

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

UNDER The Resource Management Act 1991 (RMA)

IN THE MATTER Appeals under clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Southland Water and Land Plan

BETWEEN **MERIDIAN ENERGY LIMITED**
Appellants

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

STATEMENT OF EVIDENCE OF MARGARET JANE WHYTE

FOR

MERIDIAN ENERGY LIMITED (PLANNING – TOPIC B)

4 February 2022

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ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INC
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL
Respondent

INTRODUCTION

- 1 My full name is Margaret Jane Whyte.
- 2 I hold the degrees of Bachelor of Arts and Master of Regional and Resource Planning from Otago University. I am a full member of the New Zealand Planning Institute. I am a Director of ResponsePlanning Consultants Limited. I have over 29 years planning and resource management experience.
- 3 I have undertaken planning work on behalf of Meridian Energy Limited (Meridian Energy) within the Southland Region. I have regularly visited Southland and am familiar with the Region.
- 4 I was involved in preparing the original submissions and further submissions on the Proposed Southland Water and Land Plan (PWLP). I presented evidence at the Southland Regional Council hearing on the Proposed Southland Water and Land Plan.
- 5 I presented evidence to the Environment Court on the first stage of hearings on the Water and Land Regional Plan, when the objectives were determined.
- 6 I have prepared this statement addressing matters subject to the Section 274 notices lodged by Meridian Energy Limited (Meridian).

CODE OF CONDUCT

- 7 I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence and will do so when I give oral evidence before the Environment Court.
- 8 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.
- 9 Unless I state otherwise, this evidence is within my knowledge and sphere of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

- 10 I provide the following declaration of conflict of interest. My husband is an employee of Meridian Energy. This relationship has not had any influence on my evidence and my opinion as an independent expert.

EXECUTIVE SUMMARY

- 11 I support the deletion of Policy 15C as set out in the Joint Witness Statement of Planners (Planning JWS).
- 12 I support the outcome of the Planning JWS for Policy 16. My consideration of Policy 16 was limited and I express no view on any further changes that are being sought beyond those agreed in the Planning JWS.
- 13 I support Rule 74 remaining a land use rule.
- 14 I support the change in activity status for land drainage activities in Rule 51(e) as per the Planning JWS. I do not support further changes to Rule 51(e) that remove the focus on land drainage activities.
- 15 I have suggested no further changes be made to provisions beyond those agreed in the Planning JWS.

SCOPE OF EVIDENCE

- 16 The matters addressed in my evidence are:
- 16.1 The Appeal and S274 interests of Meridian agreed in the Planning JWS related to Topic B2 - Discharges (Policy 15C), Topic B5 – Farming (Policy 16) and Topic B3 – Wetlands (Rule 74)
- 16.2 The S274 interests of Meridian not agreed in the Planning JWS related to Topic B3 – Wetlands (Rule 51).
- 17 In Appendix 1 I have attached a copy of the provisions I have addressed in evidence. These provisions are as included in the Planning JWS. I have not sought further changes to these provisions in this evidence.
- 18 I record for completeness that this statement does not address an outstanding matter of Appeal of Meridian in relation to Appendix E. This point while initially identified to be addressed in Topic B2 – Discharges, is solely related

to the Manapouri Power Station. At the Planning Conferencing and recorded in the Planning JWS it was agreed that this point of appeal is better addressed as part of Topic B6 alongside other provisions relating to the Manapouri Power Station.

19 In preparing my evidence I have read and considered the following additional documents since drafting my evidence in chief (dated 15 February 2019), my supplementary evidence following the First Interim Decision (dated 17 April 2020) and my will-say statement (dated 8 November 2021):

19.1 The evidence on Topic B by Mr McCallum-Clark dated 22 October and 28 October.

19.2 The Planning JWS (12 December 2021) and attachments B2, B3, B4 and B5;

19.3 the Joint Witness Statement Ecology (01 December 2021) (Ecology JWS);

19.4 the Joint Witness Statement Science (11 November 2021) (Science JWS);

19.5 the evidence on behalf of Ngā Rūnanga by Ms Davidson, Dr Kitson and Ms Cain

19.6 the evidence on behalf of Royal Forest and Bird Protection Society of New Zealand (Forest and Bird) and Southland Fish and Game Council (Fish and Game) of Mr Farrell and Ms McArthur.

