

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

AT CHRISTCHURCH

ENV-2018-CHC-000036

IN THE MATTER

of the Resource Management Act 1991

AND

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

BETWEEN

Director-General of Conservation

Appellant

(ENV-2016-CHC-000036)

AND

Southland Regional Council

Respondent

**EXPERT EVIDENCE OF LINDA ELIZABETH KIRK FOR DIRECTOR-
GENERAL OF CONSERVATION AS APPELLANT**

Dated 15 February 2019

Department of Conservation

Planning, Permissions and Land

RMA Shared Services

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Introduction

1. My full name is Linda Elizabeth Kirk.
2. I am employed at the Department of Conservation (DOC) in Christchurch where I have worked since 26 March 2018, providing planning advice and assistance in resource consent applications and planning matters.
3. I hold a Master of Philosophy (Resource and Environmental Planning) from Massey University (2002). From the University of Canterbury, I hold a Master of Arts with Distinction (Thesis: "*Coastal Management and Planning and New Zealand*") (1994), Bachelor of Arts Second Class Honours (Division One) (1993) and Bachelor of Science (1992), all majoring in Geography.
4. I have over 20 years experience in local government, with approximately 12 years in resource management planning and policy. I was contracted as an Environment Advisor for He Mahi Poha, the Environmental Entity for Te Rūnanga o Kaikoura (2015-2016), and Senior Environment Advisor for Te Rūnanga o Ngāi Tahu (2013-2014). I was employed by Environment Canterbury for 14 years (1999-2013), starting as a Senior Resource Management Planner in 1999-2005, and was involved in the development of the Canterbury Natural Resources Regional Plan. I held a range of senior positions at Environment Canterbury from 2005-2013 as a Portfolio/Programme Manager with oversight of five portfolios/programmes.
5. I have provided input from a local government perspective to the Ministry for the Environment in the development of the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 and was a local government member of the NZCPS 2010 Implementation Steering Group that provided advice in the preparation of the New Zealand Coastal Policy Statement 2010 guidance notes.
6. The start of my resource management career was from November 1994 to 1999, when I was a Policy Analyst at Southland Regional

Council. I was involved in a variety of resource management matters including the development of the Proposed Regional Coastal Plan for Southland and the Regional Policy Statement for Southland. This position gave me a good understanding of the Southland Region.

7. I have been asked by the Director-General of Conservation (Director-General), to provide independent planning evidence in relation to Topic A – Policy 4 of the proposed Southland Water and Land Plan (pSWLP).
8. While I am employed by the Department of Conservation, and the Department has an advocacy function under the Conservation Act 1987, my role in preparing this statement of evidence is as an independent planning expert. In my role with the Department, I am required to ensure that my advice is in accordance with recognised standards of integrity and professional competence. As well as having a duty to the Court (and I have noted below that I agree to abide by the Environment Court Code of Conduct for Expert Witnesses), I also have a duty to my profession.
9. In providing this evidence, I have been authorised by the Department of Conservation to provide any evidence that is within my planning expertise which goes outside the Department's advocacy function.
10. I was not involved in the preparation of the Director-General's submission nor the Notice of Appeal to the pSWLP.

Code of Conduct

11. I confirm that I have read the code of conduct for expert witnesses as contained in section 7.1 of the Environment Court's Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence and will do so when I give oral evidence before the Court.
12. 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.

13. Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope

14. I have been asked to provide planning evidence in relation to Topic A – Policy 4 of the proposed Southland Water and Land Plan (pSWLP).
15. For the avoidance of any doubt, I note that this evidence is limited to Policy 4 of the pSWLP, as this is the only matter within the Director-General's appeal which is included in Topic A. Further evidence statements will be prepared and filed in relation to the Director-General's s274 interest in other parties' appeals within Topic A, in accordance with the timetable set by the Court.
16. In preparing this evidence, I have read and considered the following documents:
 - (a) The pSWLP (notification and decisions versions);
 - (b) Section 32 Report;
 - (c) Section 42A Officer's Hearing Report and Reply Report;
 - (d) Report and Recommendations of the Hearing Commissioners;
 - (e) Appeals and Section 274 notices;
 - (f) Initial Planning Statement ("Updated Evaluation Report: Proposed Southland Water and Land Plan – Prepared for the Environment Court);
 - (g) Statements of evidence prepared for the Southland Regional Council by Mr Matthew McCallum-Clark, Mr Ewen Rodway and Dr Antonius Snelder;
 - (h) National Policy Statement for Freshwater Management 2014 (as amended 2017) (NPSFM); and
 - (i) Southland Regional Policy Statement 2017 (RPS).

