

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

**ENV-2018-CHC-26 to 50**

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

**AND**

**IN THE MATTER** of appeals under clause  
14 of Schedule 1 to the  
Act relating to the  
proposed Southland  
Water and Land Plan

**BETWEEN** **WAIHOPAI RŪNAKA,  
HOKONUI RŪNAKA,  
TE RŪNANGA O  
AWARUA, TE  
RŪNANGA O ORAKA  
APARIMA, and TE  
RŪNANGA O NGĀI  
TAHU (collectively  
NGĀ RŪNANGA)**

**Appellants in ENV-  
2018-CHC-47**

**AND** **SOUTHLAND  
REGIONAL COUNCIL**

**Respondent**

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**MEMORANDUM OF COUNSEL FOR NGĀ RŪNANGA ATTACHING TOPIC B,  
TRANCHE 1, TRACKED CHANGE RELIEF**

**22 February 2022**

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**MAY IT PLEASE THE COURT**

1. This memorandum of counsel is filed on behalf of Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**).
  
2. The relief being pursued by Ngā Rūnanga for the Topic B Tranche 1 appeal points is set out in **Appendix A** to this memorandum, as follows:
  - (a) A table has been included to identify the versions of provisions which Ngā Rūnanga agrees with, where those provisions have either been included in the December 2021 Planning Joint Witness Statement, or in the draft consent documentation.
  
  - (b) Where relief is not otherwise agreed by Ngā Rūnanga, the relief is set out in full.

**DATED** this 22<sup>nd</sup> February 2022



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J G A Winchester / S K Lennon  
Counsel for Ngā Rūnanga

## **Appendix A**

**Tracked change relief sought by Ngā Rūnanga for Topic B, Tranche 1**

<b>Topic Provisions</b>	<b>Provision</b>	<b>Interest</b>	<b>Agree with JWS</b>
<b>B2</b>	Policy 13	Appellant	Y
<b>B2</b>	Policy 15A	Appellant	Y
<b>B2</b>	Policy 15B	Appellant	Y
<b>B2</b>	Policy 15C	Appellant	Y
<b>B2</b>	Rule 5 (partially agreed)	Appellant	Y
<b>B2</b>	Rule 13	S274	Y
<b>B2</b>	Rule 14	S274	Y
<b>B2</b>	Rule 15		N/A
<b>B2</b>	Rule 40		N/A
<b>B2</b>	Appendix E (partially agreed)	S274	Y
<b>B3</b>	Rule 51 (partially agreed)	S274	Y
<b>B3</b>	Rule 74	Appellant	Y
<b>B4</b>	Rule 78	Appellant	Not resolved in JWS
<b>B5</b>	Policy 16	Appellant	Y
<b>B5</b>	Rule 20	Appellant	Y
<b>B5</b>	New Rule 20A (partially agreed)	Appellant	N
<b>B5</b>	New Rule 20B		Y
<b>B5</b>	Defn - Critical source area	Appellant	Y
<b>B5</b>	Defn - Ephemeral rivers	Appellant	Y
<b>B5</b>	Rule 25 (partially agreed)	274 Party	Y
<b>B5</b>	Defn - Cultivation	S274	Y
<b>B5</b>	Defn (new) - Stick raking	N/A	Y
<b>B5</b>	Rule 35A	s274	Y
<b>B5</b>	Policy 18	s274	Y
<b>B5</b>	Rule 70 (partially agreed)	N/A	Y
<b>B5</b>	Defn (new) - Stock Unit	N/A	Y
<b>B5</b>	Appendix N	Appellant	Y
<b>B5</b>	New Schedule X	N/A	N/A
<b>B5</b>	Defn - No till cultivation	N/A	Y
<b>B5</b>	Defn - Spray and pray	N/A	Y
<b>B5</b>	Defn - Hoof and tooth	N/A	Y
<b>B5</b>	Defn - Minimum till cultivation	N/A	Y

## CHANGES TO ATTACHMENT TO THE 10 DECEMBER 2021 JOINT WITNESS STATEMENT FROM EXPERT CONFERENCING

### Annotations to text

Black strikethrough and underlined text – agreed in Joint Witness Statement

Red strikethrough and underlined text – the changes suggested by Mr McCallum-Clark in his statement of evidence 11 February 2022)

Brown strikethrough and underlined text – suggested changes by Ngā Rūnanga to JWS.

