score of 120 and the ~~Semi-~~Quantitative Macroinvertebrate Community Index shall exceed a score of 7.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Lake Fed"

The temperature of the water:

- shall not exceed 21°C
- shall not exceed 11°C in trout spawning areas during May to September inclusive
- the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the

natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water shall be within the range 7.2 to 8, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community composition.

~~The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.~~

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The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured immediately upstream of the discharge~~%~~.

The concentration of dissolved oxygen in water shall exceed 99% of saturation concentration.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

When the flow is at or below the median flow, the visual clarity of the water shall not be less than 3 metres.[140]

There shall be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

The concentration of total ammonia shall not exceed 0.32 milligrams per litre.

The concentration of Escherichia coli shall not exceed 130 *E. coli* per 100 millilitres in any sample.

Chlorophyll a shall not exceed 50 milligrams per square metre at any time or exceed a monthly mean of 15 milligrams per square metre for filamentous algae or diatoms and cyanobacteria.[141]

The Macroinvertebrate Community Index shall exceed a score of 90 and the ~~Semi-~~Quantitative Macroinvertebrate Community Index shall exceed a score of 4.5.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Spring Fed"

The temperature of the water:

- shall not exceed 21°C
- shall not exceed 11°C in trout spawning areas during May to September inclusive
- the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

[140] Visual clarity is assessed using the black disc method or other comparable method employed by Environment Southland.
[141] Expressed in terms of reach biomass per unit of exposed strata (i.e., tops and sides of stones) averaged across the full width of the river.

The pH of the water shall be within the range 6.5 to 9, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community composition.

~~The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.~~

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The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured immediately upstream of the discharge~~%~~.

The concentration of dissolved oxygen in water shall exceed 99% of saturation concentration.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

When the flow is at or below the median flow, the visual clarity of the water shall not be less than 3 metres.[142]

There shall be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

The concentration of total ammonia shall not exceed 0.32 milligrams per litre.

The concentration of faecal coliforms shall not exceed 1,000 coliforms per 100 millilitres, except for popular bathing sites, defined in Appendix G "Popular Bathing Sites" and within 1 km immediately upstream of these sites, where the concentration of Escherichia coli shall not exceed 130 E. coli per 100 millilitres.

Chlorophyll a shall not exceed 50 milligrams per square metre at any time, or exceed a monthly mean of 15 milligrams per square metre for filamentous algae or diatoms and cyanobacteria.[143]

The Macroinvertebrate Community Index shall exceed a score of 90 and the ~~Semi-~~Quantitative Macroinvertebrate Community Index shall exceed a score of 4.5.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Lowland/Coastal Lakes and Wetlands"

The temperature of the water:

- shall not exceed 23°C
- the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water shall be within the range 6.5 to 9, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community composition.

[142] Visual clarity is assessed using the black disc method or other comparable method employed by Environment Southland

[143] Expressed in terms of reach biomass per unit of exposed strata (i.e., tops and sides of stones) averaged across the full width of the river.

~~The change in sediment cover must not exceed 10%.~~

CV – Sixth Interim Decision

There must be no discernible change in fine sediment (< 2mm diameter) bed cover.

The concentration of dissolved oxygen in water shall exceed 80% of saturation concentration.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

When lake inflows are below their median values, the Secchi depth clarity of the water shall not be less than 1.5 metres, except where the water is naturally low in clarity as a result of high concentrations of tannins, in which case the natural colour and clarity shall not be altered.[144]

The concentration of total ammonia shall not exceed the values specified in Table 1 "Ammonia standards for Lowland and Hill surface water bodies".

The concentration of faecal coliforms shall not exceed 1,000 coliforms per 100 millilitres, except for popular bathing sites, defined in Appendix G "Popular Bathing Sites", where the concentration of Escherichia coli shall not exceed 130 E. coli per 100 millilitres.

The concentration of chlorophyll a shall not exceed 5 milligrams per cubic metre.[145]

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Hill Lakes and Wetlands"

The temperature of the water shall not exceed 23°C the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water shall be within the range 6.5 to 9, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community composition.

~~The change in sediment cover must not exceed 10%.~~

CV – Sixth Interim Decision

[144] Visual clarity in lakes to be measured as Secchi depth.
[145] Determination of lake chlorophyll concentration to be follow the protocols in Burns et al. (2000).

There must be no discernible change in fine sediment (< 2mm diameter) bed cover.

The concentration of dissolved oxygen in water shall exceed 80% of saturation concentration.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

When lake inflows are below their median values, the Secchi depth clarity of the water shall not be less than 5 metres.

The concentration of total ammonia shall not exceed the values specified in Table 1 "Ammonia standards for Lowland and Hill surface water bodies".

The concentration of faecal coliforms shall not exceed 130 E. coli per 100 millilitres.

Biomass shall not exceed 35 grams per square metre for filamentous algae.

The concentration of chlorophyll a shall not exceed 5 milligrams per cubic metre.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Mountain Lakes and Wetlands"

The temperature of the water

- shall not exceed 21°C
- the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water shall be within the range 6.5 to 9, and there shall be no pH change in water due to a discharge that results in a loss of biological diversity or a change in community composition.

~~The change in sediment cover must not exceed 10%.~~

CV – Sixth Interim Decision

There must be no discernible change in fine sediment (< 2mm diameter) bed cover.

The concentration of dissolved oxygen in water shall exceed 99% of saturation concentration.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

The natural colour and clarity of the waters must not be changed to a conspicuous extent.

When lake inflows are below their median values, the Secchi depth clarity of the water shall not be less than 10 metres.

The concentration of total ammonia shall not exceed 0.32 milligrams per litre.

The concentration of Escherichia coli shall not exceed 130 E. coli per 100 millilitres in any sample.

The concentration of chlorophyll a shall not exceed 2 milligrams per cubic metre.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Mataura 1"

The Protected Waters[146] between map references NZMS 260 F45:967-503 to F45:963-508 (Mataura River).

Any discharge is to be substantially free from suspended solids, grease and oil.

The daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water must be within the range 6 to 8.5, except when due to natural causes.

The waters must not be tainted so as to make them unpalatable, nor must they contain toxic substances to the extent that they are unsafe for consumption by humans or farm animals, nor must they emit objectionable odours.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

There must not be any destruction of natural aquatic life by reason of a concentration of toxic substances.

~~The natural colour and clarity of the waters must not be changed to a conspicuous extent.~~ There shall be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

~~The change in~~ fine ~~sediment~~ ~~(<2mm diameter) bed~~ ~~cover must not exceed 10%.~~

[146] Protected Waters means:
(a) the Mataura River from its source (approximate map reference NZMS 260 E42:502-333) to its confluence with the sea (approximate map reference NZMS 260 F47:877-946); and
(b) the Waikaia River and its tributaries, the Ōtamita Stream, and all other tributaries of the Mataura River upstream of its confluence with the Ōtamita Stream (approximate map reference NZMS 260 F45:881-582); and
(c) the Mimihau Stream and the Mokoreta River and each of their tributaries.

CV – Sixth Interim Decision

The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured immediately upstream of the discharge~~%~~.

The oxygen concentration in solution in the waters must not be reduced below 6 milligrams per litre.

Based on no fewer than five samples taken over not more than a 30-day period, the median value of the faecal coliform bacteria content of the water must not exceed 2000 per 100 millilitres and the median value of the total coliform bacteria content of the water must not exceed 10,000 per 100 millilitres.

The Macroinvertebrate Community Index shall exceed a score of 120, 100 and 90 as the river progresses from mountain, hill to lowland hard bed. The Quantitative Macroinvertebrate Community Index shall exceed a score of 7.5, 5.5 and 4.5 as the river progresses from mountain, hill to lowland hard bed.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies classified as "Mataura 2"

The Protected Waters between map references NZMS 260 F45:894-581 to F45:885-584 (Mataura River) and NZMS 260 F46:917-391 to F46:924-396 (Mataura River).

Any discharge is to be substantially free from suspended solids, grease and oil.

The natural water temperature must not be changed by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of a discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water must be within the range 6.5 to 8.3, except when due to natural causes.

The waters must not be tainted so as to make them unpalatable, nor must they contain toxic substances to the extent that they are unsafe for consumption by humans or farm animals, nor must they emit objectionable odours.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

There must not be any destruction of natural aquatic life by reason of a concentration of toxic substances.

~~The natural colour and clarity of the waters must not be changed to a conspicuous extent.~~ There shall be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

~~The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.~~

CV – Sixth Interim Decision

The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured immediately upstream of the discharge~~%~~.

The oxygen concentration in solution in the waters must not be reduced below 6 milligrams per litre.

Based on no fewer than five samples taken over not more than a 30-day period, the median value of the faecal coliform bacteria content of the water must not exceed 200 per 100 millilitres.

The Macroinvertebrate Community Index shall exceed a score of 120, 100 and 90 as the river progresses from mountain, hill to lowland hard bed. The Quantitative Macroinvertebrate Community Index shall exceed a score of 7.5, 5.5 and 4.5 as the river progresses from mountain, hill to lowland hard bed.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Surface water bodies Classified as "Mataura 3"

The Protected Waters other than those parts classified as Mataura 1 and Mataura 2.

Any discharge is to be substantially free from suspended solids, grease and oil.

The daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C or less, as a result of any discharge. If the natural or existing water temperature is above 16°C, the natural or existing water temperature shall not be exceeded by more than 1°C as a result of any discharge.

The pH of the water must be within the range 6 to 9, except when due to natural causes.

The waters must not be tainted so as to make them unpalatable, nor must they contain toxic substances to the extent that they are unsafe for consumption by humans or farm animals, nor must they emit objectionable odours.

There shall be no bacterial or fungal slime growths visible to the naked eye as obvious plumose growths or mats. Note that this standard also applies to within the zone of reasonable mixing for a discharge.

There must not be any destruction of natural aquatic life by reason of a concentration of toxic substances.

~~The natural colour and clarity of the waters must not be changed to a conspicuous extent.~~ There shall be no more than a 20% change in clarity or colour at the edge of the reasonable mixing zone, relative to the clarity or colour upstream of the discharge point.

~~The change in fine sediment (<2mm diameter) bed cover must not exceed 10%.~~

CV – Sixth Interim Decision

The ~~change in~~ fine sediment (<2mm diameter) bed cover, when measured as a percentage at the downstream edge of the reasonable mixing zone, must not ~~exceed~~ increase by more than 10 percentage points from that measured imediately upstream of the discharge~~%~~.

The oxygen concentration in solution in the waters must not be reduced below 5 milligrams per litre.

The concentration of faecal coliforms shall not exceed 1,000 coliforms per 100 millilitres, except for popular bathing sites, defined in Appendix G "Popular Bathing Sites" and within 1 km immediately upstream of these sites, where the concentration of Escherichia coli shall not exceed 130 E. coli per 100 millilitres.

The Macroinvertebrate Community Index shall exceed a score of 120, 100 and 90 as the river progresses from mountain, hill to lowland hard bed. The Quantitative Macroinvertebrate Community Index shall exceed a score of 7.5, 5.5 and 4.5 as the river progresses from mountain, hill to lowland hard bed.

Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

Table 1 "Ammonia standards for Lowland and Hill surface water bodies"

Total Ammoniacal Nitrogen in mg/m^3 at different pH	
pH	**NH_4+-N + NH_3-N mg/m^3**
6.0	2570
6.1	2555
6.2	2540
6.3	2520
6.4	2490
6.5	2460
6.6	2430
6.7	2380
6.8	2330
6.9	2260
7.0	2180
7.1	2090
7.2	1990
7.3	1880
7.4	1750
7.5	1610

Total Ammoniacal Nitrogen in mg/m^3 at different pH	
pH	**NH_4+-N + NH_3-N mg/m^3**
7.6	1470
7.7	1320
7.8	1180
7.9	1030
8.0	900
8.1	780
8.2	660
8.3	560
8.4	480
8.5	400
8.6	340
8.7	290
8.8	240
8.9	210
9.0	180

References

Australian and New Zealand Environment and Conservation Council 2000. *Australian and New Zealand guidelines for fresh and marine water quality.*

Burns, N., Bryers, G., and Bowman, E. 2000. *Protocol for monitoring trophic levels of New Zealand lakes and reservoirs.* Prepared for the Ministry for the Environment.

Stark, J.D., Boothroyd, I.K.G., Harding, J.S., Maxted, J.R. and Scarsbrook, M.R. 2001. *Protocols for sampling macroinvertebraes in wadeable streams*. *New Zealand Macroinvertebrate Working Group Report No. 1.* Prepared for the Ministry for the Environment.

Appendix F – Water Conservation Orders

Water Conservation (Mataura River) Order 1997

SR 1997/126

PURSUANT to Sections 214 and 423 of the Resource Management Act 1991, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and on the recommendation of the Minister for the Environment made in accordance with the report of the Environment Court following an inquiry by that Court, makes the following order.