Executive Summary

17. This evidence addresses the “Topic A” matters as set out in the Council’s memorandum and Court’s directions¹, which are subject to the Director-General’s appeal, specifically Policy 4(3) of the pSWLP.
18. In my opinion, the phrase “should not grant” rather than “generally not grant” in relation to cultivation in the Alpine physiographic zone is appropriate. This relief is supported by two s274 parties².
19. I consider that the phrase “should not grant” rather than “generally not grant” in Policy 4 implements the relevant objectives of the pSWLP as well as strengthening the alignment of the planning framework within the pSWLP in relation to Rule 25(d). This in turn gives effect to the higher order planning documents such as Objective WQUAL.1a and Policy WQUAL.2 of the RPS, and Objectives A1 and A2, and Policy A1 of the NPSFM³.
20. I consider that the phrase “should not grant” also provides greater clarity with respect to guidance for Plan users and the decision-maker when considering and determining resource consent applications under section 104 and s104D of the RMA. Therefore, this approach provides greater certainty and a strong direction in the policy framework to ensure the freshwater outcomes, at a minimum of maintaining existing good water quality for the region, are met.
21. A pertinent caveat to the change in wording of Policy 4(3) is the outcome of whether or not Rule 25(d) remains as a non-complying

¹ “Memorandum of Counsel for Southland Regional Council: Dated 19 September”; “Memorandum of Counsel for Southland Regional Council in Relation to the Substance of the Topic A Hearing: Dated 31 October 2018” and Environment Court’s subsequent directions dated 5 November 2018.

² s274 parties in support of relief sought are: Southland Fish and Game Council and Ngā Rūnanga (Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima (collectively Ngā Rūnanga), and Te Rūnanga o Ngāi Tahu (collectively Ngāi Tahu).

³ See Appendix 1 as this contains the relevant excerpts from the respective planning documents referred to throughout this evidence.

activity following the Topic B appeals. At paragraph 218 of the “Report and Recommendations of the Hearing Commissioners”, there is a clear intention that cultivation of land in Alpine zone was intended to be a prohibited activity:

[218] *“We also recommend that for the sake of clarity, and for consistency with Rule 20(a)(iii) (formerly Rule 23), the notified prohibition on cultivation in the Alpine physiographic zone is amended to a prohibition on land with an elevation greater than 800 metres above mean sea level.”*

22. However, this did not transpire into the decisions’ version of the pSWLP. Irrespective of the reasons for this, the following discussion in relation to Rule 25(d) considers it as a non-complying activity rule.
23. I note that if the activity status of Rule 25(d) becomes stricter through the appeal process, then Policy 4 should be considered further to ensure vertical integration of relevant plan provisions.

Alpine Zone

24. The Alpine zone (the area greater than 800 metres above sea level) is characterised by steep slopes and thin soils or bedrock. These areas have been identified in the Alpine physiographic zone on page 19 of the pSWLP. In summary,

“the high elevation results in large volumes of snowfall and rainfall, which provides large volumes of pristine water to downstream Physiographic Zones. The primary contaminant transport pathway is overland flow⁴ due to steep slopes and the bedrock nature of the zone.....Contaminant loss is limited due to low intensity of land use” (Rodway, para 84).

⁴ Overland flow is the key transport pathway of contaminants in the Alpine Zone as stated on page 19 of the pSWLP (refer Appendix 1 of this evidence).

25. As stated in the Initial Planning Statement at section 6.1.1 on page 119:

“The proposed provisions manage cultivation on sloping ground primarily through setbacks from water, with setback increasing with increasing slope. The provisions aim to prevent soil loss into waterways. This has benefits for soil conservation, water quality, and in- and near-stream habitats and ecosystems.”

Planning Framework

26. The decisions version of the pSWLP, has changed the test for cultivation in the Alpine⁵ physiographic zone in Policy 4(3), from the notified wording of (my emphasis):

“...strongly discouraging the granting of resource consents for cultivation”

to

“...decision makers generally not granting resource consents for cultivation.”

27. The relevant Rule for managing cultivation in alpine areas is Rule 25(d) which states:

“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.”

28. As a result, I consider that the test, and hence guidance for Plan users and decision makers on their consideration and determination of any such resource consent applications under section 104, and s104D of the RMA respectively, has been lessened as a result of the Council decisions and may inadvertently allow consents to be granted where it may not otherwise have been desirable to do so.