## TOPIC B2

Note: Policy 13, 15A and 15B and Rule 15 are subject to an affidavit lodged with the Court.

### Policy 15C – 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.~~

### Rule 5 Discharges to surface waterbodies

- (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 13

Note: Same as Mr McCallum Clark's statement of evidence 11 February 2022

- (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.

### Rule 14

Note: Same as Mr McCallum Clark's statement of evidence 11 February 2022

- (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: [rest of rule unchanged]

## TOPIC B3

### Rule 51 - Minor Diversions of Water

*[Remainder of Rule remains the same]*

- (e) The diversion of water from a natural wetland for the purpose of land drainage is a noncomplying activity.

### Rule 74

Ngā Rūnanga agree that it is more appropriate the matter is addressed in Rule 51.

## TOPIC B4

### Rule 78

- (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 native fish.~~
    - ~~(xv) No activity in relation to drainage maintenance shall significantly adversely affect the habitat or health of any taonga species as identified in Appendix M.~~

**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.*

*[Insert Maps based on mapping provided by the Director-General]*

## TOPIC B5 – FARMING

### Policy 16

Note: Same as Mr McCallum Clark's statement of evidence 11 February 2022

#### Policy 16

1. ~~Minimising~~ Avoid where 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:
  - ~~(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~~

### Policy 18

Note: Same as Mr McCallum Clark's statement of evidence 11 February 2022

~~Reduce~~ Avoid where practicable, or otherwise remedy or mitigate, any adverse effects from the discharge of sedimentation 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;
- 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, 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 and implemented in accordance with Appendix N, how 1-4 will be achieved and by when.



- (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 G 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.~~
- (b) ~~ensuring that, ~~for~~ existing farming activities:~~
  - (i) ~~minimise nitrogen, phosphorus, sediment and 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~~ 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 microbial contaminant discharges; and~~
  - (ii) ~~minimises nitrogen, phosphorus, sediment or microbial contaminant discharges; and~~
  - (iii) ~~reduces nitrogen, phosphorus, sediment or microbial contaminant discharges where ~~it the farming activity~~ occurs in a ~~within the~~ catchment of a waterbody that requires improvement identified in Schedule X; and~~
  - (iv) ~~is avoided in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and~~
- (c)2- ~~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 which~~:~~
    - (1) ~~identifies whether the farming activity is occurring, or would occur, in a catchment of a waterbody that requires improvement identified in Schedule X;~~
    - (2) ~~identifies and responds to 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 that requires improvement identified in Schedule X, reduced;~~

(4) is certified as meeting all relevant requirements of this plan and regulation prepared under Part 9A of the RMA; and

(5) is independently audited and reported on;

~~(ii)(b) actively manage~~ avoid where practicable, otherwise minimise 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~~ avoid where practicable, otherwise minimise 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.

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.

Minimise means to reduce to the smallest amount reasonably practicable.

## Rule 20

Note: Same as Mr McCallum Clark's statement of evidence 11 February 2022

### Rule 20

- ~~(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, 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) ~~from 1 May 2019, a Farm Environmental Management Plan for the landholding is prepared, certified, and implemented~~ and audited in accordance with Appendix N; and
    - ~~(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, from 1 May 2020 a Farm Environmental Management Plan is prepared, certified, and implemented and audited in accordance with Appendix N.~~
- ~~(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.~~
- ~~(b)(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, 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 prepared certified, and implemented and audited 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 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 the Farm Environmental Management Plan for the landholding;
  2. whether the assessment undertaken under Rule 20(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;
  - 2(a) whether the farming activity is being undertaken in a catchment of a waterbody that requires improvement identified in Schedule X, and if so, the mitigations actions to be implemented to reduce adverse effects on water quality;
  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;
  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 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 that does not comply with Rule 20(a)(iv) is a prohibited activity