Analysis
(List of Sections)

1 Title and commencement
2 Interpretation
3 Outstanding features
4 Rates of flow in Mataura River and Waikaia River
5 General provisions relating to water permits, discharge permits, and regional plans
6 Water permit to dam not to be granted, etc
7 Provisions relating to discharges
8 Scope of this order

Orders

1. **Title and commencement**—

(1) This order may be cited as the Water Conservation (Mataura River) Order 1997.
(2) This order comes into force on the 28th day after the date of its notification in the Gazette.

2. **Interpretation**—

In this order, unless the context otherwise requires,—

"Act" means the Resource Management Act 1991:

"Authorised inflows" means discharges of water or water containing waste into protected waters pursuant to a discharge permit:

"Protected waters" means—
(1) the Mataura River from its source (approximate map reference NZMS 260 E42:502333) to its confluence with the sea (approximate map reference NZMS 260 F47:877946); and
(2) the Waikaia River and its tributaries, the Ōtamita Stream, and all other tributaries of the Mataura River upstream of its confluence with the Ōtamita Stream (approximate map reference NZMS 260 F45:881582); and
(3) the Mimihau Stream and the Mokoreta River and each of their tributaries.

3. **Outstanding features** —

It is declared that the protected waters include outstanding fisheries and angling amenity features.

4. **Rates of flow in Mataura River and Waikaia River** —

(1) Because of the outstanding features specified in clause 3, the rates of flow in the Mataura River and in the Waikaia River must not be reduced, by the grant or exercise of water permits, below the minimum rate of flow specified in subclauses (2) and (3).

(2) The minimum rate of flow at any point in the Mataura River and the Waikaia River above the Mataura Island Road Bridge (approximate map reference NZMS 260 F46:850158), where the flow is estimated by the Southland Regional Council from measurements taken at that point, must be 95% of —

(a) the flow so estimated by the Southland Regional Council at that point; plus

(b) water taken in accordance with the Act from the protected waters upstream of that point and not returned to the protected waters —

less authorised inflows upstream of that point which did not have their source in the protected waters.

(3) The minimum rate of flow at any point in the Mataura River below the Mataura Island Road Bridge (approximate map reference NZMS 260 F46:850158), where the flow is estimated by the Southland Regional Council from measurements taken at that point, must be 90% of—

(a) the flow so estimated by the Southland Regional Council at that point; plus

(b) water taken in accordance with the Act from the protected waters upstream of that point and not returned to the protected waters—

less authorised inflows upstream of that point which did not have their source in the protected waters.

5. **General provisions relating to water permits, discharge permits, and regional plans**—

(1) A water permit or a discharge permit must not be granted under Part 6 of the Act and a regional plan must not be made under Part 5 of the Act in respect of any part of the protected waters if such a permit or plan would contravene the provisions of this order.

(2) The prohibitions in subclause (1) do not apply to water permits or discharge permits granted or regional plans made in respect of any part of the protected waters for all or any of the following purposes:

(a) research into, and enhancement of, fisheries and wildlife habitats;

(b) the construction, maintenance, or protection of roads, bridges, pylons, and other necessary public utilities;

(c) soil conservation and river protection and other activities undertaken pursuant to the Soil Conservation and Rivers Control Act 1941;

(d) stock water and stock-water reservoirs.

6. **Water permit to dam not to be granted, etc**—

(1) A permit to dam the Mataura River from its source to the sea and the Waikaia River from its source to its confluence with the Mataura River must not be granted under Part 6 of the Act.

(2) A permit to dam any tributary of the Waikaia River or the Mataura River which forms part of the protected waters must not be granted under Part 6 of the Act if the dam would

harm salmonid fish-spawning or prevent the passage of salmonid fish.

(3) The prohibition in subclause (1) does not apply to water permits in respect of the weir at approximate map reference NZMS 260 F46:912385 if the water permits are granted or renewed subject to similar terms and conditions to which the former permits were subject.

7. Provisions relating to discharges

(1) A discharge permit must not be granted and a regional plan must not be made for any discharge into the protected waters if the effect of the discharge would be to breach the following provisions and standards:

(a) Any discharge is to be substantially free from suspended solids, grease, and oil:

(b) After allowing for reasonable mixing of the discharge with the receiving water in that part of the protected water between map references NZMS 260 F45:967503 to F45:963508 (Mataura River), —

(i) the natural water temperature must not be changed by more than 3 degrees Celsius;

(ii) the acidity or alkalinity of the waters as measured by the pH must be within the range of 6.0 to 8.5, except when due to natural causes;

(iii) the waters must not be tainted so as to make them unpalatable, nor must they contain toxic substances to the extent that they are unsafe for consumption by humans or farm animals, nor must they emit objectionable odours;

(iv) there must not be any destruction of natural aquatic life by reason of a concentration of toxic substances;

(v) the natural colour and clarity of the waters must not be changed to a conspicuous extent;

(vi) the oxygen content in solution in the waters must not be reduced below 6 milligrams per litre;

(vii) based on not fewer than 5 samples taken over not more than a 30-day period, the median value of the faecal coliform bacteria content of the water must not exceed 2000 per 100 millilitres and the median value of the total coliform bacteria content of the water must not exceed 10,000 per 100 millilitres;

(c) After allowing for reasonable mixing of the discharge with the receiving water in that part of the protected waters between map references —

(i) NZMS 260 F45:894581 to F45:885584 (Mataura River); and

(ii) NZMS 260 F46:917391 to F46:924396 (Mataura River),—

(A) the natural water temperature must not be changed by more than 3 degrees Celsius;

(B) the acidity or alkalinity of the waters as measured by the pH must be within the range of 6.5 to 8.3, except when due to natural causes;

(C) the waters must not be tainted so as to make them unpalatable, nor must they contain toxic substances to the extent that they are unsafe for consumption by humans or farm animals, nor must they emit objectionable odours;

(D) there must not be any destruction of natural aquatic life by reason of a concentration of toxic substances;

(E) the natural colour and clarity of the water must not be changed to a conspicuous extent;

(F) the oxygen content in solution in the waters must not be reduced below 6 milligrams per litre;

(G) based on not fewer than 5 samples taken over not more than a 30-day period, the median value of the faecal coliform bacteria content of the waters must not exceed 200 per 100 millilitres:

(d) After allowing for a reasonable mixing of the discharge with the receiving waters in those parts of the protected waters other than the parts specified in paragraphs (b) and (c),—

(i) the natural water temperature must not be changed by more than 3 degrees Celsius;

(ii) the acidity or alkalinity of the waters as measured by the pH must be within the range of 6.0 or 9.0, except when due to natural causes;

(iii) the waters must not be tainted so as to make them unpalatable, nor must they contain toxic substances to the extent that they are unsafe for consumption by humans or farm animals, nor must they emit objectionable odours;

(iv) there must not be any destruction of natural aquatic life by reason of a concentration of toxic substances;

(v) the natural colour and clarity of the waters must not be changed to a conspicuous extent;

(vi) the oxygen content in solution in the waters must not be reduced below 5 milligrams per litre.

(2) Where it is impracticable, because of emergency overflows or the carrying out of maintenance work or any other temporary situation, to require compliance with the relevant provisions of subclause (1), water permits and discharge permits may be granted by the Southland Regional Council.

8. **Scope of this order**—

Nothing in this order limits the effect of Section 14(3)(b) and (e) of the Act relating to the use of water for domestic needs, for the needs of animals, or for fire-fighting purposes.

Marie Shroff
Clerk of the Executive Council.

Explanatory Note

This note is not part of the order, but is intended to indicate its general effect.
This order declares that the Mataura River and the Waikaia River and various other rivers, streams, and tributaries include outstanding fisheries and angling amenity features.
The order includes various provisions to preserve and protect these features.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in Gazette: 10 July 1997.
This order is administered in the Ministry for the Environment.

Water Conservation (Oreti River) Order 2008

Issue 127-5744

ANAND SATYANAND, Governor-General
ORDER IN COUNCIL
At Wellington this 4th day of August 2008
Present:
HIS EXCELLENCY THE GOVERNOR-GENERAL
PRESIDING IN COUNCIL

Pursuant to Section 214 of the Resource Management Act 1991, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following Order.

Order

1. **Title**—This order is the Water Conservation (Oreti River) Order 2008.

2. **Commencement**—This order comes into force 28 days after the date of its notification in the *New Zealand Gazette.*

3. **Interpretation**—In this order, unless the context otherwise requires:

   "Act" means the Resource Management Act 1991

   "damming" means the impounding of all or part of the natural flow of any water that may involve an associated temporary or permanent structure

   "river" means the main stem of those waters identified in the Schedules to this order. The main stem shall be the river with that name on NZMS260 series topographical maps between specified lower and upper river limits as defined by map references in Schedules to this Order

   "tributaries" means all the tributaries of rivers or sections of rivers identified in Schedules to this order.

4 **Outstanding characteristics**—The waters specified in Schedules 1 and 2 include or contribute to, to the extent identified in Schedule 2, the following outstanding characteristics, features, and values:
   (a) habitat for brown trout;
   (b) angling amenity;
   (c) habitat for black-billed gulls;
   (d) significance in accordance with tikanga Māori.

5. **Waters to be protected**—Because of the outstanding characteristics, features, and values identified in clause 4, the waters specified in Schedule 1 are to be protected in accordance with the relevant conditions in clauses 7 to 9 as specified in Schedule 1.

6. **Waters to be protected as contributing to outstanding features**—

Because of their contribution to outstanding characteristics and features identified in clause 4, the waters specified in Schedule 2 are to be protected in accordance with clause 8 to the extent specified in those clauses and in Schedule 2.

7. **Restriction on damming of waters**—Subject to clauses 10 and 11, no water permit may be granted or rule included in a regional plan authorising the damming of waters specified in item 1 of Schedule 1.

8. **Requirement to maintain fish passage**—Subject to clauses 10 and 11, no water permit may be granted or rule included in a regional plan relating to the waters specified in Schedule 1 and item 1 of Schedule 2 authorising an activity that will adversely affect the passage of fish.

9. **Restriction on the alteration of water quality**—Subject to clauses 10 and 11, no discharge permit may be granted or rule included in a regional plan authorising a discharge into any of the waters specified in item 1 of Schedule 1 that will result in a reduction of water quality beyond the zone of reasonable mixing.

10. **Scope of order**—

(1) This order does not limit sections 14(3)(b) and (e) of the Act relating to the use of water for an individual's reasonable domestic needs, or for the reasonable needs of an individual's animals for drinking water, or taken or used for fire-fighting purposes.

(2) This order does not restrict or prevent the grant of resource consents for the purpose of:
   (a) research into, and protection or enhancement of, fisheries and wildlife habitats; or
   (b) the construction, removal, maintenance or protection of any road, ford or bridge, or the maintenance or protection of any network utility operation (as defined in section 166 of the Act); or
   (c) the construction and maintenance of soil conservation and river protection works undertaken pursuant to the Soil Conservation and Rivers Control Act 1941; or
   (d) the protection of human or animal health.

11. **Exemptions**—Nothing in this order prevents the grant of a discharge or water permit that would otherwise contravene conditions set out in clauses 7, 8 and 9 if:

(a) a consent authority is satisfied that:
   (i) there are exceptional circumstances justifying the grant of a permit; or
   (ii) the permit is for an activity that is of a temporary nature; or
   (iii) the permit is for an activity that is associated with necessary construction and maintenance work; and

(b) the exercise of any such resource consent would not compromise the protection of the outstanding characteristics and features identified for the waters specified in the Schedules.