⁵ alpine areas are those areas above 800m.

29. Pursuant to s67(3) of the RMA, the pSWLP must give effect to the NPSFM and the RPS⁶. To achieve this, as stated under s67(1) of the RMA, the pSWLP must include objectives for the region, and policies to implement these objectives.
30. As stated in Appendix B of the Initial Planning Statement, Policy 4 implements the following objectives in the pSWLP – Objectives 1, 6, 13A, 18 and the definition of “cultivation”.
31. In its current form, I consider that Policy 4 of the pSWLP would not implement the following pSWLP objectives:
 - a. Objective 1 [not under Appeal] as there is greater uncertainty that the cumulative effects of new cultivation activities in the Alpine zone may not be sustainably managed from the “mountains to the sea” approach;
 - b. Objective 6 [under Appeal] as water quality may not be maintained due to the characteristics of this zone and the activity of cultivation meaning that contaminants, such as soil loss, enter waterways, via overland flow;
 - c. Objective 13A [under Appeal] as the activity of cultivation may irreversibly degrade the quantity, quality and structure of the soil resource in the Alpine physiographic zone by its very nature;
 - d. Objective 18 [under Appeal] as the life supporting capacity of the region’s Alpine zone soils and water quality is not maintained due to the nature of the activity of cultivation in association with the key transport contaminant pathway of overland flow in this area of higher rainfall/snowmelt, combined with the thin soil layer and steep nature of the Alpine area.

⁶ Appendix 1 contains the relevant excerpts from the respective planning documents referred to throughout this evidence.

32. In its current form, I do acknowledge that Policy 4 of the pSWLP may to some extent implement the following pSWLP objectives:
- a. Objective 2 [under Appeal] as the activity of cultivation may be enabled; and
 - b. Objective 13 [under Appeal] as the activity of cultivation may be enabled.
33. In my opinion, as Policy 4 would not implement a number of the relevant objectives of the pSWLP, then the objectives of the pSWLP would not be effective, or be less effective, at giving effect to, (but not limited to), the water quality provisions of the NPSFM, such as Objectives A1 and A2, and Policy A1.
34. In addition, I consider that Policy 4 of the pSWLP would not give effect to, (but not limited to), Objective WQUAL.1(a) and Policy WQUAL.2 of the RPS as the life-supporting capacity of water and related ecosystems may not be safeguarded. It is acknowledged in the explanation/principal reasons to Policy WQUAL.2 that the discharge of contaminants from various sources, including production land, contributes “to levels of nitrogen, phosphorus, sediment and microorganisms in surface and groundwater”.
35. As summarised at paragraph 6.62 of the s42A Officers’ Report:

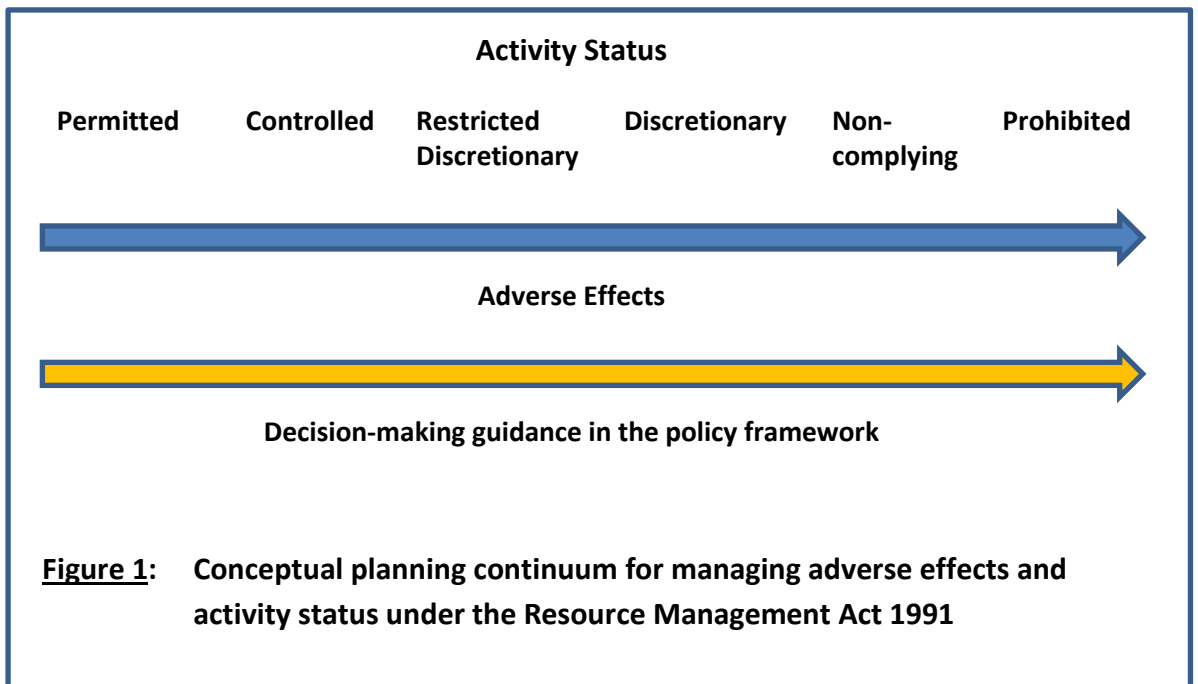
“Policy 4 clearly sets out that particular land use and discharge activities are not appropriate in the Alpine physiographic zone, with emphasis on considering the adverse effects of contaminants transported via overland flow for activities that are not prohibited. It is my view that the strong direction set out in the policy is critical to ensure the freshwater outcomes for the region are met” (page 135).