20 In preparing my evidence I have considered the relevant statutory considerations. This includes:

20.1 As relevant the key objectives, policies and provisions in the National Policy Statement for Renewable Electricity Generation (NPS-REG) and the National Policy Statement Freshwater (NPS-FM)

20.2 As relevant the key provisions in the National Environment Standard Freshwater (NESF)

- 20.3 As relevant the key objectives and policies in the Southland Regional Policy Statement (RPS)
- 20.4 The operative objectives in the PWLP, including the interpretation statement, and the policies and rules in the PWLP.
- 20.5 Key provisions in the Resource Management Act relating to the preparation of Regional Plans and considerations
- 20.6 The matters in the Resource Management Act related to provisions in Regional Plans including Sections 74, 75, 76, 32(1)(b) and Section 32(2).
- 21 I have also considered the decisions of this Court on the objectives in relation to the paradigm shift in planning approach within this Plan and the key understandings of Te Mana o te Wai and ki uta ki tai. The key matters are recorded in the introduction of the Planning JWS.
- 22 Having recorded that I have considered all of the above matters I record that the matters that I have addressed in this evidence are specific and limited. On this basis I have considered that a fully statutory assessment addressing the above matters is not necessary. I have set out the key basis for my opinions within my evidence.

CONSIDERATION

Policy 15(c)

- 23 The Planning JWS addressed Policy 15C. The outcome of the Planning JWS is that Policy 15C be deleted in its entirety. I support the deletion of Policy 15C as a policy of this type is not necessary to be included in the PWLRP in advance of the forthcoming FMU process that Environment Southland will be undertaking. The process Environment Southland is following for the future FMU processes were outlined in the overview evidence of Mr McCallum-Clark.
- 24 The FMU process that must be followed to implement the NPS-FM provides certainty that the matters currently addressed in Policy 15C will necessarily

be addressed within the FMU process, irrespective of the existence of Policy 15C.

- 25 I acknowledge the link between Policy 15C and Objective 7. In my view the FMU process itself, and the provisions that necessarily arise from this future process will respond to Objective 7. I consider including a policy such as Policy 15C (that will only apply following the freshwater objectives and limit setting process) is not necessary and it will not assist in the effective or efficient implementation of the PWLP in advance of any FMU process. On this basis I support the Planning JWS that identifies Policy 15C should be deleted.

Policy 16

- 26 Policy 16 relates solely to farming activities. Meridian is a Section 274 party to appeals on this Policy. This policy was addressed in Planning Conferencing and I understood all elements were agreed as between the planners as recorded in the Planning JWS.
- 27 Meridian is not seeking specific changes or presenting evidence in relation to those provisions that are specific to farming activities. I participated in the Planning JWS on Policy 16 on the limited basis that as a planner I consider it is important for all objectives and policies within the PWLRP to be clear and be capable of consistent implementation when considered alongside other objectives and policies. I supported the outcome in the Planning JWS in relation to Policy 16.
- 28 I note in the evidence of Mr Farrell he is seeking the word “degraded” be added into a number of clauses within Policy 16. These further changes do not change the focus of the policy being solely on farming activities. Given my limited consideration of the matters in Policy 16, on the basis that the focus of the policy does not extend beyond farming activities, I offer no opinion on any further changes to the wording of Policy 16 sought by any other party.

Wetlands

- 29 This section of my evidence addresses Rule 74 and Rule 51. Meridian is a S274 party to the appeals of Ngā Rūnanga, Forest and Bird and Fish and Game in relation to these rules.

