

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

**AT CHRISTCHURCH
KI OTAUTAHI**

ENV-2018-CHC-000036

IN THE MATTER

of the Resource Management Act 1991

AND

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

BETWEEN

Director-General of Conservation
Tumuaki Ahurei
Appellant
(ENV-2016-CHC-000036)

AND

Southland Regional Council
Respondent

**Topic B Tranche 1 Rebuttal Expert Evidence (Planning) of Linda
Elizabeth Kirk for Director-General of Conservation *Tumuaki Ahurei*,
Appellant and s274 Party**

Dated 22 February 2022

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Introduction

1. My full name is Linda Elizabeth Kirk. My experience and qualifications are set out in my 'Topic A' evidence in chief dated 15 February 2019.
2. I have been asked by the Director-General of Conservation *Tumuaki Ahurei* (D-G) to provide independent rebuttal planning evidence in relation to her outstanding Topic B Tranche 1 matters as an Appellant and section 274 party on the proposed Southland Water and Land Plan (pSWLP).
3. In preparing this evidence, the additional information and documents I have read and considered since my Topic B Tranche 1 evidence as a s274 Party dated 4 February 2022 are as follows:
 - a. Section 274 Party Statement of Evidence on behalf of Aratiatia Livestock Limited (dated 4 February 2022) from:
 - i. Claire Jordan;
 - b. Section 274 Party Statement of Evidence on behalf of Balance Agri-Nutrients Limited (dated 4 February 2022) from:
 - i. Susan Ruston - Planning;
 - c. Section 274 Party Statements of Evidence on behalf of DairyNZ Ltd and Fonterra Co-operative Group Ltd (Dairy Interest parties) (dated 4 February 2022) from:
 - i. Gerard Willis – Planning;
 - ii. Dawn Dalley – Farm Systems;
 - iii. Craig Depree – Water Quality; and
 - iv. Cain Duncan – Farm Systems
 - d. Section 274 Party Statements of Evidence on behalf of Federated Farmers of New Zealand Inc (Federated Farmers) (dated 4 February 2022) from:
 - i. Hamish English; and
 - ii. Peter Wilson – Planning;

- e. Section 274 Party Statement of Evidence on behalf of Meridian Energy Limited (dated 4 February 2022) from:
 - i. Margaret Jane Whyte - Planning;
- f. Section 274 Party Statements of Evidence on behalf of Ngā Rūnanga (dated 4 February 2022) from:
 - i. Dr Jane Kitson – Environmental Science and Mātauranga Māori;
 - ii. Ailsa Cain – Culture and Policy; and
 - iii. Treena Davidson – Planning;
- g. Section 274 Party Statements of Evidence on behalf of Ravensdown Limited (dated 4 February 2022) from:
 - i. Carmen Taylor – Planning; and
 - ii. Anna Wilkes – Farm Systems; and
- h. Section 274 Party Statements of Evidence on behalf of Royal Forest and Bird Protection Society of New Zealand Inc (Forest & Bird) and Southland Fish and Game Council (Fish & Game) (dated 4 February 2022) from:
 - i. Kathryn (Kate) McArthur – Freshwater Ecologist and Water Quality Scientist; and
 - ii. Ben Farrell – Planning; and
- i. Section 274 Party Statements of Evidence on behalf of Southwood Export Limited, Kodansha Tree Farm New Zealand Limited and Southland Plantation Forest Company of New Zealand Limited (Southwood) (dated 4 February 2022) from:
 - i. Sally Strang – Forestry; and
 - ii. Graeme Manley – Forestry;
- j. Section 274 Party Statement of Evidence on behalf of Wilkins Farming Co Ltd (Wilkins) (dated 4 February 2022) from:
 - i. Sean Wilkins – Farm Systems; and

- ii. Sharon Dines – Planning;
- k. Statements of Evidence on behalf of Southland Regional Council (SRC) (dated 11 February 2022) from:
 - i. Matthew McCallum-Clark – Planning;
 - ii. Lauren Maciaszek - Planning;
 - iii. Dr Antonius Snelder – Water Quality;
 - iv. Dr Gregory Burrell – Freshwater Ecology; and
 - v. Dr Ross Monaghan – Agricultural and Soil Science.

Code of Conduct

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

Scope

- 7. I have been asked by the Director-General to provide independent rebuttal planning evidence in relation to her following outstanding appeal Topic B matters and s274 Party interests on the pSWLP:
 - a. Reference to ‘Ephemeral Rivers’;
 - b. Wetlands – Rule 51 – Minor diversions of water;
 - c. Weed and Sediment Removal for Drainage Maintenance – Rule 78;
 - d. Farming Activities (Policy 16, Rules 20/20A, Appendix N)
 - e. Mapping of catchments in need of improvement.