“Should Not” vs “Strongly Discourage”

36. Before I begin my discussion about which terminology, I consider most appropriate to include in Policy 4, I note that the Director-General’s Notice of Appeal has some ambiguity about what it seeks with respect to the terminology to be used. The body of the Appeal refers to the phrase “strongly discourage” at paragraph 7.3 of the Appeal, but this term is not in the decision version of Policy 4(3) in the pSWLP. It is only at paragraph 8.1 of the Notice of Appeal that it clearly states that the Director-General seeks the phrase “should not grant” rather than “generally not grant”.
37. In my opinion, at the bare minimum, either of the terms “should not” or “strongly discourage”, are more appropriate than the current “generally not” phrase.
38. I support the intent of Mr McCallum-Clark’s evidence at paragraph 229 for the reinstatement of the phrase “strongly discourage” as he is of the view that the use of this phrase may better align with the associated rule (that being Rule 25(d)) and may be a more efficient and effective policy response to cultivation above 800m.
39. However, I do not consider that “strongly discourage” is the most appropriate wording for the Alpine zone cultivation policy.
40. I consider that the wording “should not” grant resource consents, provides a more appropriate policy guidance for a non-complying activity.
41. I consider that due to the characteristics of the Alpine zone and the overland flow contaminant pathway, as described in paragraphs 24, 25 and 35 above, that the activity of cultivation in this zone may be inappropriate in the majority of this zone as the effects of cultivation may result in adverse effects in the alpine environment. Therefore, in my opinion, the term “should not” is more preferable for Policy 4(3), rather than “strongly discourage”.
42. A key consideration for what terminology is most appropriate in this specific case, is the amendments made in the planning process to

the elevation baseline of the Alpine zone, to which Rule 25(d) applies. This has been amended to now be 800 metres above sea level, rather than the notified 700 metres above sea level.⁷