Background

- 30 Meridian did not lodge submissions or further submissions on either Rule 74, or Rule 51(b) that are the subject to these appeals. I provide a brief background as to the reasoning for this and why Meridian is now a Section 274 party.
- 31 I reviewed the notified provisions of the PWLRP and provided advice to Meridian as to whether it should consider lodging submissions on these provisions. A particular focus of my consideration and advice was on provisions that could have implications for the maintenance and/or operation of the Manapouri Power Scheme (MPS).
- 32 I did not recommend any submissions needed to be lodged on Rule 74. Rule 74 is a land use rule addressing activities under Section 9 of the Resource Management Act. My understanding is that for Section 9 land use matters that are necessary or requisite for the ongoing operation and maintenance of the Manapouri Power Scheme section 4 of the Manapouri - Te Anau Development Act 1963 (MTADA) applies rather than rules in District or Regional Plans. On this basis Rule 74, as a land use rule, was not relevant to the activities of Meridian associated with the maintenance and operation of the MPS. Meridian did not lodge submissions on Rule 74.
- 33 Rule 51 addresses minor diversions of water. Rule 51(b), which is the focus of the appeal, was specific to the activity of the diversion of water for the purpose of land drainage. Diversions for land drainage under Rule 51(b) provided for the activity as a permitted activity, subject three conditions (i-iii) being met. Condition (iii) is that the diversion of water was not from a Regionally Significant Wetland or a Sensitive Water body identified in appendix A or any natural wetland. If any conditions were not met then the activity status was a discretionary activity.

- 34 In reviewing Rule 51(b) I understood that Meridian did not undertake, nor propose to undertake, minor diversions of water for the purpose of land drainage. Therefore my recommendation was that a submission did not need to be lodged on Rule 51(b) to address Meridian's interests. Meridian did not lodge any submissions.
- 35 Meridian has become a S274 party on these provisions. The relief sought in the appeals to both Rule 74 and Rule 51 changes the activities that each of these rules applies to. The scope of each rule would change and would, in my view potentially (depending on what relief, if any, was granted) apply to activities associated with the maintenance and operation of the MPS.

Planning Consideration

- 36 Rule 74 as notified is a Section 9 land use rule. It relates to the use of land within a wetland. It provided for specified activities to be permitted activities, where conditions are met. Where conditions cannot be met the activity status is a discretionary activity. Land use activities not addressed in either Rule 74(a) or 74(ab) default to non-complying activities.
- 37 The appeal of Ngā Rūnanga sought an amendment be made to Rule 74 so that drainage of wetlands was a prohibited activity. Rule 74 was addressed in the Planning JWS which identifies that Rule 74 is a land use rule and as such is not an appropriate rule to address non-land use matters such as the drainage of wetlands. I agree with the Planning JWS. This is also agreed in the evidence of Ms Davidson (paragraph 18), where she considers the relief sought in the Ngā Rūnanga appeal is more appropriately addressed in Rule 51, not Rule 74. I support the Planning JWS and the view of Ms Davidson that Rule 74 is not a rule where matters other than land use matters should be addressed.
- 38 I now turn to Rule 51(b). The wording of Rule 51(b) was not agreed in the Planning JWS.
- 39 The matters I address in relation to Rule 51(b) are:
- 39.1 The focus of provisions being on Natural Wetlands which was agreed in the Planning JWS.

- 39.2 The preferred relief of the Council, that the diversion of water from a natural wetland for the purpose of land drainage is a non-complying activity, set out in Attachment B3 of the Planning JWS. This relief is also supported in the evidence of Ms Davidson¹ as addressing the changes Ngā Rūnanga had initially sought in relation to Rule 74.
- 39.3 The relief in the evidence of Mr Farrell seeking that any diversion of water from a natural wetland, irrespective of the reason, be a non-complying activity through deleting the words “for the purpose of land drainage”.
- 40 Key to my consideration and evaluation are the provisions applying to activities within and near wetlands within the NESF. The NESF did not exist at the time of the notification, submissions and appeals.
- 41 I address each of the three matters identified.
- 42 Firstly, I support the agreement in the Planning JWS that the changes to wording in relation to wetlands under consideration should refer to natural wetlands, rather than wetlands. This will provide greater alignment with the terms used in the NESF regulations.
- 43 I now address Rule 51(e) in the context of the preferred relief of the Council. The relief sought is that Rule 51(e) is: “...(e) The diversion of water from a natural wetland for the purpose of land drainage is a non-complying activity
- 44 At the time the Planning JWS was signed I was not in a position to be fully satisfied that changing land drainage from a discretionary to a non-complying activity in the Planning JWS would not result in unintended consequences for any other activities, that were subject to a different activity status in the NESF, particularly specified infrastructure. My residual concern was to ensure that the term ‘land drainage’ was distinguishable from the term ‘drainage’ as it appears in the regulations in the NESF² so that activities that had not previously been subject to specific consideration in Rule 51(e), including in

¹ Evidence of Ms Davidson – 20 December 2021, Paragraph 18

² For example heading “Drainage of natural wetlands” above Regulation 52 and use of terms “complete or partial drainage” in Regulations 52(1)(a), 52(2)(a), 53(1)(a) and 53(2)(a).

the Section 32 documentation supporting the PWLRP, were not unnecessarily captured.