Schedule 1
Clauses 5, 7, 8 and 9
Protected waters with outstanding characteristics

Item	Waters	Outstanding Characteristics or Feautures	Conditions to Apply
1	Oreti River main stem at Rocky Point at NZMS 260 E44373946 upstream to the forks at E42 345 450	Habitat for brown trout Angling amenity Value in accordance with tikanga Māori	Prohibit damming (Clause 7) Maintenance of fish passage (Clause 8) Maintenance of water quality (Clause 9)
2	Weydon Burn, Windley River and all other tributaries upstream of the Oreti River at E43 305210 near Lincoln Hill	Habitat for brown trout	Maintenance of fish passage (Clause 8)

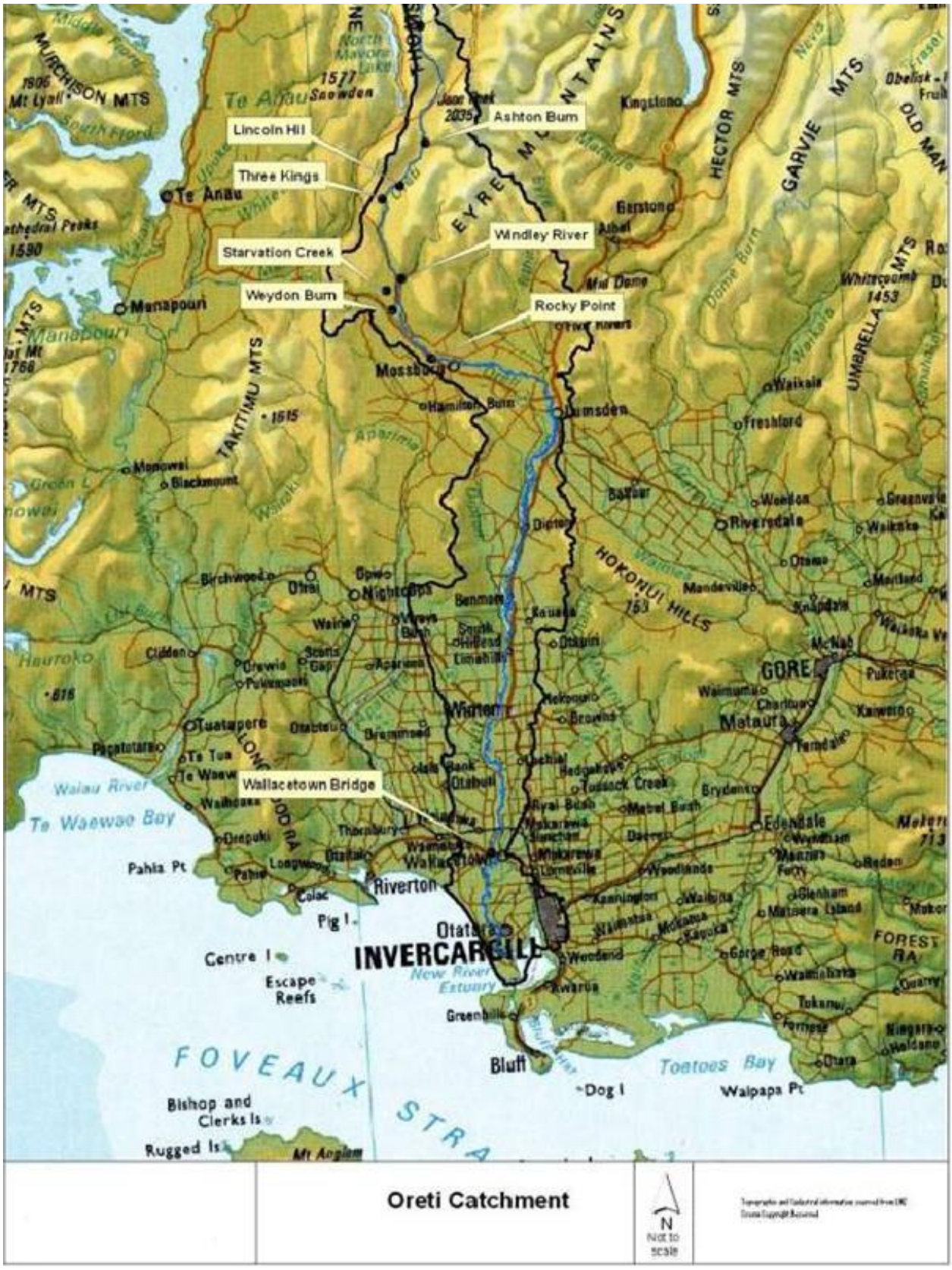
Schedule 2
Clauses 6 and 8
Waters to be protected for their contribution to outstanding features

Item	Waters	Outstanding Characteristics or Feautures	Conditions to Apply
1	Oreti River downstream of Rocky Point at E44 373946 to the Wallacetown Bridge at E46 455208	Habitat for brown trout Habitat for black-billed gull	Maintain fish passage (Clause 8)
2	Groundwater hydraulically connected to the surface water of the Oreti River from Rocky Point at E44 373946 upstream to the forks at E42 345450	Habitat for brown trout	Maintenance of fish passage (Clause 8)

Michael Webster
for Clerk of the Executive Council.

Explanatory Note
This note is not part of the order, but is intended to indicate its general effect.
This order declares that the Oreti River and various other rivers, streams, and tributaries include outstanding fisheries and angling amenity features.
The order includes various provisions to preserve and protect these features.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in Gazette: 14 August 2008.
This order is administered in the Ministry for the Environment.


Lincoln Hill
Ashton Burn
Three Kings
Windley River
Starvation Creek
Weydon Burn
Rocky Point
Wallacetown Bridge
Oreti Catchment
N
Not to scale

Appendix G – Popular Bathing Sites

Each of the following sites encompasses the waters immediately under the relevant bridge and 100 metres upstream and downstream of the bridge:

- Ōreti River at Winton Bridge
- Ōreti River at Wallacetown Bridge
- Mataura River at Gore Bridge
- Aparima River at Thornbury Bridge
- Waiau River at Tuatapere Bridge
- Waikaia River at Waikaia Bridge
- Mataura River at Riversdale
- Mataura River at Mataura Bridge
- Ōreti River at Branxholme Rail Bridge
- Mataura River at Woolwich Street Reserve

The following sites listed are considered indicative of popular bathing sites although they are not found within Southland's lowland, hill and spring-fed water bodies. These sites are monitored each month for contact recreation standards:

- Waikaia River at Piano Flat – classified under the Mataura classification
- Mararoa River at Mavora Lake – classified as mountain

Appendix I – Natural State Waters Outside National Parks

Table 1 "Natural State Waters outside National Parks"

Area Name	DOC code	DOC land status	Exclusions – refers to any waters on specified DOC managed land not to be managed as NS (all other waters on specified DOC land to be managed as NS)
Borland Mire	RASI	Scientific Reserve	
Burwood (Red Tussock)	RASI	Scientific Reserve	Excludes headwaters of Weydon Burn and Wash Creek
Dean Forest	CAST	Stewardship Land	Excludes tributaries within Motu Bush.
Eweburn, Lake Te Anau	CAST	Stewardship Land	
Eyre Mountains Taka Ra Haka Conservation Park	CACP	Conservation Park	Excludes Mataura catchment.
Halfmoon Bay	CAST	Stewardship Land	Excludes Little River Catchment.
Hokonui Forest	CAST	Stewardship Land	Excludes tributaries of Makarewa River & Hedgehope Stream but includes Dunsdale Stream.
Lake George	RAGP	Government Purpose Reserve	Excludes tributaries flowing into Lake George
Lillburn Valley Road	CAST	Stewardship Land	
Lindsay Ecological Area	CAEA	Ecological Area	Excludes Masson Creek East Branch but includes Masson Creek West Branch
Longwood Forest	CAST	Stewardship Land	Excludes areas within the Conservation Area near Pourakino Stream and small tributary of Aparima.
Mavpra Park	CAST	Stewardship Land	
Paddock Hill	CAST	Stewardship Land	
Pyke Forest	CAST	Stewardship Land	
Rowallan Forest	CAST	Stewardship Land	
Seaward Moss	CAST	Stewardship Land	
Snowdon Forest	CAST	Stewardship Land	

Area Name	DOC code	DOC land status	Exclusions – refers to any waters on specified DOC managed land not to be managed as NS (all other waters on specified DOC land to be managed as NS)
Stewart Island Forest	CAST	Stewardship Land	Excludes Little River Catchment.
Takitimu Conservation Area	CAST	Stewardship Land	
Te Anau Downs	CAST	Stewardship Land	
Te Anau Downs, Henry Creek	CAST	Stewardship Land	
The Cone Forest	CAST	Stewardship Land	
Tiwai Spit	CAST	Stewardship Land	Excludes surface water on land to the west of a straight line drawn on the edge of the main eastern Tiwai North South aligned Boundary and groundwater within the Tiwai groundwater zone.
Toetoes	CAST	Stewardship Land	Excludes two tributaries that flow into Mataura River.
Upper McLeod's Conservation Area	CAST	Stewardship Land	Excludes headwaters to the Ōreti River that do not adjoin Snowden Forest
Woodlaw Forest	CAST	Stewardship Land	

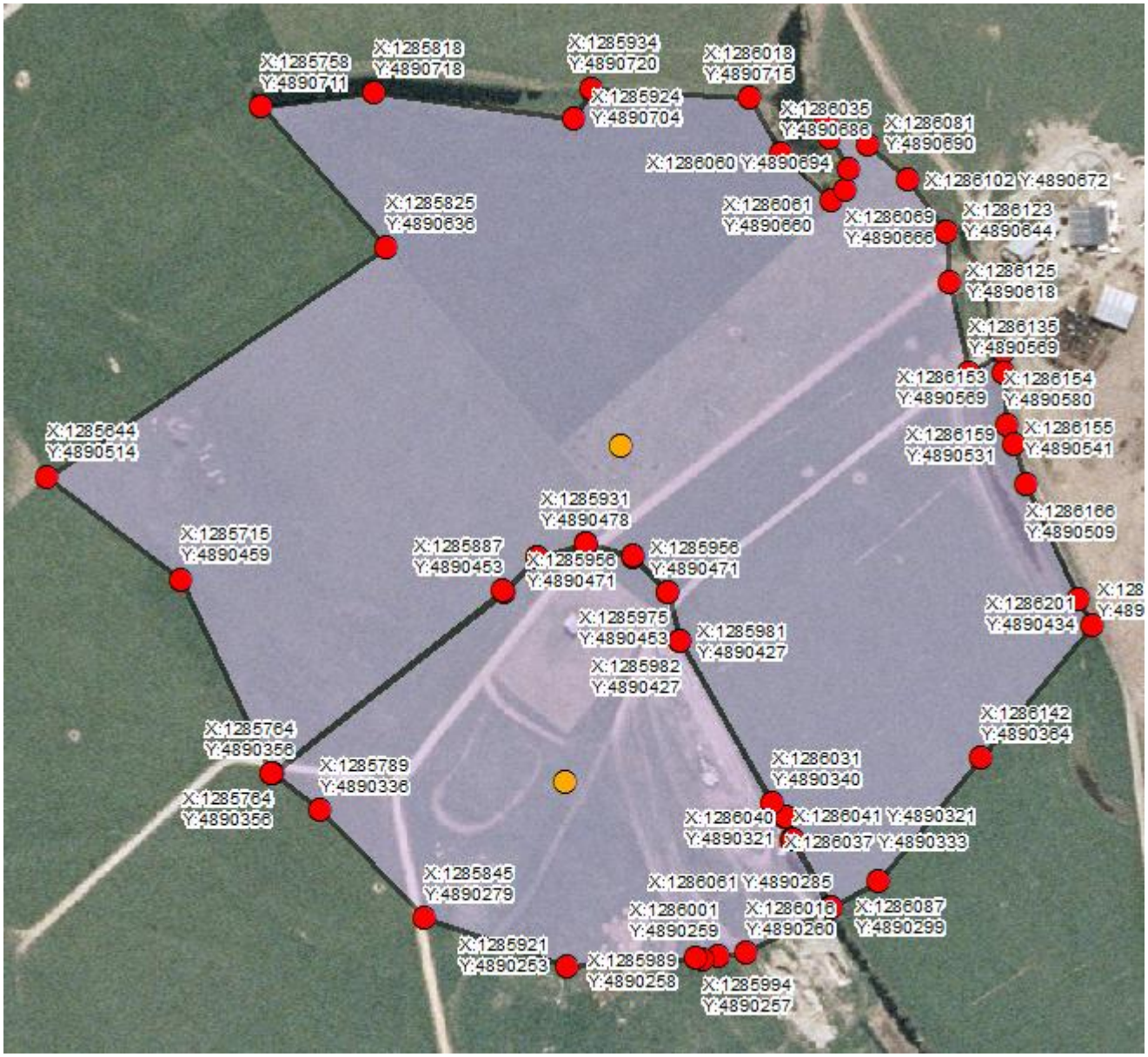
CAST = Stewardship Area – s.25 Conservation Act 1987
CAEA = Ecological Area – s.21 Conservation Act 1987
NPNP = National Park – s.4 National Parks Act 1980
RAGP = Government Purpose Reserve – s.22 Reserves Act 1977
RASI = Scientific Reserve – s.21 Reserves Act 1977
CACP = Conservation Park – s19 Conservation Act 1987