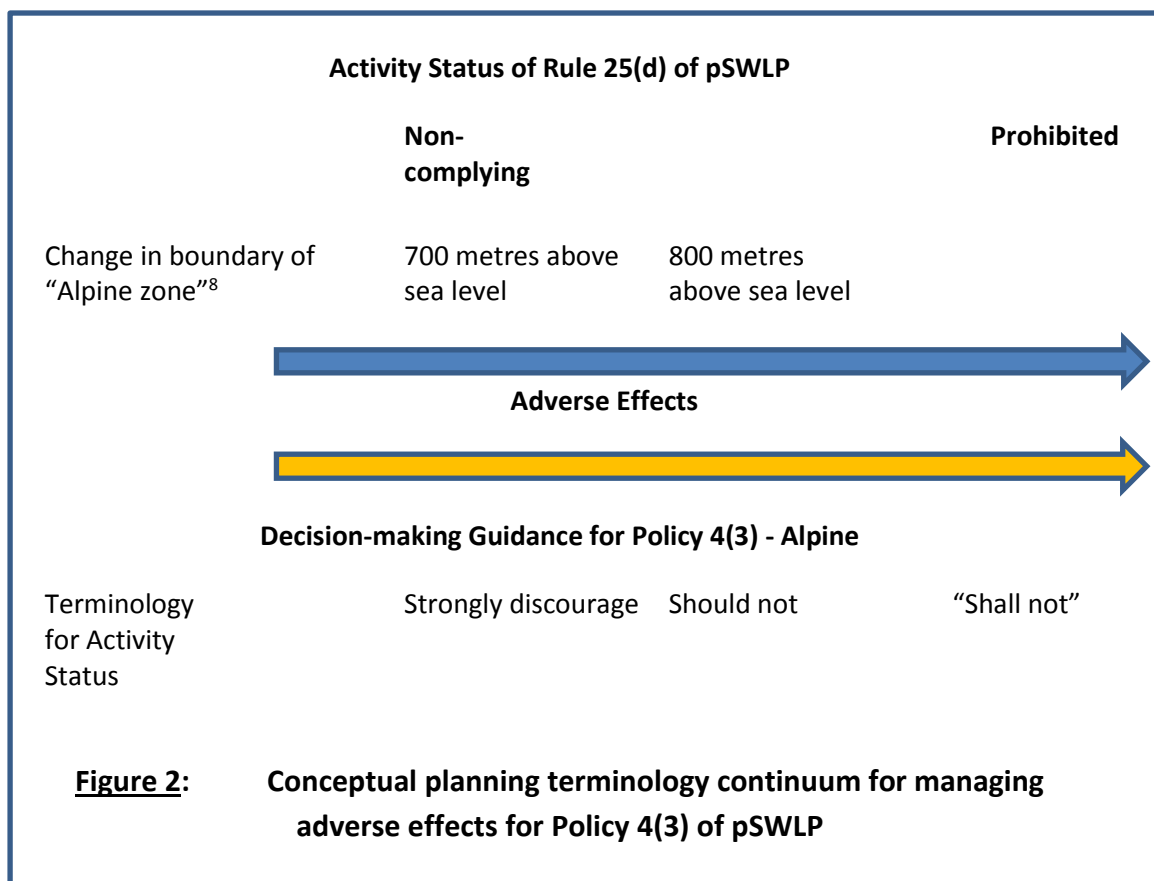
43. As shown in Figure 1, from a planning perspective, I consider that there is a continuum of policy and hence guidance needed for the decision maker as well as Plan users. This impacts on the terminology that could be used in the pSWLP.



44. Figure 1 shows that adverse effects increase across the continuum of Activity Status. Simultaneously, guidance for decision-making and Plan users in the policy framework becomes more clearer and directive as adverse effects increase.

⁷ Para 6.69 of the s42A Officers' Report (page 136).

"The 800 masl boundary for the physiographic zone was developed primarily through the analysis of hydrochemical data, which identified water sourced from above this altitude as having a distinct alpine chemical signature (very dilute/low in dissolved ions). In addition, in parts of Southland this altitude (800m) also approximates the treeline and distinguishes heavily forested land from the less vegetated alpine zone."



45. Figure 2 focuses on the specifics of Policy 4(3) and its relationship with Rule 25(d) of the pSWLP and the consideration of the terminology to be used along this conceptual continuum.
46. As there is currently low intensity of land use in the Alpine zone (after Rodway, paragraph 84), and as a result of the change in the lower elevation for the Alpine zone from what was originally notified (700 metres above sea level) to what has now been determined in the decision version of the Plan (800 metres above sea level), I consider that it is appropriate that the guidance for the decision-maker and Plan users should be more directive for new land uses, such as new cultivation activities in Rule 25(d). An increase in intensity of land use may increase the contaminant loss via overland flow. Therefore, the phrase "should not" in Policy 4 is considered more appropriate as it strengthens the vertical alignment within the pSWLP Objectives 1, 6 13A and 18, and Rule 25(d).

⁸ Paragraph 6.69 of s42A Officers' Report (page 136).

47. To further support the strengthening for Plan users and decision-making guidance for the alignment of Rule 25(d) with Policy 4 being appropriate, I note that the Alpine zone (the area greater than 800 metres above sea level) is characterised by steep slopes with thin soils or bedrock. These areas have been identified in the Alpine physiographic zone on page 19 of the pSWLP⁹ and discussed in paragraph 24 of the evidence above.
48. Therefore, from a planning perspective, I consider that if there is an increase in the intensity of land use, such as the cultivation of land, in the Alpine zone, this increases the potential for the discharge of contaminants (including soil/sediment) via overland flow into waterways which may not maintain existing water quality. As a result, this may not give effect to the higher order planning documents such as the NPSFM and the RPS to “maintain” water quality.
49. Thus, Policy 4(3) in relation to cultivation could have significant adverse effects on soil conservation, water quality and in- and near-stream habitats and ecosystems. This would have the opposite effect of the proposed cultivation provisions intent as stated at paragraph 25 of my evidence above.
50. The term “should not grant resource consents” is supported by two s274 parties¹⁰. I agree with the reasoning provided by Southland Fish and Game Council’s s274 Notice¹¹ as this succinctly summarises the key points as follows:

“Generally not granting” does not provide certainty that the line will be held against further water quality degradation.