- 45 I stated in the Planning JWS I was comfortable with the Council relief if the activity of land drainage as a non-complying activity did not include other activities, such as specified infrastructure that are separately addressed in the NESF, by regulations 45, 46, 47 and 55.
- 46 I have now had time to work through the Council preferred wording of Rule 51 as it applies to land drainage and the provisions of the NESF, particularly regulations 45, 46, 47 and 55. I am satisfied the Council preferred wording for Rule 51 as it applies to land drainage is clear and the residual concern I had of unintended consequences for specified infrastructure activities is overcome.
- 47 The Planning JWS records that full agreement on the activity status relating to wetlands in Rule 51 was not achieved. In addition to the matter I have addressed above additional changes were sought in relation to the appeals of Forest and Bird and Fish and Game. The evidence of Mr Farrell³ sets out his recommended amendment to Rule 51(e) being “.....(e) The diversion of water from a natural wetland ~~for the purpose of land drainage~~ is a non-complying activity”
- 48 The effect of the relief sought by Mr Farrell is that the application of Rule 51(e) would not be limited to land drainage activities. The relief sought by Mr Farrell would be that any diversion of water “from” (*my emphasis*) a wetland would be a non-complying activity.
- 49 I have carefully considered the implications of Mr Farrell’s relief in relation to how this rule would apply to activities Meridian undertakes associated with the maintenance and operation of the MPS which is classified as specified infrastructure under the NESF.
- 50 My understanding is that Meridian does not and is not in the future likely to undertake any activity necessary or requisite to the operation and maintenance of the MPS that would involve a diversion of water from a wetland. On this basis I have concluded it is unlikely that the rule as

³ Evidence of Mr Farrell, 20 December 2021 Appendix 1 paragraph 4 (page 39)

proposed by Mr Farrell would have any implications on the activities that Meridian may undertake associated with the MPS. On the basis that this remains the situation I do not consider that the change identified by Mr Farrell will have implications on the nationally significant MPS that have not been subject to proper evaluation under Section 32 of the Resource Management Act.

- 51 Irrespective of whether the specific rule changes will have implications or not for the operation and maintenance of the MPS, my view is that the NESF provides a comprehensive regulatory regime for activities through regulations 38-50. Further changes to Rule 51(e) that extend its ambit to activities other than land drainage activities are not necessary.
- 52 I consider that the NESF, although it has some implementation challenges⁴, provides a more comprehensive approach than could be addressed within Rule 51, irrespective of its activity status. Unlike Rule 51(e) the provisions of the NESF apply to a wider range of activities than only diversions. The NESF provisions also apply, not only to activities *within* a natural wetland, but also activities *near* a natural wetland by applying to activities within 10m -100m⁵ of the natural wetland, depending on the activity.
- 53 Below I provide an illustration of the NESF regulatory regime as it applies to the maintenance and operation of specified infrastructure. The maintenance and operation of specified infrastructure is regulated under Regulation 46 and 47 of the NESF. These Regulations apply to the following activities:
- 53.1 Vegetation clearance within or within a 10m setback from a natural wetland
 - 53.2 Earthworks or land disturbance within, or within a 10m setback from a natural wetland

⁴ There has been a public consultation and submission process run by the Ministry for the Environment and that there are signals that in the future there may be changes made within the NESF in order to overcome some of the implementation challenges that have been experienced to date.

⁵ There are provisions applying to vegetation clearance and earthworks and land disturbance within 10m of a natural wetland (for example 46(1) and 46(2) and provisions relating to the taking, use, damming, diversion or discharge of water within, or within a 100m setback from, a natural wetland for example 46(3).

53.3 The taking, use, damming, diversion or discharge of water within or within a 100m setback from a natural wetland.

54 These activities are provided for as either a permitted or restricted discretionary activity under the NESF. In order to be a permitted activity a comprehensive set of conditions must be met. These conditions are set out in Regulations 46, 47 and 55. The conditions required to be met to be a permitted activity are comprehensive and in my experience in applying these conditions are challenging to meet.

