

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KŌTI TAIAO O AOTEAROA**

**AT CHRISTCHURCH  
KI OTAUTAHI**

**ENV-2018-CHC-000036**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

of an appeal under clause 14 of the First  
Schedule of the Act

**BETWEEN**

**Director-General of Conservation**

***Tumuaki Ahurei***

Appellant

(ENV-2016-CHC-000036)

**AND**

**Southland Regional Council**

Respondent

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**Topic B Tranche 1 Supplementary Evidence (Planning) of Linda  
Elizabeth Kirk for Director-General of Conservation *Tumuaki Ahurei*,  
as a s274 Party**

Dated 20 May 2022

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## **Introduction**

1. My full name is Linda Elizabeth Kirk. My experience and qualifications are set out in my 'Topic A' evidence in chief dated 15 February 2019.
2. I have been asked by the Director-General of Conservation *Tumuaki Ahurei* (D-G) to provide independent supplementary planning evidence in reply to the Court's directions at paragraph 14 of the Minute dated 2 May 2022. This is in response to the Southland Regional Council and Southland Fish and Game Council evidence concerning Policies 15A, 15B, 16A and 17, Rules 13 and 15, and Appendix E on the proposed Southland Water and Land Plan (pSWLP).
3. For clarification, my evidence is by way of reply to:
  - a. Supplementary Statement of Evidence of Matthew McCallum-Clark in Response to Court's Minute Dated 25 March 2022 (dated 6 April 2022);
  - b. Statement of Evidence of Russell Death on Behalf of Southland Fish and Game Council on (dated 8 April 2022); and
  - c. Final Consolidated Tracked Changes of Forest & Bird and Fish & Game (F&B and F&G) (dated 11 April 2022)<sup>1</sup>.

## **Code of Conduct**

4. I confirm that I have read the code of conduct for expert witnesses as contained in section 7.1 of the Environment Court's Practice Note 2014. I have complied with the practice note when preparing my evidence and will do so when I give oral evidence before the Court.
5. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
6. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

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<sup>1</sup> As incorporated into the consolidated version of the pSWLP in the common bundle.

## Executive Summary

7. I agree with the intent of the changes to Policies 15A and 15B of Mr McCallum-Clark with further refinements to aid in clarity.
8. I agree with Policy 16A of Mr McCallum-Clark, with no further changes.
9. I support the intent of the amendments sought by F&B and F&G for Rules 13 and 15 (with further refinement) and Appendix E, as the amendments seek to clarify the maximum percentage change in fine sediment bed cover and the maximum extent of fine sediment bed cover specified for the relevant water body class in Appendix E. I consider the amendments proposed enable a clear linkage and application of Appendix E within the rules and is consistent with the planning framework (such as Objective 6 and Policies 15A and 15B as amended below).

## Policies 15A and 15B

10. In my opinion, Policies 15A and 15B provide the context for the receiving environment. This is achieved through the respective chapeau of each policy referring to the existing water quality meeting or not, the Appendix E Water Quality Standards or the bed sediments of Appendix C ANZECC sediment guidelines. The intent is for each policy to provide clear direction in implementing Objective 6, that being “maintain water quality” in Policy 15A and “improve water quality” in Policy 16B.
11. I agree with Mr McCallum-Clark<sup>2</sup> that there is uncertainty in the wording of Policies 15A and 15B as currently drafted, and that this can be improved.
12. Both Appendix C and Appendix E apply to the receiving environment after “reasonable mixing” of the respective levels of contaminants in sediment or waters (unless otherwise stated in Appendix E). Therefore, I consider it unnecessary to repeat the phrase “*beyond the zone of reasonable mixing*” in both Policies 15A and 15B as this is already encompassed in what is the receiving environment of the chapeau of each policy. This is a change in position from the Planning JWS dated 20 December 2021.

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<sup>2</sup> Supplementary Statement of Evidence of Mr McCallum-Clark at paragraph [12]

13. I support the replacement of the phrase “*remedying or mitigating*” with the word “*minimising*” as a result of Mr Duncan amending paragraph 15 of his evidence in the course of the hearing<sup>3</sup> and the conclusion that it was not actually possible to avoid all losses to water in situations when the discharge is not a point source to surface water.
14. Keeping the context of the application of each policy in mind, I consider that the definition of “minimise” in the Plan is applicable within the policies’ phraseology and provides direction on the extent or outcome of what is required – “*to reduce to the smallest amount reasonably practicable*”. The actions needed to achieve “minimise” can be through “remedy or mitigate” initiatives and these terms do not need to be in these policies.

### **Policy 15A – Maintain water quality where standards are met**

15. As a result of the discussion above, I support the amended changes on Policy 15A as proposed by Mr McCallum-Clark<sup>4</sup>, with the additional amendment to delete the “(*beyond the zone of reasonable mixing for point source discharges*)” (as shown below). Note the amendments shown in **red strikethrough and/or underline** are Mr McCallum-Clark’s changes from the JWS Planning dated 20 December 2021. **Blue strikethrough and/or underline** show my further suggested amendments to Mr McCallum-Clark’s proposal:

#### ***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, where reasonably practicable or otherwise minimising any 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*).*

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<sup>3</sup> Environment Court Transcript – All of Parties – 14 March 2022 at page 191, lines 11-30

<sup>4</sup> Supplementary Statement of Evidence of Mr McCallum-Clark at paragraph [21]