Appendix J – Drinking Water Protection Zones

Operator	Catchment	Groundwater Zone	Source	Northing	Easting	Popln
Alliance Group Ltd	Oreti River		River	1236114	4858300	>501
Alliance Group Ltd	Makarewa River		River	1238519	4857204	>501
Gore District Council	Mataura River	Knapdale	River/Bore	1285995	4890305	>501
Gore District Council	Mataura River	Knapdale	River/Bore	1285928	4890434	>501
Gore District Council	Mataura River	Knapdale	River/Bore	1286408	4888536	>501
Gore District Council	Mataura River	Knapdale	River/Bore	1286408	4888436	>501
Gore District Council	Mataura River		River	1286553	4888712	>501
Gore District Council	Mataura River		River	1285399	4890083	>501
Invercargill City Council	Oreti River		River	1237097	4862497	>501
Southland District Coucil		Lintley Aquifer	Bore	1244564	4925736	>501
Gore District Council	Waikana Stream		River	1282755	4875915	>501
Gore District Council	Pluera Stream		River	1286578	4875590	>501
Gore District Council	Mataura River		River	1282177	4877303	>501
NZAS		Tiwai	Bore	1249296	4829996	>501
NZAS		Tiwai	Bore	1251688	4829407	>501
NZAS		Tiwai	Bore	1250182	4829324	>501
NZAS		Tiwai	Bore	1250919	4829631	>501
NZAS		Tiwai	Bore	1252451	4829364	>501
NZAS		Tiwai	Bore	1253998	4829272	>501
Southland District Council	Morley Creek		River	1210668	4902284	>501
Southland District Council	Aparima River	Lower Aparima	River/Bore	1213438	4878962	>501
Southland District Council	Aparima River	Lower Aparima	River/Bore	1217611	4859627	>501
Southland District Council		Lower Aparima	River/Bore	1215783	4859557	>501
Southland District Council	Upukerora River	Te Anau	River/Bore	1188566	4957972	>501
Southland District Council	Lake Te Anau	Te Anau	Lake/Bore	1185870	4958439	>501
Southland District Council	Lake Te Anau	Te Anau	Lake/Bore	1185840	4958399	>501
Southland District Council	Lake Te Anau	Te Anau	Lake/Bore	1185766	4958246	>501
Southland District Council		Lower Waiau	Bore	1189060	4878081	>501
Southland District Council		Lower Waiau	Bore	1189273	4877842	>501

Southland District Council		Lower Oreti	Bore	1237485	4880559	>501
Southland District Council		Lower Oreti	Bore	1237669	4880633	>501
Southland District Council	Bowen River		River	1198112	5041740	>501

Gore District – Coopers Wells - Microbial Health Protection Zone



Appendix K[147] – Surface Water Appendix (Consent Orders)

Methodology for establishing the point used to determine minimum flow and the level of allocation

The point used to determine the minimum flow and the level of allocation for the purposes of Policy 22 is as follows:

(i) the point of take; or
(ii) in the case of a lake, river, artificial watercourse, modified watercourses or natural wetland where flow is lost to groundwater along the length of the lake, river, artificial watercourse, modified watercourse or natural wetland, the most flow sensitive point downstream.

The Southland Regional Council will determine the location of the above. Minimum flows are to be developed through gauging of river flows correlated with Southland Regional Council approved water level monitoring sites, rated flow recording sites, or hydrologic modelling.

Minimum Flows
The minimum flow will be as follows:
(i) for takes from the primary allocation, the minimum flow will be Q95;
(ii) for takes from the secondary allocation, the minimum flow will be the natural median flow during the period from 1 April to 30 November each year and the natural mean flow during the period from 1 December to 31 March each year; and
(iii) for takes outside of the primary or secondary allocation, the minimum flow will be derived on a case-by-case basis using the guidance contained in Method 2 of Appendix K.

In situations where surface water and groundwater interact, a minimum groundwater level may also be set to maintain instream values.

In the absence of quality information, a precautionary approach will be adopted.

Primary and secondary allocation
Primary allocation regimes will be determined by:
(i) for a lake, river, artificial watercourse, modified watercourse or natural wetland outside the Waiau catchment and not subject to a Water Conservation Order that specifies an alternative environmental flow and level regime, a primary allocation is available when the following criteria can be met:
  (1) the total surface water allocation does not exceed a volume of 30 percent of the natural pre-allocation Q95 as determined by Southland Regional Council following the methodology established in Appendix K, at any downstream point in the catchment; and
  (2) the flow at that location is at or above the natural Q95;
(ii) in the Waiau catchment, the primary allocation is that authorised through resource consents in force and operative with their terms;
(iii) for a lake, river, modified watercourse or natural wetland subject to a Water Conservation Order that specifies an environmental flow and level regime, the primary allocation will be that specified in the Order; and
(iv) in the absence of quality information, a precautionary approach will be adopted.

[147] Appeal to Environment Court by Southland Fish and Game Council ENV-2018-CHC-000037

Secondary allocation regimes will be determined by:

(i) for a lake, river, artificial watercourse, modified watercourse or natural wetland, outside the Waiau catchment and not subject to a Water Conservation Order that specifies an alternative environmental flow and level regime, a supplementary allocation is available when the following criteria can be met:

(1) the total surface water allocation does not exceed a volume of 10 percent of the relevant seasonal flow cut-off flow in a lake, river, artificial watercourse, modified watercourse or natural wetland at the time of take; and

(2) the flow at that location is at or above the natural median flow during the period from 1 April to 30 November each year and the natural mean flow during the period from 1 December to 31 March each year;

(ii) in the Waiau catchment and for a lake, river, modified watercourse or natural wetland subject to a Water Conservation Order that specifies an environmental flow and level regime, the primary allocation encompasses any supplementary allocation; and

(iii) in the absence of quality information, a precautionary approach will be adopted.

Assessments of environmental effects for surface water takes, diversion and use

(i) In situations where the total volume of surface water allocation is between 10 and 30 percent of the Q95 as determined by the Southland Regional Council following the methodology established above, at any downstream point in the catchment, an assessment of environment effects using Method 1 below will be required.

(ii) In situations where the total volume of surface water allocation will breach 30 percent of the Q95, as determined by the Southland Regional Council following the methodology established above, at any downstream point in the catchment, an assessment of environment effects using Method 2 below will be required.

Method 1 – Assessment using Generalised Habitat Models

The process for undertaking an assessment of environmental effects using generalised habitat models is as follows:

- **Step 1**: Determine the relevant surface water management unit and flow range using Southland Regional Council flow data.
- **Step 2**: Determine the appropriate critical value from the data obtained in Step 1 using following table which shows critical values by surface water management unit and flow range:

Median flow	Surface Water Management Unit		
	Lowland	Hill/Mountain	Hill2 (Hokonui/Catlins)
0 – 300 L/s	Diadromous galaxiid	Non-diadromous galaxiid	Diadromous galaxiids (low elevation) and non-diadromous galaxiids at higher elevations
300 – 750 L/s	Trout spawning/juvenile rearing or	Trout spawning/juvenile rearing or non-diadromous	Trout spawning/juvenile rearing or non-diadromous galaxiid if trout excluded

Median flow	Surface Water Management Unit		
	Lowland	Hill/Mountain	Hill2 (Hokonui/Catlins)
	Redfin/common bully if trout excluded	galaxiid if trout excluded Large adult trout	Large adult trout
0.75 – 2.5 m^3/s	Trout spawning/juvenile rearing* Large adult trout	Trout spawning/juvenile rearing Large adult trout	Trout spawning/juvenile rearing Large adult trout
2.5 – 5 m^3/s	Trout spawning/juvenile rearing*	Large adult trout	Large adult trout
> 5 m^3/s	Large adult trout	Large adult trout	Large adult trout

- **Step 3**: Determine the level of habitat at the Q95 using generalised habitat models for the critical value species (refer to *Review of methods for setting water quantity conditions in the Environment Southland draft Regional Water Plan, NIWA, June 2004*) and compare with the cumulative effect of the allocated and proposed water takes.

Method 2 – Assessment using Instream Habitat Flow Incremental Methodology

The process for undertaking an assessment of environmental effects using instream habitat analysis is the same as the process using generalised habitat models outlined in Steps 1 and 2 above. Steps 3 and 4 of this process are as follows:

- **Step 3**: Determine the level of habitat across the flow range using detailed instream habitat analysis for the critical value species (refer to *Review of methods for setting water quantity conditions in the Environment Southland draft Regional Water Plan, NIWA, June 2004*). For catchments with rivers with a median flow greater than 4.5 m^3/s, Net Rate of Energy Intake modelling will be used to determine/revise allocation policy for that catchment.

- **Step 4**: Determine the habitat maintenance level using the following table. The habitat maintenance level is based on retaining a percentage of the habitat across the flow range and will be used to determine the impact of the cumulative abstraction on the water body and assist in determining if consent should be granted and if so, the appropriate minimum flow.

Fishery quality will be assumed to be high unless agreed otherwise by key stakeholders such as the Department of Conservation, Fish and Game New Zealand and Te Ao Mārama. Similarly, the habitat maintenance level could be adjusted depending on the perceived values of the out-of-stream use in consultation with key stakeholders.

Critical value	Fishery quality	Significance ranking	% Habitat retention
Large adult trout – perennial fishery	High	1	90
Diadromous galaxiid	High	1	90
Non-diadromous galaxiid	-	2	80
Trout spawning/juvenile rearing	High	3	70
Large adult trout – perennial fishery	Low	3	70
Diadromous galaxiid	Low	3	70
Trout spawning/juvenile rearing	Low	5	60
Redfin/common bully	-	5	60

Appendix L – Groundwater Appendix

Appendix L.1 Aquifer test requirements

Minimum aquifer test requirements to support resource consent applications to take groundwater, other than replacement consent applications for abstraction volumes that have been occurring with no adverse effects of a more than minor scale, are outlined in Table L.1 below.

Table L.1: Minimum aquifer test requirements

Size of take (m^3/day)	Minimum Aquifer Test Requirements
<250	Standard yield test comprising 2 hours abstraction at the proposed maximum rate with drawdown and recovery of water levels in the pumped bore measured at regular intervals.
250 to 750	A step-drawdown aquifer test comprising a minimum of 3, 1-hour pumping steps followed by measurement of water level recovery. The maximum pumping rate utilised should be equal to or greater than the maximum proposed abstraction rate. A 24-hour constant-rate aquifer test undertaken at the maximum proposed abstraction rate. Water level monitoring should include drawdown and recovery (to within 10% of the initial static water level) in the pumped bore and in at least one observation bore within the area of localised drawdown. The pump rate should be kept constant within +/- 5%.
>750	***Confined Aquifers*** A step-drawdown aquifer test comprising a minimum of 3, 1-hour pumping steps followed by measurement of water level recovery. The maximum pumping rate utilised should be equal to or greater than the maximum proposed abstraction rate. A 24-hour constant-rate aquifer test undertaken at the maximum proposed abstraction rate. Water level monitoring should include drawdown and recovery (to within 10% of the initial static water level) in the pumped bore and in at least two observation bores in the source aquifer and one observation bore in the overlying aquifer within the area of localised drawdown. The pump rate should be kept constant within +/- 5%. ***Unconfined Aquifers*** A step-drawdown aquifer test comprising a minimum of 3, 1-hour pumping steps followed by measurement of water level recovery. The maximum pumping rate utilised should be equal to or greater than the maximum proposed abstraction rate. A 24-hour constant-rate aquifer test undertaken at the maximum proposed abstraction rate. Water level monitoring should include drawdown and recovery (to within 10% of the initial static water level) in the pumped bore and at least two observation bores within the area of localised drawdown. The pump rate should be kept constant within +/- 5%.

Appendix L.2 Stream depletion effects

The stream depletion effects resulting from groundwater abstraction will be classified and managed following the criteria outlined in Table L.2:

- assessment of the magnitude of stream depletion will be supported by a conceptual hydrogeological model that describes the nature of local surface water/groundwater interaction;

- calculation of the magnitude of stream depletion will be undertaken using relevant analytical or numerical assessment techniques which are suitable for application in the hydrogeological setting in which abstraction will occur;

- representative hydraulic properties for assessment of the magnitude of stream depletion will be derived from aquifer testing undertaken in accordance with requirements outlined in Appendix L.1, as well as an assessment of representative values from the wider hydrogeological environment;

- water bodies characterised as ephemeral will be excluded from consideration of stream depletion effects;

- stream depletion effects due to groundwater abstraction should not result in a more than minor effect on the frequency, extent and duration of flow loss in intermittent water bodies;

- where the pumped well borders two or more streams the magnitude of stream depletion will be assessed in the following manner:

    - if SD1 + SD2 <0.9Q, stream depletion will be managed on the basis of the calculated depletion in each stream;

    - if SD1 + SD2 >0.9Q, the take will be classified as having a Direct hydraulic connection and managed following the criteria outlined in TableL.2.

    Where: SD_1 = calculated magnitude of stream depletion in Stream 1
    SD_2 = calculated magnitude of stream depletion in Stream 2
    Q = the assessed pumping rate

- in the Mataura River catchment, the relevant minimum flow cut-off for groundwater takes classified as having a Riparian, Direct or High hydraulic connection will be determined as the figure required to maintain compliance with the flow allocation provisions of the Water Conservation (Mataura River) Order 1997. In all other catchments minimum flow cut-offs for groundwater takes classified as having a Riparian, Direct or High hydraulic connection will be determined following the methodology outlined in Appendix K.

