

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**IN THE MATTER** of the Resource Management Act 1991  
(the **Act**)

**A N D**

**IN THE MATTER** of appeals pursuant to clause 14 of the  
First Schedule to the Act in respect of  
the Proposed Southland Water and Land  
Plan

**BETWEEN SOUTHLAND FISH AND GAME  
COUNCIL**  
(ENV-2016-CHC-37)

**ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INCORPORATED**  
(ENV-2016-CHC-50)

Appellants

**A N D SOUTHLAND REGIONAL COUNCIL**

Respondent

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**STATEMENT OF SUPPLEMENTARY EVIDENCE OF SUSAN CLARE RUSTON  
ON BEHALF OF BALLANCE AGRI-NUTRIENTS LIMITED (s 274 PARTY)**

**PLANNING (TOPIC B)**

**20 MAY 2022**

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**A. INTRODUCTION**

1. My full name is Susan Clare Ruston. My qualifications and experience as an expert planner are set out in full in my Statement of Evidence dated 4 February 2022.
2. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2014, and agree to comply with it. I confirm that the issues addressed in this statement are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

**B. SCOPE OF EVIDENCE**

3. This statement of evidence responds to the Environment Court's directions at paragraph 14 of the Minute of the Court dated 2 May 2022, with respect to Policies 15A, 15B and 16A (paragraph 14(a)), and also with respect to enforceability of the Farm Environmental Management Plan (**FEMP**) regime (paragraph 14(b)).

**C. POLICY 15A - MAINTAIN WATER QUALITY WHERE STANDARDS ARE MET**

4. I agree with Mr McCallum-Clark at paragraph 19 of his Supplementary Statement of Evidence dated 6 April 2022, that the version of Policy 15A that was agreed in the Joint Witness Statement Planning signed on 10 December 2021 (**JWS-P**) is clear that where existing water and sediment quality meets the listed standards and guidelines, then the quality must be maintained. In my opinion, this policy appropriately supports achievement of Objective 6(a) of the proposed Southland Water and Land Plan (**pSWLP**).
5. In my view, the words "*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 of reasonable mixing for point source discharges)*" in the JWS-P version of Policy 15A, are secondary to the requirement to maintain the quality, are not exclusive and, in my opinion, they appear to reside within the policy to assist the directive of maintaining the quality of water and bed sediments. If these words were to lead to the possibility of Policy 15A diminishing the

quality of water or bed sediments, then in my opinion they should be deleted to ensure that the policy supports achievement of Objective 6(a).

6. Following questioning at the Court Hearing on 14 and 15 March 2022, Mr McCallum-Clark, in his Supplementary Statement of Evidence dated 6 April 2022, has supported amending Policy 15A by changing “*avoiding, where reasonably practicable, or otherwise remedying or mitigating any adverse effects of discharges*” in the JWS-P version to “*avoiding where reasonably practicable or otherwise minimising any adverse effects of discharges*”. Mr McCallum-Clark considers that use of the phrase “*minimising adverse effects*” is more directive and better aligns with achieving Objective 6 of the pSWLP. In considering this amendment, Policies 15A and 15B are, in my opinion, ‘framework’ policies (or ‘higher-level’ policies) that direct the approach that is to be applied when managing the adverse effects of discharges, and that other specific policies (such as Policy 16) direct how specific types of discharges (for example those resulting from farming activities) are to be managed, within the context of Policies 15A and 15B.
  