8. This evidence identifies:
 - a. the proposed relief now sought in tracked changes of the pSWLP¹;
and
 - b. the reasoning that, in my opinion, supports the proposed relief.

Executive Summary

9. I agree with the Planners JWS 2021 seeking to remove references to “ephemeral flow paths” from the provisions in the Plan as the definition of “critical source area” encompasses ephemeral flow paths. There is no need to specify ephemeral flowpaths within the provisions themselves. This has resulted in refinement of Rule 70(a) and clarifying that Objective 16 does not need to refer to “ephemeral flow paths”.
10. I seek the refinement of Rule 70(a) to delete any reference to the locations of the roosting and nesting areas of the threatened birds identified. In my opinion, this amendment provides clarity and certainty for the Plan user that it is a prohibited activity for stock to disturb roosting and nesting areas of the birds identified regardless of where they are located.
11. I consider there is no further need for the definition of “ephemeral flow path” to go into the pSWLP glossary as the definition of “critical source area” in the Planning JWS 2021 includes “ephemeral flow path”.
12. I agree with Ms Maciaszek that no change to Rule 51(e) of the Planning JWS 2021 is required as this better aligns with the rule cascade of Rules 51(b) and 51(d) and is consistent with Rule 49(d). This makes it clear that the diversion of water is a non-complying activity in the Plan.
13. For Rule 78, I seek to include a sunset clause of 31 December 2023 and an additional clause to exclude the habitat of Lamprey/kanakana or tuna in the Waituna catchment of Mataura and Waikawa. This is in addition to the exclusion of non-diadromous galaxias species from the permitted activity status and the requirement that the gravel removed shall comprise not more than 5% of the total sediment removed². In my opinion, this will

¹ pSWLP is the version dated 1 March 2021 and the mediated outcomes (consent orders pending) as stated at paragraph 4 of this Evidence. This is consistent with Mr McCallum-Clark’s approach in his Statement of Evidence dated 11 February 2021 at paragraph [21] and his Appendix 1.

² Statement of Evidence dated 20 December 2021 of Kirk at paragraphs [16-18]

reinforce the signal that both threatened indigenous freshwater species and taonga species need to be managed for in the activity of weed and sediment removal for drainage maintenance.

14. In my opinion, the inclusion of the identification of additional habitats of threatened indigenous freshwater species and taonga species will give better effect to Policies 1 and 9 the NPSFM 2020 and align with the direction of the water quality and safeguarding the life supporting capacity of ecosystem objectives and policies in the Plan. I consider it can also be done at this stage of the planning process as it is reasonably practicable to do so as required under Part 4, clause 4.1(1) of the NPSFM 2020.
15. If it is practical to do so at this stage of the planning process, I also seek the inclusion of drainage best practice guidance for the Southland region in the pSWLP. This will help in the paradigm shift in behaviour change of drainage maintenance that is required.
16. For Policy 16, I agree with the Planning JWS 2021 with the grammatical improvements as put forward by Mr Willis and supported by Mr McCallum-Clark.
17. I agree with the Planning JWS 2021 with the consistency in the application of the phrase “*a Farm Environmental Management Plan is prepared, certified, implemented and audited in accordance with Appendix N*” in the relevant provisions throughout the Plan as intended by the Planning JWS 2021.
18. For Appendix N, I agree that ensuring FEMP actions are clear and that farmers are able to engage with the Plan is important for the implementation of the Plan. Therefore, I do not support the inclusion of the potential amendments to Appendix N that were put forward by Mr Farrell³ as currently worded. They are cumbersome, potentially repetitive of clauses in Appendix N and may not be practically implemented.
19. I have posed the question as to whether the concepts of “ki uta ki tai” and “hauora” are matters that could be pursued through the approval process of certifiers and auditors as a “suitably qualified person” by the Southland Regional Council as an alternative approach to directly incorporating them

³ Statement of Evidence of Mr Farrell dated 20 December 2021 at paragraph [91(b)]
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in Appendix N. Clarification from relevant experts would be helpful in this regard.

20. I support Dr Snelder's Figure 4 to identify the "catchments in need of improvement" as this aligns with the Planners JWS 2021 and uses region-specific predictions for the Southland context.

