

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER appeals under clause 14(1) of Schedule 1 of the Act in respect of Proposed Southland Water and Land Plan

between:

TRANSPower NEW ZEALAND LIMITED
(ENV-2018-CHC-26)

FONterra CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

WILKINS FARMING CO
(ENV-2018-CHC-30)

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**STATEMENT OF SUPPLEMENTARY EVIDENCE OF GERARD MATTHEW
WILLIS
FOR FONterra COOPERATIVE GROUP LTD AND DAIRYNZ LTD**

(PLANNING – POLICIES 15A, 15B, 16A AND 17)

20 MAY 2022

**GORE DISTRICT COUNCIL, SOUTHLAND
DISTRICT COUNCIL & INVERCARGILL
DISTRICT COUNCIL (ENV-2018-CHC-31)**

**DAIRYNZ LIMITED
(ENV-2018-CHC-32)**

**H W RICHARDSON GROUP
(ENV-2018-CHC-33)**

**BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 & 35)**

**DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)**

**SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)**

**MERIDIAN ENERGY LIMITED Act 1991
(ENV-2018-CHC-38)**

**ALLIANCE GROUP LIMITED
(ENV-2018-CHC-39)**

**FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)**

**HERITAGE NEW ZEALAND POUHERE
TAONGA
(ENV-2018-CHC-41)**

**STONEY CREEK STATION LIMITED
(ENV-2018-CHC-42)**

**THE TERRACES LIMITED
(ENV-2018-CHC-43)**

**CAMPBELL'S BLOCK LIMITED
(ENV-2018-CHC-44)**

**ROBERT GRANT
(ENV-2018-CHC-45)**

**SOUTHWOOD EXPORT LIMITED,
SOUTHLAND PLANTATION FOREST
COMPANY OF NZ, SOUTHWOOD EXPORT
LIMITED (ENV-2018-CHC-46)**

**TE RUNANGA O NGAI TAHU, HOKONUI
RUNAKA, WAIHOPAI RUNAKA, TE
RUNANGA O AWARUA & TE RUNANGA O**

ORAKA APARIMA
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

and:

SOUTHLAND REGIONAL COUNCIL
Respondent

1. INTRODUCTION

- 1.1 My full name is Gerard Matthew Willis. I have the qualifications and experience and confirm my compliance with the code of practice as set out in my primary evidence dated 20 December 2021 (**my 20 December 2021 evidence**).

2. BACKGROUND

Scope of evidence

- 2.1 I have been asked to prepare this supplementary evidence for Fonterra Co-operative Group Ltd (**Fonterra**) and DairyNZ Ltd (**DairyNZ**), collectively referred to as the 'dairy interests'. My evidence responds to Mr McCallum-Clark's preferred wording for Policies 15A, 15B, 16A and 17 as set out in supplementary evidence dated 6 April 2022 (**Mr McCallum-Clark's supplementary evidence**).

3. POLICY 15A

- 3.1 Mr McCallum-Clark's supplementary evidence proposes that the word "mitigating" used in the mediated version of Policy 15A, be replaced with the wording "minimising".
- 3.2 The wording preferred by the dairy interests, as attached to legal submissions dated 11 April, continues to support the mediated version of Policy 15A. Although I acknowledge that the difference in wording is subtle, I continue to prefer the mediated version. The reasons for this are set out below.

Policies 15A and 15B: framework policies

- 3.3 I consider both Policies 15A and 15B to be 'framework' policies. That is, they set out the broad planning strategy for how the objectives will be achieved insofar as they may be affected by discharges. This framework role is apparent by the fact that the policies apply generically. That is, they do not apply to a particular type of discharge or land use activity but broadly to discharges of *all* types and origins.
- 3.4 Policy 15A will apply to the consideration of an application for discharge consent in any part of Southland where the Appendix E and C standards and guidelines are met¹. However, this policy will not apply on its own.

¹ Although I understand that this in a very small part of the region.

- 3.5 Other policies (such as Policy 16, 16A, 17, 17A and 18) set out the *discharge-specific* policies. The relevant discharge-specific policy will be considered together with Policy 15A (or Policy 15B) when assessing any discharge consent application.
- 3.6 Importantly, Policy 15A (and Policy 15B) must also set the foundation for, and be consistent with, the rules that follow in the plan.

Policies 15A and 15B focus on adverse effects

- 3.7 Consistent with its role as a framework policy, there is an important structural difference in Policies 15A and 15B relative to most of the other discharge-specific policies. Policies 15A and 15B focus on the approach to be taken to managing *adverse effects* whereas the other discharge-specific policies go a step further by providing direction on the approach to specific *contaminant discharges*.
- 3.8 That distinction is, in my opinion, important. I support the concept of minimisation (which contains both the directiveness of a verb but also a clear inference of an outcome) being used in the context of contaminant loss. Minimising contaminant loss can be an appropriate response to a general obligation to mitigate effects (see further discussion below).
- 3.9 Hence, there is logic, in my opinion, for a policy providing direction on adverse effects to refer to 'mitigate' (being a broad concept) rather than minimise (being one approach to mitigation), but the focus of discharge-specific policies being on minimisation of contaminant loss.