⁹ See Appendix 1 for the relevant excerpts from the respective planning documents referred to throughout this evidence.

¹⁰ s274 parties in support of relief sought are: Southland Fish and Game Council and Ngā Rūnanga (Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima (collectively Ngā Rūnanga), and Te Rūnanga o Ngāi Tahu (collectively Ngāi Tahu).

¹¹ Attachment 1 on page 5 of Southland Fish and Game Council’s s274 Notice.

“Should” provides a more directive policy direction and more certainty that the line will be held against further water quality degradation.”

51. I note that Rule 25(d) is under appeal and may be subject to further change as stated as a pertinent caveat to my discussion in paragraph 21 of my evidence above. There is only one appellant specifically on Rule 25(d), that being Royal Forest and Bird Protection Society of New Zealand, Inc., (Forest and Bird) who have sought that the activity status for cultivation in the Alpine zone is a prohibited activity, rather than a non-complying activity. The Director-General of Conservation is a s274 party to this appeal. However, I consider that the more restrictive activity status sought by Forest and Bird does not detract from my reasoning for “should not grant resource consents” to be made explicit in Policy 4.
52. Rather, the intent of the Hearing Commissioners (at paragraph 21 of my evidence above) further supports stronger decision-making guidance for cultivation of land in the Alpine zone if it remains as a non-complying activity.
53. With respect to Policy 4(3), I consider that the term “should not grant resource consents” will enable Policy 4 in its entirety (and in turn Rule 25(d)) to implement the pSWLP Objectives 1, 6, 13A and 18. This would allow these pSWLP objectives to better give effect to the higher order planning documents of the RPS (Objective WQUAL.1(a) and Policy WQUAL.2) as well as of the Objectives A1 and A2 and Policy A1 of the NPSFM¹².
54. I consider that the term “should not grant resource consents” rather than “generally not granting” in Policy 4(3) strengthens the alignment of Policy 4 in the planning framework in the pSWLP in relation to Rule 25(d) and provides stronger and greater clarity with respect to guidance for Plan users and decision-makers when

¹² See Appendix 1 for the relevant excerpts from the respective planning documents referred to throughout this evidence.

considering applications under section 104 and s104D of the RMA. This may also be a more efficient and effective policy response to cultivation above 800 metres so as to sustainably manage the discharge of contaminants from potential activities sought in this area. This may, at a minimum, ensure water quality is maintained as required by the NPSFM and the RPS, by reducing the likelihood of consents being granted where it may not otherwise be desirable to do so.

Conclusion

55. I consider that in order to give effect to the higher order planning documents such as Objectives A1 and A2, and Policy A1 of the NPSFM, and Objective WQUAL.1(a) and Policy WQUAL.2 of the RPS, as well as strengthening the alignment within the pSWLP provisions themselves and implementing pSWLP Objectives 1, 6, 13A and 18, that the term “should not grant resource consents” in Policy 4(3) as follows, is the most appropriate phrase to use:

“Policy 4 – Alpine

In the Alpine physiographic zone, avoid, remedy, or mitigate erosion and adverse effects on water quality from contaminants, by:

1. ...
3. prohibiting dairy farming and intensive winter grazing, and decision makers ~~generally not granting~~ should not grant resource consents for cultivation.”

56. As a result, I consider this will then provide clearer and stronger guidance to Plan users and decision-makers for any consent applications made under Rule 25(d) and will better give effect to the higher order planning documents of the NPSFM and the RPS, and implement Objectives 1, 6, 13A and 18 of the pSWLP. This may reduce the possibility of cultivation activities discharging contaminants that may have significant adverse effects on soil

conservation, water quality, and in- and near-stream habitats and ecosystems in the Southland region.

A handwritten signature in blue ink, appearing to read "L. Kirk".