Topic B Tranche 1 Matters of Rebuttal

Reference to ‘Ephemeral Waterbody’

21. The D-G is a s274 party on the Royal Forest and Bird Society appeal on Rule 70, which sought to include “ephemeral rivers and wetlands” in some parts of the Rule as well as other amendments.
22. In my s274 evidence, I highlighted the potential for Rule 70(a) to produce unintended consequences of removing protection for roosting and nesting birds⁴. As a result, I sought to reinstate “ephemeral waterbodies” into Rule 70(a) and to retain the definition of “ephemeral waterbody” in the glossary as follows (further amendments to the Planning JWS 2021 were sought in blue):

*“**Ephemeral waterbody flow paths rivers**
Rivers Swales or depressions which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.*”

Rule 70

- (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 an ephemeral waterbody flow path river), modified watercourse, or ~~natural wetland~~ by stock including cattle, deer, pigs or sheep is a prohibited activity.*”
23. I note Mr McCallum-Clark⁵ supports the reinstatement to Rule 70(a) of the phrase “(including ephemeral flow paths)” to avoid the unintended consequence of disturbance of roosting and nesting areas of the specified threatened bird species becoming permitted rather than a prohibited activity.

⁴⁴ Statement of s274 evidence of Ms Kirk at paragraph [35]

⁵ Statement of Evidence of Mr McCallum-Clark at paragraph [49]

24. On reflection, I agree with the s274 evidence of Ms Ruston⁶, Mr Willis⁷, Ms Taylor⁸ and Mr McCallum-Clark⁹ that the use of the term “waterbody” is not appropriate and may be limited in its interpretation to when “water was present”. This may have the consequence of not properly managing terrestrial values such as the threatened bird species roosting or nesting in such areas.
25. I agree with the Planning JWS 2021 that the more appropriate phrase is “ephemeral flow path” and to retain this in the definition of “critical source area”. I agree with Ms Taylor¹⁰ that “the inclusion of “ephemeral flow paths” within the definition of critical source area, ensures the consideration of mitigation and/or management of potential runoff from landscape features and associated flow paths, which are not rivers, arising from farming activities, is appropriately provided for in the Plan.
26. As Rule 70 is the only provision in the Plan (other than Objective 16 which is discussed below) that directly refers to the “ephemeral flow paths”, an alternative amendment to Rule 70(a) would be to delete any reference to the locations of the roosting and nesting areas of the threatened birds identified. In my opinion, this amendment provides clarity and certainty for the Plan user that it is a prohibited activity for stock to disturb roosting and nesting areas of the threatened birds identified regardless of where they are located. Therefore, my preference is to amend Rule 70(a) (in blue) as follows:

“Rule 70

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

27. As a consequence, there is no further need for the definition of “ephemeral flow path” to go into the pSWLP glossary as the definition of

⁶ Statement of s274 Evidence of Ms Ruston at paragraph [35]

⁷ Statement of s274 Evidence of Mr Willis at paragraphs [7.5] and [7.10]

⁸ Statement of s274 Evidence of Ms Taylor at paragraph [34]

⁹ Statement of Evidence of Mr McCallum-Clark at paragraph [42]

¹⁰ Statement of s274 Evidence of Ms Taylor at paragraph [30]

“critical source area”¹¹ in the Planning JWS 2021 includes “ephemeral flow path”.

28. For clarity, I agree with the Planning JWS 2021 definition of “critical source area” and the deletion of “ephemeral flow path” from the glossary and provisions of the pSWLP if Rule 70(a) is amended as I propose to exclude the location of the nesting and roosting habitat of the specified bird species.
29. Mr McCallum-Clark¹² also notes that Objective 16 contains “(excluding ephemeral rivers)”. I continue to agree with the Planners JWS 2021 seeking to remove references to “ephemeral rivers/flow paths” from the provisions in the Plan as the definition of critical source area included ephemeral rivers/flow paths, and there was no further need to specify ephemeral rivers within the provisions themselves.
30. I agree with Mr McCallum-Clark¹³ that the general public do not consider an “ephemeral river” as a “river” and retaining this term may create uncertainty to the Plan user when it has been removed from the other provisions throughout the Plan. In my opinion it does not provide for any clarity for its purpose to remain in Objective 16 as it stands. Therefore, my preference is to delete “(excluding ephemeral rivers)” from Objective 16 as follows:

¹¹ Planning JWS 2021, attachment B5 – Farming:

Critical source area

- (a) a landscape feature ~~like an ephemeral flow path~~, 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 Swales or depressions which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.