Table L.2: Classification and management of surface water depletion effects

Hydraulic Connection	Classification	Management Approach
Riparian	Any groundwater take within 5 metres of a surface water body[a]	The groundwater take will be managed as an equivalent surface water take unless there is clear hydrogeological evidence that demonstrates that pumping will not impact on the surface water body[a]
Direct	Where the calculated effect on an adjacent surface water body after 7 days abstraction at the maximum authorised rate is equal to or greater than 80 percent of the assessed pumping rate.	The groundwater take will be managed as an equivalent surface water take for flow and allocation purposes and therefore subject to any relevant minimum flow regime.
High	Where the calculated effect on an adjacent surface water body[a] after 7 days abstraction at the maximum authorised rate is less than 80 percent of the assessed pumping rate; and, Where the calculated effect on an adjacent surface water body[a] after pumping at the maximum authorised rate for either: (i) the maximum period allowed by the seasonal volume[b], or (ii) a continuous period of 90 days is equal to or greater than 60 percent of the assessed pumping rate.	Where the magnitude exceeds 2 litres per second, the calculated stream depletion effect will be managed as an equivalent take from an adjacent surface water body with the remainder of the allocation included in the allocation volume for the relevant groundwater zone. Groundwater takes classified as having a high degree of hydraulic connection will be subject to any relevant minimum flow regime.
Moderate	Where the calculated effect on an adjacent surface water body[a] after pumping at the maximum authorised rate for either: (i) the maximum period allowed by the seasonal volume; or (ii) a continuous period of 90 days is between 30 and 60 percent of the assessed pumping rate or has a magnitude greater than 5 litres per second	Where the magnitude exceeds 2 litres per second, the calculated stream depletion effect will be included in the allocation calculated from an adjacent surface water body with the balance of the abstraction included in the allocation volume for the relevant groundwater zone. No specific minimum flow restrictions will be imposed on the groundwater take.
Low	Where the abstraction is not classified as having a riparian, high, direct or moderate hydraulic connection.	The take will be managed solely as a groundwater take and the full allocation included in the allocation volume for the relevant groundwater management zone.

Notes

[a] Includes rivers, lakes and wetlands.

[b] In situations where the seasonal volume limits maximum rate abstraction to a period of less than 90 days.

The assessment of stream depletion effects will take into account any non-consumptive component of the groundwater take.

In circumstances where groundwater has a Moderate, High, Direct or Riparian degree of hydraulic connection then the allocation for groundwater in Table L.4 is only available where there is an available surface water allocation.

Appendix L.3 Interference effects

Determination of "Acceptable"

(a) The cumulative interference effect of any new groundwater abstraction (in conjunction with other lawfully established groundwater takes) is considered "acceptable" if the drawdown does not exceed any of the following limits in properly constructed and operated bores:

(i) 20 percent of the available drawdown in any existing bore which adequately penetrates an unconfined aquifer that is not utilised for long-term monitoring of water levels; or
(ii) 50 percent of the potentiometric head in any existing bore screened in a confined aquifer that is not utilised for long-term monitoring of water levels; or
(iii) no more than 10 percent of the available drawdown in a unconfined aquifer which exists 50 percent of the time during natural conditions when no pumping is occurring from the aquifer, for bores utilised for long-term monitoring of water levels; or
(iv) no more than 20 percent of the available potentiometric head in a confined aquifer that exists 50 percent of the time during natural conditions when no pumping is occurring from the aquifer, for bores utilised for long-term monitoring of water levels; or
(v) in any situation where the drawdown interference exceeds any of the limits in sub-clauses (i)-(iv) the new groundwater abstraction will be considered acceptable if it can be demonstrated that the drawdown interference will not have an impact upon the yield of the bore that is any more than minor or the effect is mitigated.

(b) An increased volume or increased pumping rate for any lawfully established groundwater abstraction will be considered a new groundwater abstraction under Policy 22.

(c) Adequacy of bore construction and the available drawdown will be calculated following the methodology outlined in Appendix L.3.

(d) An exception to clause (a) above may be appropriate for aquifer testing and necessary infrastructure works, and in certain circumstances for mining activities where dewatering occurs for a short duration.

(e) The assessment of drawdown interference shall take into account the offsetting component of any non-consumptive aspects of the take and use of water.

Assessment of Interference Effects

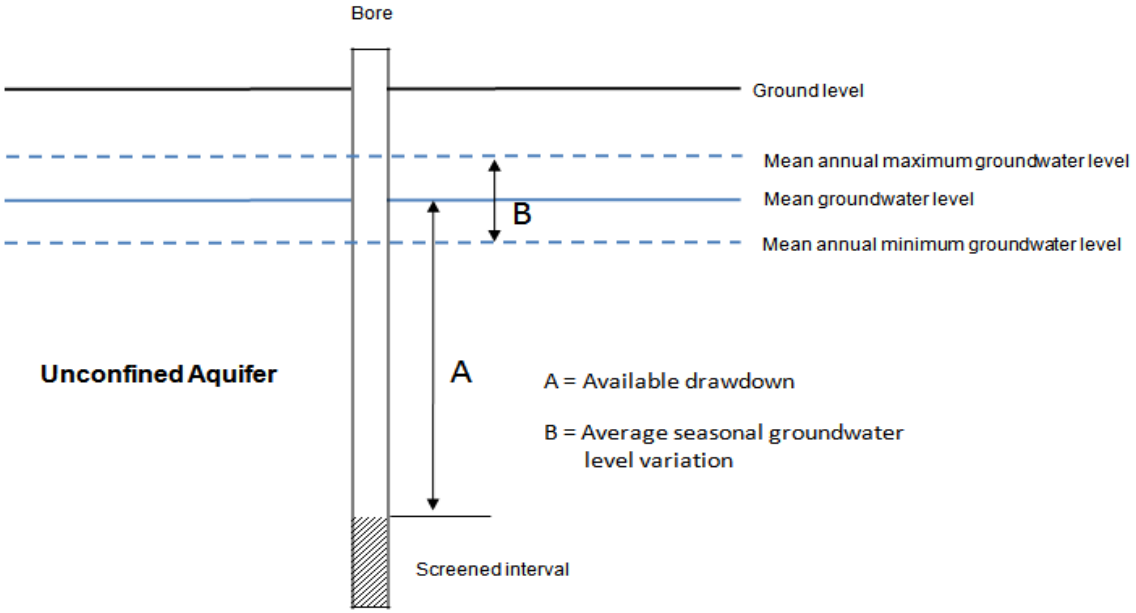
The magnitude of pumping interference effects will be assessed as the drawdown occurring in response to pumping at the maximum rate and/or duration using standard hydrogeological analysis methods appropriate for the hydrogeological setting.

Unconfined Aquifers

An existing bore or well will be classified as adequately penetrating an unconfined aquifer where the interval over which groundwater enters the bore or well is located at a depth exceeding 3 times the average seasonal groundwater level variation below the mean groundwater level (i.e. A >3 x B).

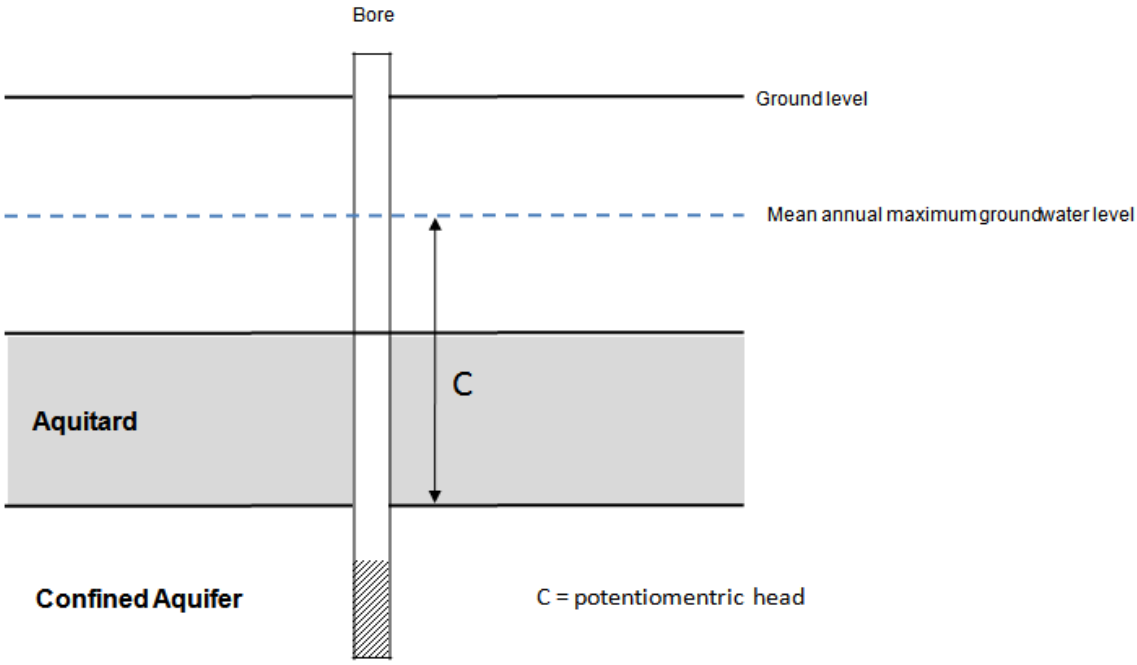
The available drawdown in an adequately penetrating bore screened in an unconfined aquifer is defined as the distance between the mean groundwater level and the top of the screened interval.

Bores or wells not meeting the criteria for adequate penetration will be excluded from assessment of pumping interference effects. Where the depth of the screened interval in a bore or well is not known, available drawdown will be assessed assuming the screened interval extends 1 metre upwards from the full bore or well depth.



Confined Aquifers

The potentiometric head in a bore screened in a confined aquifer is defined as the head between the mean annual maximum piezometric level and top of the confined aquifer.



Appendix L.4 Calculation of seasonal surface water and groundwater allocation

Where not specified by existing resource consent conditions, maximum daily and seasonal abstraction rates used for calculating total groundwater allocation under Rule 49 and Rule 54, and for calculating 'reasonable use' of water where relevant, will be established on the following basis.

Stock water and dairy use

Peak daily demand and annual allocation for surface water and groundwater takes for stock and dairy use will be calculated based on the number of each stock type multiplied by the relevant figures outlined in Table L.3.

Table L.3 Peak and average daily water use for various stock types

Water Use	Peak (daily) water requirement L/head	Average (annual) water requirement L/day
Dairy - lactating cows (including dairy shed use)	140	95
Drystock	45	30
Beef Cattle	45	30
Deer - hinds	45	30
Stags	30	20

Seasonally Variable Water Uses

For water uses which exhibit significant seasonal variability in daily water use (e.g. municipal supply, milk processing, meat processing), seasonal abstraction rates will be calculated on the basis of the following:

Seasonal Abstraction Rate = (Peak daily water use x 0.75) x 365 days

Appendix L.5[148] Groundwater Allocation (Consent Orders)

L.5.1 Unconfined Aquifers

The primary allocation for groundwater management zones defined on Map Series 3: Groundwater Management Zones are listed in Table L.4.

Table L.4 Primary groundwater allocation limits

Groundwater Zone	Primary Allocation ($m^3 \times 10^6$/year)
Awarua	45.81
Blackmount	21.12
Castlerock	6.12
Cattle Flat	2.39
Central Plains	31.29
Centre Hill	6.07
Croydon	2.56
Dipton	9.52
Edendale	11.71
Five Rivers	17.05
Knapdale	2.74
Longridge	4.67
Lower Aparima	32.41
Lower Mataura	34.98
Lower Oreti	19.31
Makarewa	62.67
Orepuki	10.54
Oreti	2.73
Riversdale	6.53
Te Anau	~~118.25~~ 88.94
Te Waewae	18.94
Tiwai	2.57
Upper Aparima	56.93
Upper Mataura	10.40
Waihopai	44.50
Waimatuku	22.27
Waimea Plains	12.41
Waipounamu	1.16
Wendon	5.22
Wendonside	9.56

Note: In circumstances where groundwater has a Moderate, High, Direct or Riparian degree of hydraulic connection then the allocation for groundwater in Table L.4 is only available where there is an available surface water allocation.

[148] Appeal to Environment Court by (i) Wilkins Farming Co ENV-2018-CHC-000030
(ii) Director-General of Conservation ENV-2018-CHC-000036

L.5.2 Confined Aquifers

Lumsden Aquifer

Groundwater abstraction from the Lumsden aquifer will be managed in accordance with the allocation volume and minimum water level cut-offs outlined in Table L.5.

Table L.5 Lumsden Aquifer allocation and minimum groundwater level cut-offs

Primary Allocation ($m^3 \times 10^6$/year)	Monitoring bore	Initial level trigger		Minimum level cut-off	
		m asl	% reduction in maximum daily abstraction rate (m^3/day)	m asl	% reduction in maximum daily abstraction rate (m^3/day)
5.76	E44/0300	202.5	50	201.5	100

North Range Aquifer

Groundwater abstraction from the North Range aquifer will be managed in accordance with the allocation volume and minimum water level cut-off specified in Table L.7. Groundwater takes from this aquifer will also be subject to a pro-rata reduction in seasonal allocation (1 October - 30 September) based on the seasonal recovery triggers specified in Table L.8.