7. At the same time, I understand that ‘remedy’ is generally understood to mean to counteract or remove something undesirable and ‘mitigate’ is generally understood to mean to make something less intense or severe.<sup>1</sup> These responses differ from ‘minimise’ which the JWS-P, in the context of the pSWLP provisions, defines as “*to reduce to the smallest amount reasonably practicable*”. On this basis, I consider that minimising is an option when meeting an obligation to remedy or mitigate something, but that remedying or mitigating something is not limited to minimising it. In my opinion, use of ‘remedying or mitigating’ is appropriate in Policy 15A, while ‘minimise’ may be appropriate where a more stringent approach is specifically needed (such as in Policy 16). While these terms follow the words “*including by*” and are therefore not exclusive, I consider that the relationship between the ‘framework policies’ (15A and 15B) and the more specific discharge policies is clearer by retaining the words “*remedying or mitigating*” in Policy 15A and adopting “*minimise*” in the discharge specific policies, where necessary.
  
8. For the preceding reasons, I prefer the JWS-P version of Policy 15A.

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<sup>1</sup> I have drawn my understanding both from my planning experience and from the following definitions in The Pocket Oxford Dictionary of Current English, Revised Eighth Edition 1996. Remedy means “...*means of counteracting or removing anything undesirable...rectify; make good*” (page 765) and mitigate means “*make less intense or severe*” (page 570).

**D. POLICY 15B - IMPROVE WATER QUALITY WHERE STANDARDS ARE NOT MET**

9. Mr McCallum-Clark, in his Supplementary Statement of Evidence of 6 April 2022, has recommended amending the JWS-P version of Policy 15B.
10. I do not support Mr McCallum-Clark's proposal to remove "*improve*" from the chapeau. Rather I consider that the chapeau needs to retain the directive that where the water quality standards and bed sediment guidelines are not met, then water quality must be improved. In my opinion, this more clearly identifies the framework of Policies 15A and 15B delivering on Objectives 6(a) and 6(b) respectively. At the same time, I consider that Policy 15B's clauses (1), (1a) and (2) need to be read as an exclusive package, that together achieve improved water quality. To achieve this, I recommend deleting "*including*" from the chapeau.
11. With respect to clause (1a) of Policy 15B, I consider the reference to "*other new discharges*" in the JWS-P version is clear that it refers to any other new discharge that is not identified in clause (1) of Policy 15B. I see no need to list the new discharges proposed by Mr McCallum-Clark, and I consider that such a change could detract from the clarity of the policy.
12. Further to this, I consider that clause (1a) would be improved by expressly referring to new discharges that could lead to a net reduction in contaminant losses in a sub-catchment<sup>2</sup> thereby providing a clearer consenting pathway for such activities. I consider that this change better supports Policy 14 which seeks to encourage discharges of contaminants to land over discharges of contaminants to water.
13. With respect to clause (2) of Policy 15B, I do not support inclusion of "*varying*" of a resource consent condition. My reasoning is summarised as follows:
- a) If an application to change a condition of consent is administrative in nature and does not alter the nature and/or scale of environmental effect resulting from the activity, for example changing a reporting date

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<sup>2</sup> For example, where one new discharge replaces a number of existing discharges, in different locations but in the same sub catchment, and the new discharge adopts improved treatment technology; or where a discharge to land replaces a discharge to water.

requirement or a monitoring site location, then 'demonstrating how and by when adverse effects will be avoided' is not needed;

- b) If an application to change a condition of consent could result in materially greater adverse environmental effects, then the 'activity' would be considered to be a new activity, and therefore be assessed against clauses (1) or (1a) and any relevant specific discharge policy;
  - c) If an application to change a condition of consent could result in materially lessor adverse environmental effects, then the improvement sought by (2) is already addressed and this would be evident in the application and assessment of the application, since sections 88 to 121 of the Act are applied to any application for a change or cancellation of a condition of a consent as if the application was a discretionary activity;
  - d) If an application to change a condition of consent resulted in no material change in adverse environmental effects, then I consider it is not reasonable to require an improvement in water quality from the existing authorised activity, rather in my opinion it is reasonable to allow the already authorised activity to run its full term, or otherwise be reviewed pursuant to s128 of the Act.
14. Also focusing on clause (2), the phrase "*seeking a different discharge permit for an existing activity*" is unclear to me. I am concerned that it could capture the "*different discharge*" as a new discharge under (1) and (1a), while at the same time creating an expectation that the activity sits within (2). I consider that it is clearer to refer in (2) to "*seeking a discharge permit for an existing but previously unconsented discharge*".
15. Based on the preceding considerations, I recommend the following amendments shown in red text, to the JWS-P version of Policy 15B.