¹² Statement of Evidence of Mr McCallum-Clark at paragraph [50-54]

¹³ Statement of Evidence of Mr McCallum-Clark at paragraph [54]

“Objective 16

Public access to, and along, river ~~(excluding ephemeral rivers)~~ and lake beds is maintained and enhanced, except in circumstances where public health and safety or significant indigenous biodiversity values are at risk.”

Wetlands – Rule 51 – Minor diversions of water

31. I agree with Ms Maciaszek¹⁴ that the relevant policies of the pSWLP most direct relevant to Rule 51(e) are Policies 32, 33 and 34. I also agree with Ms Maciaszek¹⁵ that no change to Rule 51(e) is required as retaining “for the purpose of land drainage” within the rule provides clarity to the Plan user that the diversion of water from a natural wetland for the purpose of land drainage is a non-complying activity and that this does better align with the rule cascade of Rules 51(b) and 51(d). In addition, it would also then be consistent with Rule 49(d) which manages the abstraction, diversion and use of water:

“Rule 49 – Abstraction, diversion and use of water

(d) Except as provided for in Rules 49(a), 49(ab), 49(b), 50(a), 50(b), 51(a), 51(b), 51(c), 52(a), 52(b), 52A(b), the taking, diversion and use of surface water is a non-complying activity.”

32. For clarity, I seek no change to Rule 51(e) of the Planning JWS 2021.

Weed and Sediment Removal for Drainage Maintenance – Rule 78

33. I agree with Mr McCallum-Clark’s¹⁶ summary of the positions of Mr Farrell, Ms Davidson and myself on Rule 78.
34. I too, like Mr McCallum-Clark¹⁷, am “*struggling to reconcile maintenance of modified watercourses with Te Mana o te Wai, the prioritisation of the health and well-being of water bodies, and the significance of these water*

¹⁴ Statement of Evidence of Ms Maciaszek at paragraph [50]

¹⁵ Statement of Evidence of Ms Maciaszek at paragraph [45]

¹⁶ Statement of Evidence of Mr McCallum-Clark at paragraphs [58-67]

¹⁷ Statement of Evidence of Mr McCallum-Clark at paragraph [75]

bodies to tangata whenua" and aligning Rule 78 within the framework of the Plan¹⁸.

35. Mr Farrell¹⁹ puts forward two alternatives to amend Rule 78:
- a. either retain the rule as a permitted activity with a new clause that "*the modified watercourse is not a habitat of threatened native fish*"; or
 - b. amend Rule 78 to require a resource consent for the removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall.
36. In my s274 Statement of Evidence²⁰, I grappled with broadening the permitted activity rule to include both threatened indigenous freshwater species and taonga species and agreed that such additions would give better effect to the NPSFM 2020 and the pSWLP framework. A discretionary activity status for threatened indigenous freshwater species and taonga species would align with the pSWLP framework.
37. However, I was unable to find a practical solution due to the limitations of the mapping as the technical experts identified. The effect of incorporating all threatened indigenous freshwater fish species and/or taonga species would make the permissible rule unworkable in reality and require a resource consent for this activity in the bulk of the Southland region due to the extent and breadth of these species across the Southland region. Therefore, in my opinion, other than exclusions for the habitat of non-diadromous galaxias species, Lamprey/kanakana and one taonga species where there is certainty of mapping in the Waituna catchment (see below), I consider Rule 78 is unable to be expanded to also exclude the habitats of other species.
38. I am uncertain as to whether or not there is scope to make a blanket change of the activity status of Rule 78 from a permitted activity to either a restricted discretionary activity or a discretionary activity as put forward by Mr Farrell.

¹⁸ Statement of s274 Evidence of Ms Kirk at paragraph [51]

¹⁹ Statement of s274 Evidence of Mr Farrell at paragraphs [22-23] and Appendix BF1 [5-6]

²⁰ Statement of s274 Evidence of Kirk at paragraphs [43, 48-58]

39. As an interim measure, and to further embed the required paradigm shift in behaviour that is required for this activity in order to better give effect to the pSWLP and the NPSFM 2020 in the future²¹, I recommend that a sunset clause is added to Rule 78 to stop this activity being a permitted activity when Plan Change Tuatahi is notified, with a resource consent to be required after this date as per Rule 78(b). This will clearly signal to all Plan users that behaviour change is required. Therefore, the sunset clause date of 31 December 2023²² would be appropriate, as follows (in blue):

“Rule 78 – weed and sediment removal for drainage maintenance

(a) Until 31 December 2023, the ~~The~~ removal of aquatic weeds and plants....”