Table L.7 North Range Aquifer minimum groundwater level cut-off

Primary Allocation ($m^3 \times 10^6$/year)	Monitoring bore	Minimum level cut-off	
		m asl	% reduction in maximum daily abstraction rate (m^3/day)
1.83	E44/0196	245.0	100

Table L.8: North Range Aquifer seasonal recovery triggers

E44/0196 Water Level 1 October (m asl)	Percentage of seasonal allocation available (%)
>250.0	100
>249.0	75
>248.0	50
≤248.0	25

All Other Confined Aquifers

Allocation volumes, minimum water level cut-offs and seasonal recovery triggers for confined aquifers not listed in Table L.5 to Table L.8 will be established following the methodology outlined in Appendix L.6.

Appendix L.6 Establishing allocation volumes for confined aquifers

- In addition to confined aquifers specifically identified in Appendix L.5, aquifer systems elsewhere in the Southland Region may be classified by the Southland Regional Council as confined where aquifer test data collected in accordance with requirements outlined in Appendix L.1 exhibit no significant departure from 'ideal' confined aquifer conditions.

- For aquifers which are characterised by the Southland Regional Council as semi-confined (i.e. exhibiting a significant departure from 'ideal' confined aquifer conditions), allocation will be managed as part of that established for adjacent, hydraulically connected groundwater resources;

- Allocation volumes for confined aquifers not identified in Appendix L.6 will be determined on the basis of groundwater throughflow following Rule 54(e). Where alternative methods (such as numerical modelling) are not available, primary allocation for confined aquifers will be based on the following relation:

  Annual allocation = $0.75(T \times i \times W)$
  Where T = representative aquifer transmissivity
  i = hydraulic gradient
  W = aquifer width perpendicular to groundwater flow

- Minimum groundwater level cut-offs (and/or seasonal recovery triggers) for confined aquifers will be established to:
  - maintain long-term aquifer storage volumes (taking into account observed temporal groundwater level variations, recharge and seasonal recovery characteristics);
  - establish and maintain a consistent reliability of supply for all groundwater users within the primary allocation volume. Trigger levels for supplementary groundwater allocation will be established at a level which maintains reliability of supply for the primary groundwater allocation.

Appendix L.7 Establishing allocation volumes for takes outside of groundwater management zones

The primary allocation for groundwater takes outside groundwater management zones listed in Appendix L.5 will be established as equal to 35 percent of the rainfall recharge occurring over the relevant land area where the water is to be taken.

Appendix M – Taonga Species List

Birds

Name in Māori	Name in English	Scientific name
Hoiho	Yellow-eyed penguin	*Megadyptes antipodes*
Kāhu	Australasian harrier	*Circus approximans*
Kākā	South Island kākā	*Nestor meridionalis meridionalis*
Kākāpō	Kākāpō	*Strigops habroptilus*
Kākāriki	New Zealand parakeet	*Cyanoramphus* spp
Kakaruai	South Island robin	*Petroica australis australis*
Kakī	Black stilt	*Himantopus novaezelandiae*
Kāmana	Crested grebe	*Podiceps cristatus*
Kārearea	New Zealand falcon	*Falco novaeseelandiae*
Karoro	Black-backed gull	*Larus dominicanus*
Kea	Kea	*Nestor notabilis*
Kōau	Black shag	*Phalacrocorax carbo*
	Pied shag	*Phalacrocorax varius varius*
	Little shag	*Phalacrocorax melanoleucos brevirostris*
Koekoeā	Long-tailed cuckoo	*Eudynamys taitensis*
Kōparapara *or* Korimako	Bellbird	*Anthornis melanura melanura*
Kororā	Blue penguin	*Eudyptula minor*
Kōtare	Kingfisher	*Halcyon sancta*
Kōtuku	White heron	*Egretta alba*
Kōwhiowhio	Blue duck	*Hymenolaimus malacorhynchos*
Kūaka	Bar-tailed godwit	*Limosa lapponica*
Kūkupa/Kererū	New Zealand wood pigeon	*Hemiphaga novaeseelandiae*
Kuruwhengu/Kuruwhengi	New Zealand shoveller	*Anas rhynchotis*
Mātā	Fernbird	*Bowdleria punctata punctata* and *Bowdleria punctata stewartiana* and *Bowdleria punctata wilsoni* and *Bowdleria punctata candata*
Matuku moana	Reef heron	*Egretta sacra*
Miromiro	South Island tomtit	*Petroica macrocephala macrocephala*
Miromiro	Snares Island tomtit	*Petroica macrocephala dannefaerdi*
Mohua	Yellowhead	*Mohoua ochrocephala*
Pākura/Pūkeko	Swamp hen/Pūkeko	*Porphyrio porphyrio*
Pārera	Grey duck	*Anas superciliosa*
Pateke	Brown teal	*Anas aucklandica*
Pīhoihoi	New Zealand pipit	*Anthus novaeseelandiae*
Pīpīwharauroa	Shining cuckoo	*Chrysococcyx lucidus*
Pīwakawaka	South Island fantail	*Rhipidura fuliginosa fuliginosa*
Poaka	Pied stilt	*Himantopus himantopus*
Pokotiwha	Snares crested penguin	*Eudyptes robustus*

Name in Māori	Name in English	Scientific name
Pūtakitaki	Paradise shelduck	*Tadorna variegata*
Riroriro	Grey warbler	*Gerygone igata*
Roroa	Great spotted kiwi	*Apteryx haastii*
Rowi	Ōkārito brown kiwi	*Apteryx mantelli*
Ruru koukou	Morepork	*Ninox novaeseelandiae*
Takahē	Takahē	*Porphyrio mantelli*
Tara	Terns	*Sterna* spp
Tawaki	Fiordland crested penguin	*Eudyptes pachyrhynchus*
Tete	Grey teal	*Anas gracilis*
Tīeke	South Island saddleback	*Philesturnus carunculatus carunculatus*
Tītī	Sooty shearwater/Muttonbird/Hutton's shearwater Common diving petrel South Georgian diving petrel Westland petrel Fairy prion Broad-billed prion White-faced storm petrel Cook's petrel Mottled petrel	*Puffinus griseus* and *Puffinus huttoni* and *Pelecanoides urinatrix* and *Pelecanoides georgicus* and *Procellaria westlandica* and *Pachyptila turtur* and *Pachyptila vittata* and *Pelagodroma marina* and *Pterodroma cookii* and *Pterodroma inexpectata*
Tītitipounamu	South Island rifleman	*Acanthisitta chloris chloris*
Tokoeka	South Island brown kiwi	*Apteryx australis*
Toroa	Albatrosses and Mollymawks	*Diomedea* spp
Toutouwai	Stewart Island robin	*Petroica australis rakiura*
Tūī	Tūī	*Prosthemadera novaeseelandiae*
Tutukiwi	Snares Island snipe	*Coenocorypha aucklandica huegeli*
Weka	Western weka	*Gallirallus australis australis*
Weka	Stewart Island weka	*Gallirallus australis scotti*
Weka	Buff weka	*Gallirallus australis hectori*

Plants

Name in Māori	Name in English	Scientific name
Akatorotoro	White rata	*Metrosideros perforata*
Aruhe	Fernroot (bracken)	*Pteridium aquilinum* var *esculentum*
Harakeke	Flax	*Phormium tenax*
Horoeka	Lancewood	*Pseudopanax crassifolius*
Houhi	Mountain ribbonwood	*Hoheria lyalli* and *H. glabata*
Kahikatea	Kahikatea/White pine	*Dacrycarpus dacrydioides*
Kāmahi	Kāmahi	*Weinmannia racemosa*
Kānuka	Kānuka	*Kunzia ericoides*
Kāpuka	Broadleaf	*Griselinia littoralis*
Karaeopirita	Supplejack	*Ripogonum scandens*
Karaka	New Zealand	*Corynocarpus laevigata*

Name in Māori	Name in English	Scientific name
	laurel/Karaka	
Karamū	Coprosma	*Coprosma robusta, coprosma lucida, coprosma foetidissima*
Kātote	Tree fern	*Cyathea smithii*
Kiekie	Kiekie	*Freycinetia baueriana* subsp *banksii*
Kōhia	NZ Passionfruit	*Passiflora tetranda*
Korokio	Korokio Wire-netting bush	*Corokia cotoneaster*
Koromiko/Kōkōmuka	Koromiko	*Hebe salicfolia*
Kōtukutuku	Tree fuchsia	*Fuchsia excorticata*
Kōwahi Kōhai	Kōwhai	*Sophora microphylla*
Mamaku	Tree fern	*Cyathea medullaris*
Mānia	Sedge	*Carex flagellifera*
Mānuka Kahikātoa	Tea-tree	*Leptospermum scoparium*
Māpou	Red matipo	*Myrsine australis*
Mataī	Mataī/Black pine	*Prumnopitys taxifolia*
Miro	Miro/Brown pine	*Podocarpus ferrugineus*
Ngaio	Ngaio	*Myoporum laetum*
Nīkau	New Zealand palm	*Rhopalostylis sapida*
Pānako	(Species of fern)	*Asplenium obtusatum*
Pānako	(Species of fern)	*Botrychium australe* and *B. biforme*
Pātōtara	Dwarf mingimingi	*Leucopogon fraseri*
Pīngao	Pīngao	*Desmoschoenus spiralis*
Pōkākā	Pōkākā	*Elaeocarpus hookerianus*
Ponga/Poka	Tree fern	*Cyathea dealbata*
Rātā	Southern rātā	*Metrosideros umbellata*
Raupō	Bulrush	*Typha angustifolia*
Rautāwhiri/Kōhūhū	Black matipo/Māpou	*Pittosporum tenuifolium*
Rimu	Rimu/Red pine	*Dacrydium cypressinum*
Rimurapa	Bull kelp	*Durvillaea antarctica*
Taramea	Speargrass, spaniard	*Aciphylla* spp
Tarata	Lemonwood	*Pittosporum eugenioides*
Tawai	Beech	*Nothofagus* spp
Tētēaweka	Muttonbird scrub	*Olearia angustifolia*
Tī rākau/Tī Kōuka	Cabbage tree	*Cordyline australis*
Tīkumu	Mountain daisy	*Celmisia spectabilis* and *C. semicordata*
Tītoki	New Zealand ash	*Alectryon excelsus*
Toatoa	Mountain Toatoa, Celery pine	*Phyllocladus alpinus*
Toetoe	Toetoe	*Cortaderia richardii*
Tōtara	Tōtara	*Podocarpus totara*
Tutu	Tutu	*Coriaria* spp
Whaririki	Mountain flax	*Phormium cookianum*
Whīnau	Hīnau	*Elaeocarpus dentatus*
Wī	Silver tussock	*Poa cita*
Wīwī	Rushes	*Juncus* all indigenous *Juncus* spp and *J. maritimus*

Freshwater Fish and Shellfish

Name in Māori	Name in English	Scientific name
Inanga	(whitebait species)	*Galaxias maculatus*
	Banded kokopu	*Galaxias fasciatus*
Koaro	(whitebait species)	*Galaxias brevipinnis*
	Shortjaw kokopu	*Galaxias postvectis*
Taiwharu	Giant kokopu	*Galaxias argenteus*
	Upland bully	*Gobiomorphus breviceps*
	Bluegill bully	*Gobiomorphus hubbsi*
Kokopu/hawai	Giant bully	*Gobiomorphus gobioides*
	Common bully	*Gobiomorphus cotidianus*
	Redfin bully	*Gobiomorphus huttoni*
Tuna	Longfin eel	*Anguilla dieffenbachii*
Tuna	Shortfin eel	*Anguilla australis*
Kanakana	lamprey	*Geotria australis*
	Alpine galaxias	*Galaxias paucispondylus*
	Gollum galaxias	*Galaxias gollumoides*
	Southern flathead galaxias	*Galaxias depressiceps*
Piripiripohatu	Torrentfish	*Cheimarrichthys fosteri*
Paraki/ngaiore	Common smelt	*Retropinna retropinna*
	Black flounder	*Rhombosolea retiaria*
Koura/kewai	Freshwater crayfish	*Paranephrops planifrons, Paranephrops zealandicus*
Kakahi	Freshwater mussels	*Echyridella menziesi*
Pipi/Kākahi	Pipi	*Paphies australe*
Tuaki	Cockle	*Austrovenus stutchburgi*
Tuaki/Hākiari, Kuhakuha/Pūrimu	Surfclam	*Dosinia anus, Paphies donacina, Mactra discor, Mactra murchsoni, Spisula aequilateralis, Basina yatei, or Dosinia subrosa*
Tuatua	Tuatua	*Paphies subtriangulata, Paphies donacina*
Waikaka/Pūpū	Mudsnail	*Amphibola crenata, Turbo smaragdus, Zedilom spp*

Appendix N[149] – Farm Environmental Management Plan Requirements

Part A – Farm Environmental Management Plans

A Farm Environmental Management Plan (FEMP) can be based on either of:

1. the material set out in Part B below; or
2. industry prepared FEMP templates and guidance material, with Southland-specific supplementary material added where relevant, so that it includes the material set out in Part B below.

Part B – Farm Environmental Management Plan Content

1. A written FEMP that is:
   - (a) prepared and retained, identifying the matters set out in clauses 2 to 5 below;
   - (b) reviewed at least once every 12 months by the landholding owner or their agent and the outcome of the review documented; and
   - (c) provided to the Southland Regional Council upon request.