## **Policy 15B – Improve water quality where standards are not met**

16. As a result of the discussion above, I support the intent of the amended changes on Policy 15B as proposed by Mr McCallum-Clark<sup>5</sup>, with additional amendments to improve clarity and readability (as shown in paragraph [19]). I consider that the clauses can be “word smithed” to be more concise and remove the uncertainty around what does “exacerbate” mean. I reiterate that the chapeau of the policy provides the qualification of the receiving environment and does not need to be repeated in the clauses themselves.
17. I do not consider that the heading of Policy 15B requires amendment as the policy must be read as a whole, with the overall direction being towards improvement. This is achieved through the use of the conjunctive “and” between the clauses of Policy 15B, meaning that all clauses must be read together.
18. An alternative approach is to reframe Policy 15B to bring the improvement clause that applies to existing activities (Policy 15B(2)) to the start of the clauses, with the “maintain” clauses of new activities following.
19. Note the amendments shown in **red strikethrough and/or underline** show Mr McCallum-Clark’s changes from the JWS Planning dated 20 December 2021. **Blue strikethrough and/or underline** show my further suggested changes to Mr McCallum-Clark’s proposal:

### ***Policy 15B – Improve water quality where standards are not met***

*Where existing water quality does not meet the Appendix E Water Standards or bed sediments do not meet the Appendix C*

*ANZECC sediment guidelines, **improve** water quality will be including*

***by:***

1. ***maintained 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 that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and~~*
- 1a. ***maintained by** ~~avoiding where reasonably practicable and otherwise **minimising remedying or mitigating** any adverse effects~~*

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<sup>5</sup> Supplementary Statement of Evidence of Mr McCallum-Clark at paragraph [26]

- ~~of other new discharges on water quality or sediment quality from new discharges to land, new discharges to groundwater or new diffuse discharges to water so that would exacerbate the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated; and~~
2. **improved by** requiring any application for **the** replacement of an expiring discharge permit, ~~or the varying or seeking a different discharge permit for an existing activity variation of an existing discharge permit.~~ to demonstrate how and by when adverse effects will be avoided where **reasonably** practicable and otherwise **minimised.** ~~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).~~

#### **Policy 16A – Industrial and trade processes that may affect water quality**

20. I agree with Mr McCallum-Clark's revision of Policy 16A. The further amendments to Policies 15A and 15B above provide clarity and clear linkage about the context of the receiving environment of discharges for some water bodies. Policy 16A provides clear direction on the use of best practicable option for industrial and trade process activities and retains the wider range of water bodies that it applies to. No further amendments are proposed.

#### ***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 and trade processes.*

*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.*

## Rule 13, Rule 15, and Appendix E

21. Professor Death's<sup>6</sup> evidence provides the deposited sediment numerics necessary to maintain ecosystem health for each of the waterbody types in Appendix E. I am unable to comment on the detail of the technical evidence as this is outside my area of expertise, but I provide comment on the application of the technical evidence in the Plan to assist the Court.
22. F&B and F&G jointly provided their final consolidated tracked changes to Rule 13, Rule 15, and Appendix E sediment standards on 11 April 2022. These have been usefully captured in the consolidated version of the Plan that the Council has produced as part of the common bundle.
23. I support the intent of the amendments sought in Appendix E as I interpret this to provide the maximum level of fine sediment bed cover for the respective receiving waterbodies.
24. I support the intent of the amendments sought in Rules 13 and 15 as the amendments seek to clarify the maximum percentage change in fine sediment bed cover and the maximum extent of fine sediment bed cover specified for the relevant water body class in Appendix E. I consider this enables a clear linkage and application of Appendix E within the rules and is consistent with the planning framework (such as Objective 6 and Policies 15A and 15B as amended above).
25. As discussed in paragraph [12] above, I consider the phrase "(beyond the zone of reasonable mixing)" is unnecessary to be repeated within the provisions and that this should be deleted from Rules 13(a)(2) and 15(a)(iv)5) as proposed by F&B and F&G as follows:

"...or an exceedance of the percentage bed cover for fine sediment specified in Appendix E (beyond the zone of reasonable mixing); ..."
26. In the application of the rules, I interpret that to remain as a permitted activity under either Rule 13 or 15 as proposed by F&B and F&G, the change in fine sediment bed cover is unable to go above the maximum level for the respective waterbody. For example, a surface water body classified as "lowland soft bed" has a maximum level of fine sediment bed

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<sup>6</sup> Statement of Evidence of Professor Death, dated 8 April 2022

cover of 30% but the change in fine sediment bed cover must not exceed 10% for each activity. I interpret this to mean that cumulative effects of multiple discharge activities are able to incrementally change the level of fine sediment bed cover up to 10% each until there is a maximum 30% fine sediment bed cover. Beyond that 30% fine sediment bed cover of the receiving waterbody means that further discharges with effects of increasing the fine sediment cover would not be permitted under Rules 13 and 15 as proposed by F&B and F&G.

27. In my opinion, the amendments in Rules 13 and 15, and Appendix E as proposed by F&B and F&G, reduce the uncertainty that has been raised during the hearing as to what does the 'change in fine sediment bed cover must not exceed 10% in Appendix E', mean in practice. For example, questions were posed to Mr Hodson on this matter during the hearing and Mr Hodson responded that "*the effects of a 10% increase in deposited fine sediment cover will depend on the absolute level of cover that's present*"<sup>7</sup>.



Linda Elizabeth Kirk

20 May 2022

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<sup>7</sup> Environment Court Transcript – All of Parties – 14 March 2022 at page 172, lines 29-30