Linda Elizabeth Kirk

15 February 2019

Appendix 1: Relevant Excerpts from Planning Documents in relation to Policy 4(3) - Alpine

Resource Management Act 1991

67 Contents of regional plans

- (1) A regional plan must state—
- (a) the objectives for the region; and
 - (b) the policies to implement the objectives; and
 - (c) the rules (if any) to implement the policies.
- (2) A regional plan may state—
- (a) the issues that the plan seeks to address; and
 - (b) the methods, other than rules, for implementing the policies for the region;
and
 - (c) the principal reasons for adopting the policies and methods; and
 - (d) the environmental results expected from the policies and methods; and
 - (e) the procedures for monitoring the efficiency and effectiveness of the policies and methods; and
 - (f) the processes for dealing with issues—
 - (i) that cross local authority boundaries; or
 - (ii) that arise between territorial authorities; or
 - (iii) that arise between regions; and
 - (g) the information to be included with an application for a resource consent;
and
 - (h) any other information required for the purpose of the regional council's functions, powers, and duties under this Act.
- (3) A regional plan must give effect to—
- (a) any national policy statement; and
 - (b) any New Zealand coastal policy statement; and
 - (ba) a national planning standard; and
 - (c) any regional policy statement.

- (4) A regional plan must not be inconsistent with—
- (a) a water conservation order; or
 - (b) any other regional plan for the region; or
 - (c) *[Repealed]*
- (5) A regional plan must record how a regional council has allocated a natural resource under section 30(1)(fa) or (fb) and (4), if the council has done so.
- (6) A regional plan may incorporate material by reference under Part 3 of Schedule 1.

104 Consideration of applications

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
- (a) any actual and potential effects on the environment of allowing the activity; and
 - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
 - (b) any relevant provisions of—
 - (i) a national environmental standard:
 - (ii) other regulations:
 - (iii) a national policy statement:
 - (iv) a New Zealand coastal policy statement:
 - (v) a regional policy statement or proposed regional policy statement:
 - (vi) a plan or proposed plan; and

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

(2A) When considering an application affected by section 124 or 165ZH(1)(c), the consent authority must have regard to the value of the investment of the existing consent holder.

(2B) When considering a resource consent application for an activity in an area within the scope of a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, a consent authority must have regard to any resource management matters set out in that planning document.

(2C) Subsection (2B) applies until such time as the regional council, in the case of a consent authority that is a regional council, has completed its obligations in relation to its regional planning documents under section 93 of the Marine and Coastal Area (Takutai Moana) Act 2011.

(3) A consent authority must not,—

(a) when considering an application, have regard to—

(i) trade competition or the effects of trade competition; or

(ii) any effect on a person who has given written approval to the application:

(b) [Repealed]

(c) grant a resource consent contrary to—

(i) section 107, 107A, or 217:

(ii) an Order in Council in force under section 152:

(iii) any regulations:

(iv) wāhi tapu conditions included in a customary marine title order or agreement:

(v) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011:

(d) grant a resource consent if the application should have been notified and was not.

(4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.

(5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

(6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.

(7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

104D Particular restrictions for non-complying activities

(1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of—

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

National Policy Statement for Freshwater Management 2014 (as amended 2017)

Objective A1

To safeguard:

- a) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and
- b) the health of people and communities, as affected by contact with fresh water;

in sustainably managing the use and development of land, and of discharges of contaminants.

Objective A2

The overall quality of fresh water within a freshwater management unit is maintained or improved while:

- a) protecting the significant values of outstanding freshwater bodies;
- b) protecting the significant values of wetlands; and
- c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

Policy A1

By every regional council making or changing regional plans to the extent needed to ensure the plans:

- a) establish freshwater objectives in accordance with Policies CA1-CA4 and set freshwater quality limits for all freshwater management units in their regions to give effect to the objectives in this national policy statement, having regard to at least the following:
 - i. the reasonably foreseeable impacts of climate change;
 - ii. the connection between water bodies; and
 - iii. the connections between freshwater bodies and coastal water; and
- b) establish methods (including rules) to avoid over-allocation.

Southland Regional Policy Statement 2017

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“Objective WQUAL.1 – Water quality goals

Water quality in the region:

- (a) safeguards the life-supporting capacity of water and related ecosystems;
- (b) safeguards the health of people and communities;
- (c) is maintained, or improved in accordance with freshwater objectives formulated under the National Policy Statement for Freshwater Management 2014;
- (d) is managed to meet the reasonably foreseeable social, economic and cultural needs of future generations.