2. The FEMP contains the following landholding details:
   - (a) physical address;
   - (b) description of the landholding ownership and the owner's contact details;
   - (c) legal description(s) of the landholding; and
   - (d) a list of all resource consents held for the landholding and their expiry dates.

3. The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:
   - (a) the boundaries;
   - (b) the physiographic zones (and variants where applicable) and soil types (or Topoclimate South soil maps);
   - (c) all lakes, rivers, streams, ponds, artificial watercourses, modified watercourses and natural wetlands;
   - (d) all existing and proposed riparian vegetation and fences (or other stock exclusion methods) adjacent to water bodies;
   - (e) places where stock access or cross water bodies (including bridges, culverts and fords);
   - (f) all known subsurface drainage system(s) and the locations of the drain outlets;
   - (g) all land that may be cultivated and land to be cultivated over the next 12-month period;
   - (h) all land that may be intensively winter grazed and the land to be planted for winter grazing for the next period 1 May to 30 September; and
   - (i) for land to be cultivated or intensively winter grazed:
     - (i) critical source areas;
     - (ii) intended setbacks from any lake, river (excluding ephemeral rivers), artificial watercourses, modified watercourse or natural wetland; and
     - (iii) land with a slope greater than 20 degrees.
   - (j) *any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rārangi Kōrero or on the New Zealand Archaeological Association website; and*

[149] Appeal to Environment Court by (i) Southland Fish and Game Council ENV-2018-CHC-000037
(ii) Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041
(iii) Te Runanga o Ngai Tahu & others ENV-2018-CHC-000047

4. Nutrient Budget

For all landholdings over 20ha, the FEMP contains a nutrient budget (which includes nutrient losses to the environment) calculated using the latest version of the OVERSEER model in accordance with the latest version of the OVERSEER Best Practice Data Input Standards (or an alternative model approved by the Chief Executive of Southland Regional Council), and which is repeated:

(a) where a material change in land use associated with the farming activity occurs (including a change in crop area, crop rotation length, type of crops grown, stocking rate or stock type) at the end of the year in which the change occurs, and also every three years after the change occurs; and

(b) each time the nutrient budget is repeated all the input data used to prepare it shall be reviewed by or on behalf of the landholding owner, for the purposes of ensuring the nutrient budget accurately reflects the farming system. A record of the input data review shall be kept by the landholding owner.

5. Good Management Practices

The FEMP contains a good management practices section which identifies:

(a) the good management practices implemented since 3 June 2016; and

(b) the good management practices which will be undertaken over the coming 12-month period. These must include practices for:

(i) the reduction of sediment and nutrient losses from critical source areas, particularly those associated with overland flow;

(ii) cultivation (including practices such as contour ploughing, strip cultivation or direct drilling);

(iii) the use of land for intensive winter grazing (including those practices specified in Rule 20(a)(iii);

(iv) riparian areas (including those from which stock are excluded under Rule 70) and the type of riparian vegetation to be planted, how it will be maintained and how weeds will be controlled; and

(v) minimising of the discharge of contaminants to surface water or groundwater, with particular reference to the contaminant pathways identified for the landholding.

Examples of general good management practices are provided on the Southland Regional Council, DairyNZ and Beef and Lamb New Zealand websites and in the document[150] titled "Industry-agreed Good Management Practices relating to water quality, Version 2, 18 September 2015".

Appendix N

See Annexure 4 of Sixth Interim decision

[150] Released by FAR, New Zealand Pork, Dairy NZ, beef + lamb New Zealand, Horticulture New Zealand and Deer Industry New Zealand.

Appendix O – Reasonable and Efficient Use of Water

Irrigation

(a) Seasonal allocation for new resource consents to take and use water for irrigation at a rate exceeding (the equivalent of) 3,000 m^3/ha/year will be established by use of a field-validated daily time-step irrigation demand model to calculate the annual irrigation volume 90 percent (9 in 10 year) reliability which takes account of:

- physical factors including crop and soil type;
- climatic factors including rainfall variability and evapo-transpiration;
- an irrigation application efficiency of 80%.

(b) Replacement resource consent applications to take and use water for irrigation will utilise records of historical water use to establish a seasonal allocation which takes into account:

- the requirements of Policy 42;
- whether the previous seasonal allocation as determined under Appendix O(a) remains appropriate for the farming activity being undertaken;
- the volume of water utilised in previous irrigation seasons;
- any proposed changes to the operation of the irrigation system or farming system.

Group or Community Water Supplies

A water management plan shall be submitted with a resource consent application to take and use water for group or community water supplies that addresses:

- the estimated average and peak demand for water taking into account the number of connections, the nature of water use and projected future demand;
- the current effectiveness and efficiency of the distribution network as well as works proposed to improve the efficiency of water distribution and use;
- how water demand will be managed during periods of water shortage.

Other Uses

- The rate and volume of abstraction for resource consent applications to take and use water for purposes other than irrigation, group or community water supply will be calculated in accordance with best management practices for efficient use of water in relation to that use; and for stock and dairy shed use will be calculated in accordance with Table L.3 in Appendix L.4. Applications for replacement resource consents may also demonstrate by way of independent verification or audit that existing (and proposed) usage is in accordance with rates and volumes sought and does not result in wastage or inefficient use of water.

Appendix P – Effluent Pond Drop Test methodology

- Testing is undertaken over a minimum period of 48 hours.
- Testing recording equipment is to be accurate to 0.8 mm or less.
- Continuous readings are to be taken over the entire test period at not more than 10 second intervals.
- Any change in pond fluid level over the test period needs to be accounted for.
- Ponds must be at or over 75% design depth before a test can be undertaken.
- The pond has been de-sludged in the 12 months prior to the test being undertaken and there shall be no sludge or crust on the pond surface during the test.
- The pond surface is not frozen during any part of the testing.
- An anemometer shall be installed for the duration of the test and wind speed shall be at 10 metres per second or less for at least 24 hours during the test.

Pass/Fail Criteria

When tested in accordance with the methodology above, the pond "meets" the pond drop test criteria if the maximum pond level drop does not exceed the following:

Maximum Depth of Pond (m) excluding freeboard	Maximum Allowable Pond Level Drop (mm per 24 hours)
<0.5	1.2
0.5 to 1.0	1.4
1.0 to 1.5	1.6
1.5 to 2.0	1.8
>2.0	2.0

Appendix R – Fish Screen Standards and Guidelines

(a) Where the diversion or take does not exceed a maximum rate of 10 litres per second and a maximum volume of 100 cubic metres per day, a fish screen shall be installed to prevent fish from entering the intake. The fish screen shall be designed to the following standard and kept functional at all times while water is being taken:

(i) Water shall only be taken when a fish screen with a mesh size or slope width not exceeding 2 millimetres for intakes within 2 kilometres of the coast, a coastal lake or estuary, or 3 millimetres for anywhere else is operated and maintained across the full width of the intake to ensure that fish and fish fry are prevented from bypassing the screen into the intake; and

(ii) The screen area shall be designed to ensure the calculated average through screen velocity does not exceed 0.12 metres per second (screens should generally be designed to exceed this to account for some routine level of clogging of the screen with detritus). The required area (square metres) of fish screen should exceed = Flow (litres per second)/120.

Example: The minimum required fish screen area for a cylindrical screen can therefore be calculated from:

Area = $2\pi r (r + h) \times z$

Where: π =3.141592659

r = radius of cylinder (metres)

h = length or height of cylinder (metres)

z = proportional open mesh area of screen material (i.e. 0.5 for mesh that is 50% open area)

Note: The above formula holds where the screen is fully immersed in water as is usually the case with pump takes. Where this is not the case, the area will need to be adjusted accordingly. Where 50% of the screen may be exposed, then the area calculation will need to be adjusted to half (or multiplied by 0.5), or the actual screen area would need to be doubled (multiplied by 2) in order to achieve the same area immersed. This example makes no allowance for the area taken up by the end of the intake pipe. Where high levels of detritus and other clogging materials are present, screen areas should be increased to account for reduced effective screen area.

(b) Where the diversion or take does not exceed a maximum rate of 10 litres per second and a maximum volume of 100 cubic metres per day but does not meet the standards in (a) above; or where the diversion or take exceeds a maximum rate of 10 litres per second and a maximum volume of 100 cubic metres per day and the diversion is less than 10 cubic metres per second or the take is less than 500 litres per second pumped, a fish screen shall be installed to prevent fish from entering the intake. The fish screen shall be designed with the following features:

(i) The site is located as close to the river source as possible to minimise exposure of fish to the fish screen structure, and minimises the length of stream affected while providing the best possible conditions for (ii) - vi) below;

(ii) Water velocity through the screen ("approach velocity") is slow enough (generally <0.12 metres per second) to allow fish to escape the entrainment (being sucked though or washed over the screen) or impingement (being squashed or rubbed against the screen);

(iii) Water velocity across (or past) the screen ("sweep velocity") is greater than the approach velocity (b) and is sufficient to sweep the fish past the intake;

(iv) An effective bypass system is provided that is easily accessible to entrained fish, and fish are taken away from the intake and back into the source channel, or into water which provides the fish with unimpeded passage back into the source channel;

(v) Screening material (mesh, profile bars or other) on the screen needs to have a smooth surface and openings that prevent any damage to fish coming into contact with the screening material; and

(vi) The intake structure and fish screen are operated to a consistent, appropriate standard with appropriate operation and maintenance procedures, and this operation and maintenance should be regularly checked or monitored. A record should be kept of all the maintenance and monitoring carried out.

(c) Where the diversion is more than 10 cubic metres per second or the take is more than 500 litres per second pumped, in addition to the features listed in (b)(i) to (vi) above, it will be necessary for the intake to be purpose designed and to consider on a case by case basis whether any additional features will be necessary to ensure fish are prevented from entering the intake.

Note: Submerged galleries (abstracting water vertically) and galleries in the river banks (abstracting water horizontally), or behavioural barriers and devices such as those that use light and sound diversions that may not meet all of the engineering features set out in (2) above, but shall be considered to comply with them where it is demonstrated that they are able to exclude fish to the same degree of effectiveness.

Appendix S[151] – Archaeological Site Responsibilities

This appendix sets out information to alert the public to their responsibilities regarding archaeological sites. This is relevant with regards to:

(a) Demolition/destruction of any structure associated with human activity prior to 1900, whether or not it is scheduled in a district or regional plan.
(b) Earthworks or other works that may disturb pre-1900 surface or subsurface archaeological sites or material.

An archaeological site is as defined by the Heritage New Zealand Pouhere Taonga Act 2014 as being:
(a) any place in New Zealand, including any building or structure (or part of a building or structure), that:
  (i) was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
  (ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand.

It is also possible for Heritage New Zealand Pouhere Taonga (Heritage New Zealand) to declare a post-1900 sites as an archaeological site.

Consent required from Heritage New Zealand
An authority (consent) from Heritage New Zealand must be obtained prior to the commencement of works noted in (a) or (b) above, and preferably before submitting a resource consent application. It is an offence to modify or destroy an archaeological site, or demolish/destroy a whole building, without an authority if the person knew or ought to reasonably suspect it to be an archaeological site. For further information, contact Heritage New Zealand. The relevant legislation is the Heritage New Zealand Pouhere Taonga Act 2014, in particular sections 42 and 44 of that Act.

Known or suspected archaeological sites
The following resources may assist in determining if an archaeological site is or may be present:
- Historic and cultural heritage scheduled in a district or regional plan.
- Sites listed by the New Zealand Archaeological Association's Archaeological Site Recording Scheme (latest information is on the New Zealand Archaeological Association website).
- The Southland Regional Council GIS information that highlights known sites and areas where there is a higher risk of unidentified historic heritage being encountered.
- Written and oral histories of the area including those of Tangata Whenua.

Archaeological discovery without an authority (Protocol)
If an archaeological site is subsequently discovered or is suspected, the following protocol must be followed:
(a) immediately cease operations;
(b) inform the relevant iwi authority;
(c) inform Heritage New Zealand and apply for the appropriate authority, if required;
(d) inform the Southland Regional Council and apply for the appropriate resource consent, if required; and
(e) take appropriate action, after discussing with Heritage New Zealand, the Southland Regional Council and relevant iwi authority to remedy damage and/or restore the site.

[151] Appeal to Environment Court by Heritage New Zealand Pouhere Taonga ENV-2018-CHC-000041

ANNEXURE 4

Appendix N – Farm Environmental Management Plan Requirements

[1] A Farm Environment Management Plan must be:

(1) a Freshwater Farm Plan prepared, implemented and audited in accordance with regulations prepared under Part 9A of the RMA and which apply within the Southland region, plus any additional information or components required by Part B below; or

(2) if Freshwater Farm Plans, under Part 9A of the RMA, are not yet required in the Southland region, a Farm Environmental Management Plan will be prepared and implemented in accordance with Parts A to C below.