Mitigation versus minimisation

- 3.10 In the context it is used, I understand 'mitigate' to mean *reduce* (or 'make less severe'). In everyday terms, I understand 'minimise' to mean *reduce as much as you can*². As noted above, minimising may be the appropriate response to an obligation to mitigate but in some contexts, mitigation may be best given effect to by something other than minimisation. For example, mitigation of effects sufficient to ensure that certain standards are met in receiving water is another way of indicating *the extent* of mitigation expected. It is precisely that approach that is used in Policy 15A.
- 3.11 The term 'mitigation' is not used as a 'soft option' in Policy 15A where just doing the bare minimum is sufficient. Rather, I read the mediated version of the policy requiring mitigation of adverse effects to the point where the Standards of Appendices E and C

² Noting that the planning JWS version provides a plan definition of minimise that seek to guide that refers to reducing contaminant losses as much as reasonably practicable.

can continue to be met. It is not inconceivable that, for a large point source discharge, in a catchment close to exceeding standards (for example), the mediated version of Policy 15A could require more than 'minimisation' (as defined).

3.12 The key point that is relevant from a plan interpretation perspective, is that Policies 15A and 15B will be read and interpreted alongside other discharge-specific policies. In my opinion, if there is any doubt about the appropriate policy test to apply the more specific and more directive policy (generally the discharge-specific policy) will prevail. Hence, for any farming land use or intensive winter grazing application for example, the policy direction under Policy 16 (the applicable discharge-specific policy) is that contaminant losses need to be minimised. I do not see that as being in conflict with, or being undermined by, the Policy 15A referring to 'mitigation'.

4. **POLICY 15B**

4.1 I understand that the various concerns have been expressed about the mediated version of Policy 15B including:

- (a) The apparent illogicality of asserting, in the policy's chapeau an expectation for improvement but having two of the following three clauses of the policy refer to "maintaining" water quality.
- (b) A lack of clarity about what was meant by "other new discharges" in clause 1a.
- (c) The lack of provision for new discharge consents where the net effect of the new discharge would result in a reduction in contaminant loss (because the new discharge is associated with a reduction in existing discharges)³.

4.2 Mr McCallum-Clarke has sought to address each of those concerns in his latest drafting and I consider his draft a significant improvement. Nevertheless, Mr McCallum-Clark's version remains unclear to me in some respects, in particular, whether the pathway to consent new discharges that lead to a net reduction in contaminant loss is sufficiently clear⁴.

4.3 There is also a lack of clarity about the term 'existing activity' in the context it is used in Mr McCallum-Clark's clause 2. I understand that the clause should apply to the

³ The example given is a feed pad or wintering barn that, while giving rise to a "new" discharge, may lead to lower contaminant loss overall (or in a 'net' sense) given that the diffuse losses from having animals on the paddock would reduce.

⁴ I acknowledge that Mr McCallum-Clark may intend that such an application could be consented under clause 1a (because it allows for a new discharge to minimise contaminant loss), however, in my opinion, a clearer and more certain consenting pathway would be helpful.

consenting of an existing, but previously unconsented, discharge. However, the wording seems to leave open the prospect that it could apply to, say, a new discharge associated with a new feed pad to be used as part of an existing farming activity. In that case, the “new” discharge would be subject to both clause 1a and 2 and hence be subject to two conflicting policy directions.

4.4 To address these concerns, I have made further changes to Mr McCallum-Clark’s drafting as set out in **Attachment 1**.

4.5 For the avoidance of doubt, I consider that Policy 15B sets out the discharge management ‘strategy’ for all catchments in Southland that exceed the standards and guidelines of Appendices E and C. In my opinion, in determining whether the intent of the chapeau is being met, the policy needs to be read as a whole rather than as individual clauses. The “and” at the end of each clause, in my opinion, confirms that intent.

5. **POLICY 16A**

5.1 In his 6 April 2022 supplementary evidence, Mr McCallum-Clark largely agrees with the version of Policy 16A included in the Court’s Minute of 10 March 2022. With the substitution of the words “subject to” for the words “pursuant to” the policy reads:

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.

5.2 I support Mr McCallum-Clark’s proposed drafting. For the avoidance of doubt, I would interpret this policy as requiring industrial and trade process discharges to adopt best practical option and that that 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. In other words, BPO must improve of water quality where standards and guidelines of Appendices E and C are exceeded.

6. **POLICY 17**

6.1 In response to questions from the Court (2 May 2022), Mr Duncan indicated that, in his opinion, even best practice in effluent management could not entirely *avoid* the loss of contaminants to groundwater via sub-surface drainage, although it could *minimise* such

Fonterra Co-operative Group Ltd and DairyNZ Ltd

losses. He did confirm that best practice could avoid overland flow and ponding of agricultural effluent.

6.2 For that reason, I propose that Policy 17 (c) be amended to read as follows:

(c) avoiding any surface run-off or overland flow, or ponding or contamination of water, including via sub-surface drainage, resulting from the discharge of agricultural effluent to pasture; and

(ca) minimising contamination of water by agricultural effluent via sub-surface drainage.

6.3 In response to the question posed in the Court's 2 May minute I can confirm that, in my opinion, the definition of 'agricultural effluent' includes both liquid and solid effluent. Hence, Policy 17 applies to the discharge of both. The rules, however, differentiate between the two, with Rule 35 (as well as parts of Rules 32A, 32B, 32D and 35A) dealing with liquid effluent discharges and solid effluent being expressly addressed by Rule 38.



Gerard Matthew Willis

20 May 2022

ATTACHMENT 1 – POLICIES 15A, 15B, 16A and 17

Mr McCallum-Clark's amendments I agree with are shown in **red** font. My further suggested amendments in **blue** font.

Policy 15A

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-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).

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~~ **minimising remedying or mitigating ensuring no net increase in** any adverse effects on water quality or sediment quality ~~of other new discharges 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 not, as a minimum, exacerbated;** and
2. requiring any application for replacement of an expiring discharge permit, or the varying or seeking a different discharge permit for an existing activity 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).

Policy 16A

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.

Policy 17

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; 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.

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.