## Rule 20A

Note: Same as Mr McCallum Clark's statement of evidence 11 February 2022

## **Rule 20A**

- (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 10% of the area of the land holding, whichever is the greater; and
  - (ii) the slope of land that is used for intensive winter grazing must be 10 degrees or less; and
  - (iii) livestock must be kept 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, mātaītai reserve, taiāpure, estuary or the coastal marine area; and
    - (2) 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; and
  - (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 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; 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. the quality of and compliance with Appendix N and the Farm Environmental Management Plan for the landholding;
  - 2. whether the intensive winter grazing activity is being undertaken in a catchment of a waterbody that requires improvement identified in Schedule X, and if so, the mitigation actions to be implemented to improve water quality;
  - 3. 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;
  - 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 25

- (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;
  - (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 on land with a slope greater than 20 degrees<sup>64</sup>; and
  - ~~(iv)~~(iii) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and
  - (v) critical source areas are not cultivated when forage crops used for intensive winter grazing are established and sediment detention is established when cultivating critical source areas for any other purpose; and
- (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, 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.~~
- (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. potential adverse effects on the preservation of the natural character of wetlands, lakes, rivers and their margins.
  - ~~21a.~~ 21a. mitigation measures for addressing adverse effects identified in 1 and 1a; and
  - ~~2a.~~ 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(a)(ii) and (iii) ~~(iv)~~ is the average slope over any 20 metre distance.

#### Rule 70

Note: Ngā Rūnanga is only a party to that part which relates to ephemeral rivers.

- (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 ephemeral flow paths), ~~(including an ephemeral river)~~, modified watercourse, ~~or natural wetland~~ by stock including cattle, deer, pigs or sheep is a prohibited activity.

#### Definition of Ephemeral River

Critical source area

- (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.
- ~~(b) areas which arise through land use activities and management approaches (including cultivation and winter grazing) which result in contaminants being discharged from the activity and being delivered to surface water bodies.~~

Ephemeral flow paths rivers—Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.

#### Appendix N

Note: Same as Mr McCallum Clark's statement of evidence 11 February 2022

#### Appendix N

A Farm Environmental 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 Parts B (3) and (6)(b) as 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 prepared and implemented in accordance with Parts A to C below.

#### Part A – Farm Environmental Management Plans

A Farm Environmental Management Plan (FEMP) can be based on either of:

1. the ~~material~~ 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 material 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, provided it includes the material set out in Part B below in relation to each farm receiving industrial wastewater.

**Part B – Farm Environmental Management Plan Default Content**

1. ~~A written FEMP that is:~~
  - (a) ~~prepared and retained, identifying the matters set out in clauses 2 to 5 below; and~~
  - (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; and
  - (b) description of the landholding ownership and the owner's contact details; and
  - (c) legal description(s) of the landholding; and
  - (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".
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; and
  - (b) the physiographic zones (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 existing and proposed riparian vegetation and fences (or other stock exclusion methods) adjacent to waterbodies; and
  - (e) places where stock access or cross water bodies (including bridges, culverts and fords); and
  - (f) the location of all known subsurface drainage system(s) and the locations and depths of the drain outlets; and
  - (g) all land that may be cultivated and land to be cultivated over the next 12-month period; and
  - (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~~
  - (h) all critical source areas not already identified above; and
  - (i) ~~for land to be cultivated or intensively winter grazed, or break fed on pasture between 1 June and 31 July, and the slope<sup>1</sup> of the land and intended setbacks from any lake, river, artificial watercourses, modified watercourse or natural wetland and any other critical source areas; and:~~
    - (i) ~~critical source areas; and~~

- ~~(ii) intended setbacks from any lake, river (excluding ephemeral or intermittent rivers), artificial watercourses, modified watercourse or natural wetland; and~~
  - ~~(iii) land with a slope greater than 20° degrees~~
  - (j) any areas of the land within a catchment of a waterbody that requires improvement identified in Schedule X; and
  - (k) any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rārangī Kōrero or on the New Zealand Archaeological Association website; and
  - (l) the presence of taonga species listed in Appendix M within water bodies on the farm (if known); and
  - (m) other significant values and uses (if known) on nearby land and waters.
4. Nutrient Budget/Nutrient Loss Risk Assessment  
 For all landholdings over 20ha, the FEMP contains either:
- (a) a nutrient budget (which includes nutrient losses to the environment) calculated, using ~~a~~ 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 nutrient loss assessment tool 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; and the Nutrient Budget or Nutrient Loss Risk Assessment is repeated: ~~which is repeated:~~
    - (a1) 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
    - (b2) 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 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
    - (c3) the nutrient budget or nutrient loss risk assessment must be prepared by a suitably qualified person that has been approved as such by the Chief Executive of Southland Regional Council.
5. Objectives of Farm Environmental Management Plans  
 A description of how each of the following objectives will, where relevant, be met:
- (a) Irrigation system designs and installation: To ensure that all new irrigation systems and significant upgrades meet Industry best practice standards;
  - (b) Irrigation management: To 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 waterbodies are avoided where practicable or otherwise minimised;