Part A – Farm Environmental Management Plans

[2] All FEMPs (prepared in accordance with this Appendix) must include and give effect to the FEMP Purpose Statement.

FEMP Purpose Statement

This FEMP contributes to the management of Southland's water and land resources under the Southland Water and Land Plan (the SWLP) which embodies ki uta ki tai and upholds Te Mana o Te Wai. These concepts are to be at the forefront of water and land management in the FEMP.

[3] The SWLP, and therefore this FEMP, must give effect to the objectives of the SWLP, including Objectives 1 and 2 which are fundamental to the SWLP. These objectives are:

> **Objective 1** (of the SWLP) – Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.
>
> **Objective 2** (of the SWLP) – The mauri of water provides for te hauora a te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the water body) and te hauora o te tangata (health and mauri of the people).

[4] A FEMP can be based on either:

(1) the default content set out in Part B below; or

(2) industry-prepared FEMP templates and guidance material, with Southland-specific supplementary material added where relevant, so that it includes the default content set out in Part B below; or

(3) a management plan and nutrient budget prepared in accordance with a condition of resource consent to discharge industrial wastewater onto land that is also used for farming activity, with the default content set out in Part B below included where relevant to the farm receiving the industrial wastewater.

[5] All FEMPs shall be certified and compliance with the FEMP audited in accordance with Part C.

Part B – Farm Environmental Management Plan Default Content

[6] The FEMP shall contain the following landholding details:

(a) physical address;
(b) description of the landholding ownership and the owner's contact details;
(c) legal description(s) of the landholding;
(d) a list of all resource consents held for the landholding and their expiry dates; and
(e) the type of farming activities being undertaken on the property, such as 'dairy' or 'sheep and beef with dairy support'.

[7] The FEMP shall contain a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:

(a) property and paddock boundaries; and
(b) the physiographic zones found on the Regional Council's website (and variants where applicable) and soil types (or Topoclimate South soil maps); and
(c) all lakes, rivers, streams (including intermittent rivers), springs, ponds, artificial watercourses, modified watercourses and natural wetlands; and
(d) all critical source areas; and
(e) all existing and proposed riparian vegetation and fences (or other stock exclusion methods) adjacent to water bodies; and
(f) places where stock access or cross water bodies (including bridges, culverts and fords); and
(g) the location of all known subsurface drainage system(s) and the locations and depths of the drain outlets; and
(h) land to be:
    (i) cultivated; or
    (ii) intensively winter grazed; or
    (iii) used for pasture-based wintering; and

(iv) used for a sacrifice paddock;[1] and

(i) any areas of the land within a catchment of a water body identified in Schedule X; and

(j) any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rārangi Kōrero or on the New Zealand Archaeological Association website; and

(k) the presence of taonga species listed in Appendix M of the Southland Land and Water Plan within water bodies on the farm (if known); and

(l) other significant values and uses (if known) of nearby land and waters including mahinga kai and nohoanga.

Nutrient Budget/Nutrient Loss Risk Assessment

[8] For all landholdings over 20 ha, the FEMP contains either:

(a) a nutrient budget (which includes nutrient losses to the environment) calculated using a model approved by the Chief Executive of Southland Regional Council); or

(b) a nutrient loss risk assessment undertaken using a nutrient loss risk assessment tool approved by the Chief Executive of Southland Regional Council;

(c) the nutrient budget or nutrient loss risk assessment will be ~~is~~ repeated:

(i) where a material change* in land use associated with the farming activity has occurred or is intended that may affect the implementation of cl [9] Objectives (including a change in crop area/yield, crop rotation length, type of crops grown, stocking rate or stock type); and

(ii) each time the nutrient budget or nutrient loss risk assessment is repeated, all the input data used to prepare it shall be reviewed by or on behalf of the landholding owner, for the purposes of

[1] See 'Rule 35B' decision.

ensuring the nutrient budget or nutrient loss risk assessment accurately reflects the farming system. A record of the input data review shall be kept by the landholding owner; and

(iii) the nutrient budget or nutrient loss risk assessment must be prepared by a suitably qualified person who has been approved as such by the Chief Executive of Southland Regional Council.

Objectives of Farm Environmental Management Plans

[9] The following objectives will be met:

(a) **Nutrient and soil management**:

(i) losses of nitrogen, phosphorus, sediment and microbial contaminants from farming activities to water bodies do not increase (when compared to existing discharges) and are minimised with any change in farming activity; and

(ii) the overland flow of water is minimised to control sediment loss from cultivated paddocks and from paddocks used for intensive winter grazing, pasture-based wintering and for sacrifice paddocks; vegetated setbacks are maintained to slow the overland flow of water, filter and support the infiltration of sediment/nutrients; and sediment trap(s) established where critical source areas are cultivated;

(iii) if the farm is within a catchment identified in Schedule X, adverse effects on water quality are reduced (when compared to existing activities).

(b) **Habitat management**: activities in waterways (including modified watercourses),[2] natural wetlands and their margins are managed so that in-stream and riparian habitat values are not diminished, and

[2] Sixth Interim Decision, Rule 78. 'Modified watercourse' is a 'water carrying channel that was existing in some form prior to land development but has been **modified or straightened for drainage or other purposes** and excludes ephemeral rivers.

where practicable are improved;

[10] If relevant to farming operations, the following objectives will also be met:

(a) **Intensive Winter Grazing and Pasture-Based Wintering**: ensure the particular risks of these activities are managed effectively, grazing of critical source areas and setbacks are avoided; and the extent and duration of exposed soils is minimised;

(b) **Collected agricultural effluent management**: manage the discharge of collected agricultural effluent in accordance with industry best practice to ensure the adverse effects of contaminants on water quality do not increase and are minimised;

(c) **Irrigation system designs and installation**: ensure that all new irrigation systems and significant upgrades meet industry best practice;

(d) **Irrigation management**: ensure efficient on-farm water use that meets crop demands, including through upgrading existing systems to meet industry best practice standards, and ensuring that water and contaminant losses to water bodies do not increase and are minimised.

The FEMP must also identify additional objectives if these are relevant to the farming activities and/or to address environmental risks associated with the farm and the environment within which it is located.

[11] For each (relevant) objective above:

(a) identify how the farm fits within the wider catchment, known as a 'catchment context', including a description of where contaminants lost from the farm end up; and

(b) identify the risks associated with the farming activities on the property, including the risk pathways of the relevant physiographic zones (and variants), and the risks caused by extreme weather events;

and

(c) demonstrate how the losses of nitrogen, phosphorus, sediment and microbial contaminants are being minimised; and

(d) where the farm is located in a Schedule X catchment, assess how the effects on water quality will be reduced by taking into account the risk pathways of the relevant physiographic zone and the catchment context(s), the risks associated with farming activities and the actions to minimise losses of contaminants; and

(e) define the actions to be taken that clearly set a pathway and timeframe for achievement of the objectives; and

(f) identify any specific mitigations required by a resource consent held for the property; and

(g) specify the records to be kept for demonstrating mitigations have been actioned and are achieving the objective.

Winter Grazing Plan

[12] A Winter Grazing Plan is to be prepared each year for the following activities:

(a) intensive winter grazing; or

(b) pasture-based wintering; or

(c) for stock other than cattle, where pasture is to provide less than 50% of the animal's diet and supplementary feed will be offered on the paddock; or

(d) sacrifice paddocks.

[13] Implementing the FEMP, the Winter Grazing Plan is to:

(a) record:

(i) the location, paddock slope, land area used, crop type, expected pasture or crop yield and supplementary feed amount and type; and

(ii) stock type, numbers and estimated duration of grazing on each paddock.

(b) identify:

(i) any critical source areas, explain how stock will be excluded from them between 1 May–30 September; and

(ii) any water bodies and features from which stock must be setback and excluded, explaining how this will be done.

(c) explain the procedures to be followed in an adverse weather event (including higher than or below average rainfall);

(d) excluding sacrifice paddocks, confirm how the following practices are to be implemented:

(i) downslope grazing or a 20 m 'last-bite' vegetated strip at the base of the slope; and

(ii) back fencing to prevent stock entering previously grazed areas.

(e) for intensive winter grazing:

(i) identify paddocks to be resown after grazing and the date by which this is to occur, weather permitting.

(f) for a sacrifice paddock:

(i) identify paddocks to be resown after use as a sacrifice paddock and the date by which this is to occur, weather permitting.

(g) for pasture-based wintering:[3]

(i) explain the intended paddock set-up including:

(1) the predicted post grazing residual on each paddock; and

(2) identification of paddocks to be resown after grazing and the date this is to occur, weather permitting; and

(ii) if a post-grazing residual is intended, explain how the amount of exposed soil will be minimised and the armouring provided by the pasture on the paddock will be retained.

(h) for stock other than cattle, where pasture is less than 50% of the animal's diet and supplementary feed will be offered on the paddock:

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[3] See the 'Rule 20B' decision.

(i) identify paddocks to be resown after grazing and the date this is to occur, weather permitting; and

(i) with reference to the planned total feed to be offered stock[4] and the relevant physiographic zones (and variants), explain how the intensity, operation and location of intensive winter grazing and pasture-based wintering will:

(1) not lead to an increase in contaminant losses when compared with what has occurred in the past;

(2) minimise contaminant losses; and

(3) for Schedule X catchments, lead to a reduction in adverse effects on water quality.

Part C – Farm Environmental Management Plan Certification, Auditing, Review and Amendment

[14] Farm Environmental Management Plan Certification:

(a) the FEMP must be certified, prior to implementation on the farm, by a Suitably Qualified Person (SQP) who has been approved as such by the Chief Executive of Southland Regional Council;

(b) the purpose of FEMP certification is to confirm that the farming activities on the farm will be carried out in a way that will achieve the Objectives in this Appendix and will comply with any resource consent for the landholding;

(c) the FEMP must be re-certified, prior to implementation, following any amendments to the FEMP carried out in accordance with Part C (17) of this Appendix;

(d) within one month of a FEMP being certified, a copy of the certified FEMP must be provided to the Southland Regional Council.

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[4] An alternative way to express 'planned total feed' may be to refer to crop yield (kg of dry matter per m^2) and the proportion of crop in the total diet (kg of dry matter offered per cow per day).

[15] Auditing of the certified Farm Environmental Management Plan:

(a) within 12 months of the landholding's first FEMP being certified, the landholding owner must arrange for an audit of the farming activities to ascertain and ensure compliance with the FEMP. Thereafter, the frequency of auditing will be in accordance with any conditions of consents held for the landholding, or alternatively, where there are no consent or consent conditions requiring auditing, every two years after receipt of the previous audit report, unless the Chief Executive of the Southland Regional Council, having regard to the Objectives of the Southland Water and Land Plan, specifies in writing, a shorter or longer period between auditing;

(b) the auditor must be a SQP who has been approved as such by the Chief Executive of Southland Regional Council and must not be the same person or from the same organisation that prepared the FEMP;

(c) the auditor must prepare an audit report that:

  (i) sets out the auditor's findings;

  (ii) states whether compliance has been achieved; and

  (iii) sets out any recommendations from the auditor.

(d) within one month of the final audit report being prepared, the audit report must be provided to the Southland Regional Council by the auditor.

[16] The FEMP must be reviewed by the landholding owner, or their agent, as follows:

(a) when there is a material change* in farming activities on the landholding that increases the risk of not achieving the plan's objectives, and where that change is not provided for within the landholding's certified FEMP; and

(b) at least once every 12 months; and

(c) to respond to the outcome of an audit.

[17] The outcome of the review is to be documented and amendments to the FEMP must be made where Part C(16)(a) applies, and in circumstances where the annual review identifies that amendments are required.

Notes:

(a) actions and mitigations in a FEMP may be more stringent than permitted activity standards of the pSWLP rules where this is appropriate to achieve the FEMP objectives;

(b) the no increase in contaminant loss explanation required by clause 13 (h)(1) is to be made in the context of the whole of the relevant land holding consistent with Policy 16(c1) for farming activities that affect water quality. The same approach is to be taken for the explanation of reduced adverse effects on water quality for landholdings located in a Schedule X catchment required by clause 13(h)(3);

(c) when addressing 'intensity' in Clause 13(h) the factors in Clauses 13(a)(i) and (ii) shall be applied, as relevant, in the required explanation;

(d) minimise means to reduce to the smallest amount reasonably practicable;

(e) **intensive winter grazing** means grazing of stock between May and September (inclusive) on forage crops (including brassica, beet and root vegetable crops), excluding pasture and cereal crops.

(f) **pasture-based wintering** means break feeding cattle, other than lactating dairy cows, on pasture between 1 May and 30 September inclusive where supplementary feed offered is more than 10,000 kgDM/ha.

(g) **sacrifice paddock**[5] means an area on which—

(i) stock are temporarily contained (typically during extended periods of wet weather); and

[5] SRC, memorandum 'regarding the fifth Interim Decision' dated 9 February 2023 at [35].

(ii) the resulting damage caused to the soil by pugging is so severe as to require resowing with pasture species