*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 ~~and or otherwise remedying or mitigating ensuring no net increase in any adverse effects of other new discharges on water quality or sediment quality so that would exacerbate the exceedance of those standards or sediment guidelines is not, as a minimum, exacerbated~~; and*
  2. *requiring any application for replacement of an expiring discharge permit, or seeking a discharge permit for an existing but previously unconsented 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).*

**E. POLICY 16A - INDUSTRIAL AND TRADE PROCESSES THAT MAY AFFECT WATER QUALITY**

16. Mr McCallum-Clark, in his Supplementary Statement of Evidence of the 6 April 2022, at paragraph 31, has supported the version of Policy 16A that was proposed within the Court's Minute of 10 March 2022 (at paragraph 48 of the Court's Minute) and then refined during questioning. I also support this refined version of Policy 16A on the basis that it is significantly clearer than the JWS-P version. As previously discussed (at paragraph 6 of this Statement of Evidence), the pSWLP's policy framework sits Policy 16A within the context of Policies 15A and 15B. That is, Policy 16A does not apply on its own, rather Policies 15A and 15B set the generic requirements for maintaining and improving water quality, and Policy 16A, along with other activity specific policies, address how discharges from specific types of activities are to be managed when meeting the requirements of Policies 15A and 15B. Policy 16A addresses "*industrial and trade processes*" and requires "*adoption of the best practicable option to manage the treatment and discharge of contaminants*" from these activities. This expectation, in my opinion, is strengthened by the clarity provided in the version of Policy 16A that Mr McCallum-Clark prefers in his paragraph 31.

## F. FARM ENVIRONMENTAL MANAGEMENT PLANS

17. With respect to the question ‘*what constitutes a breach in relation to a Farm Environmental Management Plan*’, I agree with Mr McCallum-Clark’s Supplementary Statement of Evidence dated 13 May 2022 (at paragraphs 18 and 19), that compliance with a FEMP requires that the practices, actions and mitigations described in a FEMP are achieved within the timeframes prescribed in the FEMP, and that this requirement could be more clearly indicated within the rules. On this basis, I generally support Mr McCallum-Clark’s recommended changes at his paragraph 20, however, in my opinion, a further amendment is needed. I am concerned that the relationship between certifying the FEMP and auditing implementation of the FEMP is blurred by the phrase:

“...a Farm Environmental Management Plan is:

(A) prepared, certified, and ~~implemented~~ audited in accordance with Appendix N; ~~and~~ ...”

18. With respect to the pSWLP, it is not the FEMP that is audited (the FEMP is certified), rather it is compliance with the FEMP that is audited. On this basis, I recommend that the following phrase be adopted, or words of similar effect:

“...a Farm Environmental Management Plan is:

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

19. With respect to the auditing of compliance with FEMPs, I agree with Mr McCallum-Clark (at paragraph 15 of his Supplementary Statement of Evidence dated 13 May 2022) that the auditing section of Appendix N in the JWS-P version was based on assumptions about the use of audit grades. It is possible that a range of grades will not be adopted by Southland Regional Council, and a ‘pass or fail’ approach could be adopted. Further to this, I consider that auditing of compliance with FEMPs is a critical part of the FEMP framework, and the community needs confidence that there will be timely checking to ensure that the actions and timeframes in FEMPs are being complied with. On this basis, I support the changes to ‘Part C (2) Auditing of

the Certified Farm Environmental Management Plan' as proposed by Mr McCallum-Clark at his paragraph 15.

**Sue Ruston**

20 May 2022