- (c) Nutrient and soil management: To avoid where practicable, or otherwise minimise, nutrient and sediment losses from farming activities to ground and surface water, to maintain or improve water quality;
  - (d) Waterways and wetland management: To manage activities within waterways, critical source areas, natural wetlands, and their margins, by avoiding stock damage, and avoiding where practicable, or otherwise minimising inputs of nutrients, sediment and faecal contaminants to ground and surface water;
  - (e) Collected agricultural effluent management: To manage collected agricultural effluent in accordance with best industry practice, to ensure contaminants derived from collected agricultural effluent do not cause adverse effects on water quality.
  - (f) Drainage maintenance: To manage drainage maintenance activities to ensure contaminant losses to water bodies and damage to aquatic habitats are avoided where practicable, or otherwise minimised.  
The FEMP must also identify additional objectives relevant to the farming activities and/or to address environmental risks associated with the land holding and the environment within which it is located.
6. The description for (5) above shall include, for each relevant objective in 5 above:
- (a) an identification of the adverse environmental effects, and risks associated with the farming activities on the property, including, consideration of the risks associated with the relevant physiographic zone/s (and variants) and how the identified effects and risks will be managed-~~or~~ and mitigated; and
  - (b) where the farm is located within a catchment of a waterbody that requires improvement identified in Schedule X, the mitigations that will achieve a reduction in the discharge of the contaminants where relevant to the farming activity that trigger the requiring improvement status of the catchment (noting that in catchments of waterbodies where aquatic ecosystem health requires improvement, reductions and mitigation required will address nitrogen, phosphorus and sediment losses and the effect of those losses); and
  - (c) defined mitigations that clearly set a pathway and timeframe for achievement of the objectives; and
  - (d) the records to be kept for demonstrating mitigations have been actioned ~~measuring performance~~ and are achieving the objective; and
  - (e) identification of any specific mitigation required by a resource consent held for the property.
7. If any Intensive Winter Grazing is occurring on the landholding, the Farm Environmental Management Plan must also include an intensive winter grazing plan that takes into account and responds to the risk pathways for the relevant physiographic zones (and variants).
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;
  - (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, Dairy NZ and Beef and Lamb New Zealand websites and in the document 146 titled "Industry-agreed Good Management Practices relating to water quality, Version 2, 18 September 2015".

### Part C – Farm Environmental Management Plan Certification, Auditing, Review and Amendment

#### 1. Farm Environmental Management Plan Certification

- (a) The FEMP must be certified, prior to implementation on the farm, by a Suitably Qualified Person (SQP) that 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 property.
- (c) The FEMP must be re-certified, prior to implementation, following any amendments to the FEMP carried out in accordance with Part C(3)(a) 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.

#### 2. 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' compliance with the certified 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, auditing timeframes associated with the audit grade assigned. *Note: Southland Regional Council will provide, on its website, a schedule of the auditing frequency required for FEMP's based on the audit grade assigned to each landholding.*
- (b) The auditor must be a Suitably Qualified Person (SQP) that 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) stating whether compliance has been achieved and the final compliance grade; and
    - (iii) any other 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.
3. Review and Amendment of the Farm Environmental Management Plan  
The FEMP must be reviewed, by the landholding owner, or their agent, as follows:
- (a) when there is a material change to the nature of the farming activities occurring on the landholding, and where that material 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.
- The outcome of the review is to be documented and amendments to the FEMP must be made where Part C(3)(a) applies and in circumstances where the annual review identifies that amendments are required.

<sup>1</sup> Slope is the average slope over any 20 metre distance.