40. In addition, as noted at paragraph [52] of my s274 Statement of Evidence, I note that the Ecology JWS 2021 provides confidence in the mapping of the Waituna catchment of Maitaha and Waikawa for Lamprey/kanakana and tuna habitat. Therefore, I support the inclusion of a clause to exclude these mapped habitat areas of Lamprey/ kanakana and tuna in Rule 78 to further signal the behaviour change required at this time. Unfortunately, I do not have a map of these specific habitat areas at this time. Therefore, assuming a map could be produced, I recommend that the following clause is added to Rule 78:

“(xv) the modified watercourse is not shown in Map Series 8 as a habitat of Lamprey/kanakana or tuna in the Waituna catchment of Maitaha and Waikawa.”

41. The inclusion of a further clause to Rule 78 will reinforce the signal that both threatened indigenous freshwater species and taonga species need to be managed for in the activity of weed and sediment removal for drainage maintenance. This will give better effect to Policies 1²³ and 9²⁴ of the NPSFM 2020 and the water quality and safeguarding the life

²¹ As signaled in Statement of s274 Evidence of Ms Kirk at paragraph [58].

²² Plan Change Tuatahi is intended to be notified by this date.

²³ Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai

²⁴ Policy 9: The habitats of indigenous freshwater species are protected.

supporting capacity of ecosystem objectives and policies in the Plan (Objectives 1, 2, 4, 14 and 15, and Policies 3 and 30).

42. In my opinion, I consider these amendments to Rule 78 can be done at this stage of the planning process as it is reasonably practicable to do so as required under Part 4, clause 4.1(1) of the NPSFM 2020²⁵.

43. In answer to Question 3 in the Ecology JWS 2021, the Ecology experts considered that there is a hierarchy of actions that can be taken in terms of sustainable drainage maintenance that would be more consistent with the Te Mana o Te Wai hierarchy:

“The first order of priorities should be preventing the issue of weed and sediment accumulation [through prevention and restoration], and the second order of priority is mitigation.”

44. The Ecology experts also noted in their answer to Question 3 in the Ecology JWS 2021 that:

“Various guidance documents recommend the use of the mitigation measures similar to those listed in Table 1 [of the Ecology JWS 2021]. These mitigation measures would be best incorporated into the plan via reference to the requirement to adhere to a drainage best practice code, as done for other regions (e.g. Canterbury and Greater Wellington).”

45. In my s274 Statement of Evidence at paragraph [53], I noted this response from the ecologists, but I supported Ms Davidson that development of good management practice guidance and Ngā Rūnanga consultation could sit outside of the pSWLP. As a result of including further threatened indigenous freshwater species and taonga species and to embed the required paradigm shift in behaviour change of drainage maintenance, I now consider it would be beneficial to incorporate guidance documents within the Plan itself as suggested by the Ecology experts.

46. The inclusion of such drainage best practice guidance would need to be developed for the Southland region and potentially included in Appendix

²⁵ NPSFM 2020:

4.1 Timing

(1) Every local authority must give effect to this National Policy Statement as soon as reasonably practicable.

N, or as a separate provision. However, I am unclear as to whether this could practically be done at this stage or would need to occur through Plan Change Tuatahi. My preference would be to include at this stage if it were practical to do so.

Farming Activities (Policy 16, Rules 20/20A, Appendix N)

Policy 16

47. As per my s274 Statement of Evidence at paragraph [62], I continue to agree with the Planning JWS 2021 version of Policy 16, with the grammatical improvements as put forward by Mr Willis. I note that Mr McCallum-Clark²⁶ also agrees with these refinements.
48. I note that in my discussion on Rule 78 in my s274 Statement of Evidence at paragraph [43], I acknowledged that there is an incorrect reference to Policy 16 in my 20 December 2021 evidence and that it should refer to Rule 78 instead. Ms Ruston²⁷ has picked up on this error and I can confirm that there is no intention of including the identification of habitat of other threatened species in Policy 16.

Rules 20/20A

49. As per my s274 Statement of Evidence at paragraph [59], I continue to agree with the Planning JWS 2021 with the consistency in the application of the phrase “*a Farm Environmental Management Plan is prepared, certified, implemented and audited in accordance with Appendix N*” in the relevant provisions throughout the Plan as intended by the Planning JWS 2021. For clarity, I have included those provisions in Appendix 1.