Explanation/Principal Reasons

The objective provides specific recognition of those areas where water quality is in its natural state. Within these areas the overall water quality is of a high standard and is generally low in nutrients, as it is largely unmodified or unaffected by point and non-point discharges.”

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“Policy WQUAL.2 All waterbodies

Maintain or improve water quality, having particular regard to the following contaminants:

- (a) nitrogen;
- (b) phosphorus;
- (c) sediment;
- (d) microbiological contaminants.

Explanation/Principal Reasons

The major contaminants of concern in relation to water quality in Southland are those listed in Policy WQUAL.2, which arise from both point-source and non-point source discharges. Point-source discharges of contaminants, such as those from wastewater treatment plants, industrial sites and production land contribute to levels of nitrogen, phosphorus, sediment and microorganisms in surface water and groundwater. Non-point source discharges from land use activities contribute contaminants to groundwater, and contaminated groundwater can then affect surface water quality. Method WQUAL.1 provides for timeframes for improvements to meet freshwater objectives.

Managing activities that give rise to these contaminants will assist Southland Regional Council to meet Objectives WQUAL.1 and WQUAL.2. Without management it will not be possible to maintain water quality throughout the region. Depending on the water quality issue and its causes in any given catchment, improvements in water quality may take some time to be realised.

Policy WQUAL.2 lists the priority contaminants that need to be addressed. Additional contaminants may also need to be focused on in some areas.”

Proposed Southland Water and Land Plan (Decision Version, 4 April 2018) in relation to Policy 4 – Alpine

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Physiographic Zones

Southland's physiographic zones have been developed at a regional scale to better understand our region's water, how it moves across the landscape and why water quality is better in some places than others.

Scientists have divided Southland into nine physiographic zones. Each zone represents areas of the landscape with common attributes that influence water quality, such as climate, topography, geology and soil type. Zones differ in the way sediment, microbes (e.g. *E.coli*) and nutrients, such as nitrogen and phosphorus, build up and move through the soil, aquifers (areas of groundwater) and into our rivers and streams.

Alpine

The Alpine physiographic zone includes all land above 800 metres elevation, and is mainly found in northern and western parts of Southland. This zone is characterised by steep slopes with thin soils or bare bedrock. Its high elevation results in high snowfall and rainfall, which provides large volumes of pristine water to downstream physiographic zones. Overland flow (surface runoff) is the key transport pathway, however contaminant loss is limited due to low intensity of land use.

Key transport pathway for contaminants:

- **Overland flow** – nitrogen, phosphorus, sediment and microbes to rivers.

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Objective 1

Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast.

Objective 2

Water and land is recognised as an enabler of primary production and the economic, social and cultural wellbeing of the region.

Objective 6

There is no reduction in the overall quality of freshwater, and water in estuaries and coastal lagoons, by:

- (a) maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and
- (b) improving the quality of water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.

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Objective 13

Enable the use and development of land and soils to support the economic, social, and cultural wellbeing of the region.

Objective 13A

The quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land.

Objective 18

All activities operate in accordance with “good management practice” or better to optimise efficient resource use, safeguard the life supporting capacity of the region’s land and soils, and maintain or improve the quality and quantity of the region’s water resources.

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Physiographic Zone Policies

Policy 4 – Alpine

In the Alpine physiographic zone, avoid, remedy, or mitigate erosion and adverse effects on water quality from contaminants, by:

1. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow;
2. having particular regard to adverse effects of contaminants transported via overland flow when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and

3. prohibiting dairy farming and intensive winter grazing, and decision makers generally not granting resource consents for cultivation.

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Land Use Rules

Rule 25 – Cultivation

- (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; and
 - (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 wetland and
 - (iii) cultivation does not occur at an altitude greater than 800 metres above mean sea level; and
 - (iv) cultivation does not occur on land with a slope greater than 20 degrees.

- (b) The use of land for cultivation that does not meet the setback distance of Rule 25(a)(ii) 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 3 metres from the outer edge of the bed; and
 - (ii) cultivation does not take place more than once in any 5-year period; and
 - (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) 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 the exercise of its discretion to the following matters:

1. potential adverse effects of discharges of sediment and other contaminants from critical source areas in the area being cultivated on water quality and biodiversity;
- 1a. mitigation measures for addressing adverse effects;
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.

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Cultivation

Preparing land for growing pasture or a crop by mechanical tillage, direct drilling, herbicide spraying, or herbicide spraying followed by over-sowing for pasture or forage crops (colloquially referred to as 'spray and pray'), but excluding any spraying undertaken solely for the control of pest plant species.