55 I have considered the key policies in the PWLP that address wetlands. These are Policies 33 and 34. I have not identified any matters addressed in these policies that are not effectively addressed by the Regulations in the NESF.

56 My view is that the NESF contains a comprehensive regulatory approach to the management of effect on wetlands associated with the maintenance and operation of specified infrastructure and further changes to Rule 51(e) to extend its ambit beyond land drainage activities is not necessary. No changes beyond those identified in the Planning JWS are necessary.



Jane Whyte

4 February 2022

Appendix 1 – Copy of Provisions from the Planning JWS addressed in evidence

B2 - Discharges

B5 – Farming

B3 - Wetlands

B2 - Discharges

Tracked changes key:

Blue = previously agreed by parties

Red = changes that show Council's preferred relief

Policy 15C

~~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.~~

B5 Farming

Tracked changes key:

Red = changes that show Council's preferred relief

Green = changes post first tranche of conferencing

Policy 16

1. **Minimising** ~~Avoid where~~ **reasonably practicable, or otherwise** ~~minimise remedy or mitigate, 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:
 - ~~(a) discouraging avoiding the establishment of new dairy farming of cows or new intensive winter grazing activities any new, or further intensification of any existing, dairy farming of cows or intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and~~
 - (b) ensuring that, for existing farming activities:**
 - ~~(i) existing farming activities minimise nitrogen, phosphorus, sediment and or microbial contaminant discharges are minimised;~~
 - ~~(ii) reduce adverse effects on water quality where the farming activity occurs within the catchment of a waterbody that requires improvement identified in Schedule X; and~~
 - ~~(iii) demonstrate how (i) and (ii) is being or will be achieved through the implementation of Farm Environmental Management Plans prepared in accordance with (c) below and in addition,~~
 - ~~(ba) ensuring that for (ii) — the establishment of new, or further intensification of existing, dairy farming of cows or intensive winter grazing activities:~~
 - ~~(i) does not result in an increase in nitrogen, phosphorus, sediment and or microbial contaminant discharges; and~~
 - ~~(ii) minimises nitrogen, phosphorus, sediment or microbial contaminant discharges through the implementation of farm plans prepared in accordance with (c) below; and~~
 - ~~(iii) reduces nitrogen, phosphorus, sediment or microbial contaminant discharges where is the farming activity occurs within the catchment of a degraded waterbody that requires improvement identified in Appendix Schedule X; and~~
 - ~~(iv) is avoided in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and~~
 - ~~(v) resource consent is not granted to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities where any 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 [where [reasonably] practicable], or minimised otherwise remedied or mitigated; or and~~
 - (c)2-** requiring all farming activities to:
 - ~~(a) be undertaken in accordance with~~ **implement** a Farm Environmental Management Plan **which:**

- (i) identifies whether the farming activity is occurring, or would occur, in a catchment of a waterbody that requires improvement which contains a degraded waterbody identified in Schedule X;
 - (ii) identifies and responds to the contaminant pathways (and variants) for the relevant Physiographic Zones;
 - (iii) 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 degraded catchment of a waterbody that requires improvement identified in Schedule X, reduced;
 - (iv) is certified as meeting all relevant requirements of this plan and regulation prepared under Part 9A of the RMA; and
 - (v) is independently audited and reported on;
- (d) actively manage avoid where practicable, otherwise minimise remedy or mitigate, 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
- (e) manage avoid where practicable, otherwise minimise remedy or mitigate, collected and diffuse run-off and leaching of 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.
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.

Minimise means to reduce to the smallest amount reasonably practicable.

B3 – Wetlands

Tracked changes key:

Blue = previously agreed by parties

Red = changes that show Council's preferred relief

Rule 51

- (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:
- (i) a drain known as the North Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CG10 463 308;1 or
 - (ii) a drain known as the West Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CG10 457 302;2 or
 - (iii) a drain known as the South Drain on the Tiwai Peninsula, at about Map Reference NZTopo50 CH10 456 2983
- 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) The diversion of water from a natural wetland for the purpose of land drainage is a non-complying activity.

Rule 74

- (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 purpose of mahinga kai undertaken in accordance with Tikanga Maori;
- 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 Maori;
 - (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 3 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 the existing biodiversity values of the wetland; or~~
 - ~~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.

- (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.