Appendix N

50. In my s274 Statement of Evidence at paragraphs [63] and [60], I supported the intent of Mr Farrell’s²⁸ suggested clarification of the wording of Appendix N in relation to the matters that need to achieve “improvement” in those “catchments in need of improvement”, with some

²⁶ Statement of Evidence of Mr McCallum-Clark at paragraph [86]

²⁷ Statement of s274 Evidence of Ms Ruston at paragraph [59]

²⁸ Statement of Evidence of Mr Farrell dated 20 December 2021 at paragraph [91(b)]

minor amendments. I do not support the term “degraded” being used further than the Planning JWS 2021.

51. Having read and considered the s274 evidence, primarily opposing the example Mr Farrell²⁹ put forward of how people who manage farm land understand “ki uta ki tai” and “hauora” as filed by Mr Duncan³⁰, Ms Ruston³¹, Ms Wilkes³² and Mr Willis³³ and the Statement of Evidence of Mr McCallum-Clark³⁴, I agree that Mr Farrell’s example is cumbersome, potentially repetitive of clauses in Appendix N and may not be a practical part of the FEMP. I agree that ensuring FEMP actions are clear and that farmers are able to ‘buy-in’ or engage with the Plan is important for the implementation of the Plan. Therefore, I do not support the inclusion of the potential amendments to Appendix N that were put forward by Mr Farrell as currently worded.
52. However, I suggest that the concepts of “ki uta ki tai” and “hauora” that Mr Farrell is proposing must at least, be understood by the certifiers and auditors of the FEMPs. With the requirement of certifiers and auditors to be a “suitably qualified person” approved by the Chief Executive of the Southland Regional Council, then rather than include such concepts within Appendix N outright, an alternative approach is through the approval process of the Chief Executive of the Southland Regional Council. This would enable the Council to have confidence that the certifiers and auditors of the FEMPs understand the concepts and what the Plan is seeking to deliver.
53. I acknowledge I am not an expert in FEMP certification or auditing processes and further clarification from such experts would be useful to help understand whether the concepts of “ki uta ki tai” and “hauora” are understood in these processes and if they should be part of the approval process by the Chief Executive of the Southland Regional Council.

²⁹ Statement of Evidence of Mr Farrell dated 20 December 2021 at paragraph [91(b)]

³⁰ Statement of s274 Evidence of Mr Duncan at paragraphs [71-75]

³¹ Statement of s274 Evidence of Ms Ruston at paragraphs [72-76]

³² Statement of s274 Evidence of Ms Wilkes at paragraphs [38-46]

³³ Statement so s274 Evidence of Mr Willis at paragraphs [9.3-9.11]

³⁴ Statement of Evidence of Mr McCallum-Clark at paragraphs [153-156]

Mapping of “catchments in need of improvement”

54. In my s274 Statement of Evidence³⁵, I supported the inclusion of maps to identify “catchments in need of improvement” that had been produced by Dr Depree.
55. Since that time, Dr Snelder³⁶ has been able to produce similar maps and has aligned his mapping techniques with what was sought by the Planners JWS 2021 for a single map of the “catchments in need of improvement” in terms of any of the attributes in Tables 1 and 2. As a result, I support the inclusion of Dr Snelder’s Figure 4 to identify the “catchments in need of improvement” and I support the region-specific predictions that Dr Snelder has used to reflect the Southland context. I note that the Figure 4 should reflect this terminology and not use “degraded”.



Linda Elizabeth Kirk

22 February 2022

³⁵ Statement of s274 Evidence of Ms Kirk at paragraphs [65-67]

³⁶ Statement of Evidence of Dr Snelder dated 11 February 2022

Appendix 1: Summary of Kirk's Collated Amendments recommended @ 22 February 2022

Tracked changes key:

Black text = Decisions Version of pSWLP

Black underline and ~~strike-out~~ = changes agreed through the Planning JWS 2021

Red underline and ~~strike-out~~ = changes recommended by Mr McCallum-Clark

Blue underline and ~~strike-out~~ = changes recommended by Ms Kirk

Glossary

Amend the definition of "critical source area" as follows:

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.~~

Delete the definition of "ephemeral rivers" as follows:

Ephemeral rivers

~~Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.~~

Insert the term "minimise"³⁷ in the pSWLP glossary as follows:

Minimise means to reduce to the smallest amount reasonably practicable.

³⁷ Farrell Evidence dated 20 December 2021 at [20]: "Minimise means to reduce to the smallest amount reasonably practicable."

Objective 16

Amend Objective 16 as follows:

Objective 16

Public access to, and along, river ~~(excluding ephemeral rivers)~~ and lake beds is maintained and enhanced, except in circumstances where public health and safety or significant indigenous biodiversity values are at risk.

Policy 16

Amend Policy 16 of the JWS Planning dated 10 December 2021 as follows:

1. ~~Minimising~~ Avoid where reasonably practicable, or otherwise minimise remedy or mitigate, any the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and groundwater) from farming activities by:

~~(i) (a) discouraging avoiding the establishment of new dairy farming of cows or new intensive winter grazing activities any new, or further intensification of any existing, dairy farming of cows or intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and~~

(ab) ensuring that, for existing farming activities:

(i) existing farming activities minimise ~~minimise~~ nitrogen, phosphorus, sediment and ~~or~~ microbial contaminant discharges ~~are minimised~~;

(ii) reduce adverse effects on water quality where the farming activity occurs within the catchment of a waterbody that requires improvement identified in Schedule X; and

(iii) demonstrate how (i) and (ii) is being or will be achieved through the implementation of Farm Environmental Management Plans prepared in accordance with (c) below and in addition,

(ba) ensuring that ~~for~~ the establishment of new, or further intensification of existing, dairy farming of cows or intensive winter grazing activities:

(i) does not result in an increase in nitrogen, phosphorus, sediment and ~~or~~ microbial contaminant discharges; and

- (ii) minimises nitrogen, phosphorus, sediment or microbial contaminant discharges; 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;

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

(v) is independently audited and reported on;

~~(ii)(b) actively manage~~ ~~avoid where practicable, otherwise minimise~~ ~~remedy or mitigate,~~ sediment run-off risk from farming and hill country development activities by identifying critical source areas and implementing actions and maintaining practices including setbacks from water bodies, sediment traps, riparian planting, limits on areas or duration of exposed soils and the prevention of stock entering the beds of surface water bodies; and

~~(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.

23. 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.

Policy 18

Amend Policy 18 as follows:

Policy 18 – Stock exclusion from water bodies

...

5. showing, in a Farm Environmental Management Plan prepared, [certified,](#) [and implemented and audited](#) in accordance with Appendix N, how 1-4 will be achieved and by when.

Rule 20

Amend Rule 20 as follows:

Rule 20 - Farming

~~(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:

...

- (ii) where the farming activity includes a dairy platform on the landholding, the following conditions are met:

...

(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

...

~~(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.

...

~~(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

...

Rule 20A

Amend Rule 20A as follows:

Rule 20A – Intensive winter grazing

(a) Intensive winter grazing is a permitted activity provided the following conditions are met:

...

(vi) a Farm Environmental Management Plan for the landholding is prepared, certified, and implemented and audited in accordance with Appendix N, that also includes a grazing plan that includes: ...

(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, certified, and implemented and audited in accordance with Appendix N; and

...

Rule 20B

Amend Rule 20B as follows:

Rule 20B –High risk winter grazing on pasture

(a) High risk winter grazing on pasture is a permitted activity provided the following conditions are met:

...

iv) a Farm Environmental Management Plan for the landholding is prepared, certified, and implemented and audited in accordance with Appendix N, that also includes a grazing plan that includes:

...

(b) The use of land for high risk winter grazing on pasture that does not meet conditions (a)(i)-(vi) of Rule 20B 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

Rule 51

Retain Rule 51(e) as follows:

Rule 51 – Minor diversions of water

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

Rule 70

Amend Planning JWS 2021 Rule 70(a) as follows:

Amend Rule 70(a) as follows:

Rule 70

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

(b) ...

(ca) The disturbance of the bed of a lake, river or modified watercourse by sheep, other than as regulated by Rule 70(a) and 70(b), is a permitted activity, provided the following conditions are met:

...

(iv) a Farm Environmental Management Plan for the landholding is prepared, certified, and implemented and audited in accordance with Appendix N, and shows how access by sheep will be managed;

...

Amend Rule 78(a) as follows:

Rule 78 – weed and sediment removal for drainage maintenance

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.

- (a) Until 31 December 2023, the ~~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;
- (xiv) the modified watercourse is not shown in Map Series 8 as a habitat of threatened non-diadromous galaxias; and
- (xv) the modified watercourse is not shown in Map Series 8 as a habitat of Lamprey/kanakana or tuna in the Waituna catchment of Matura and Waikawa.

~~**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.

Appendix N

Amend Appendix N, Part B, clause 5 with the following amendments (in blue):

Appendix N - Farm Environment Management Plan Requirements

A Farm Environmental Management Plan must be:

- (1) A Freshwater Farm Plan prepared, certified, 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, certified, and implemented and audited in accordance with Parts A to C below.

...

Part B – Farm Environmental Management Plan Default Content

5. Objectives of Farm Environmental Management Plans

A description of how each of the following objectives will, where relevant, be met: ...

d) Waterways and wetland management: To manage activities within and nearby 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.

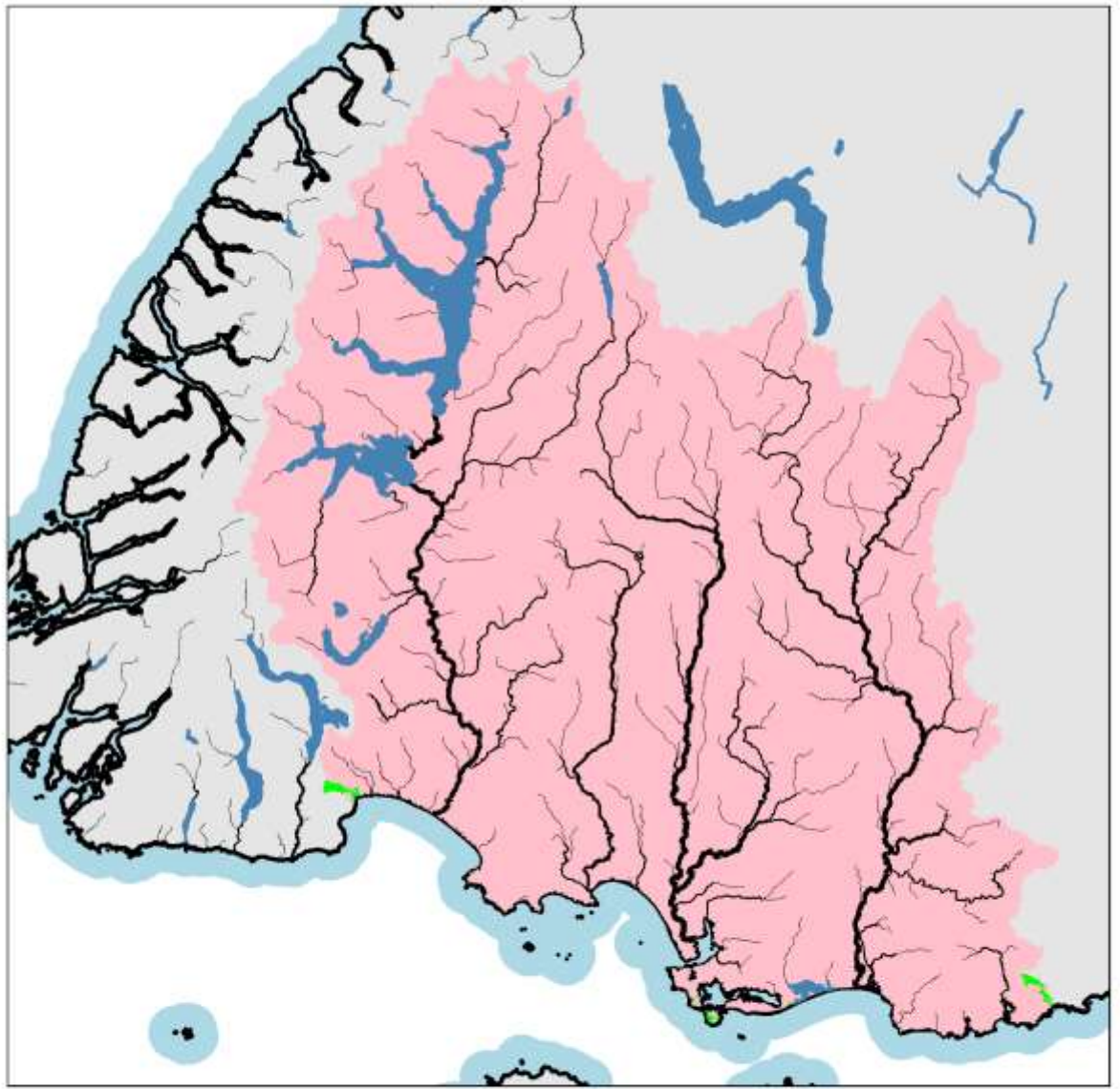
....

Amend Appendix N, Part B, clause 6(b) as follows:

(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

Maps

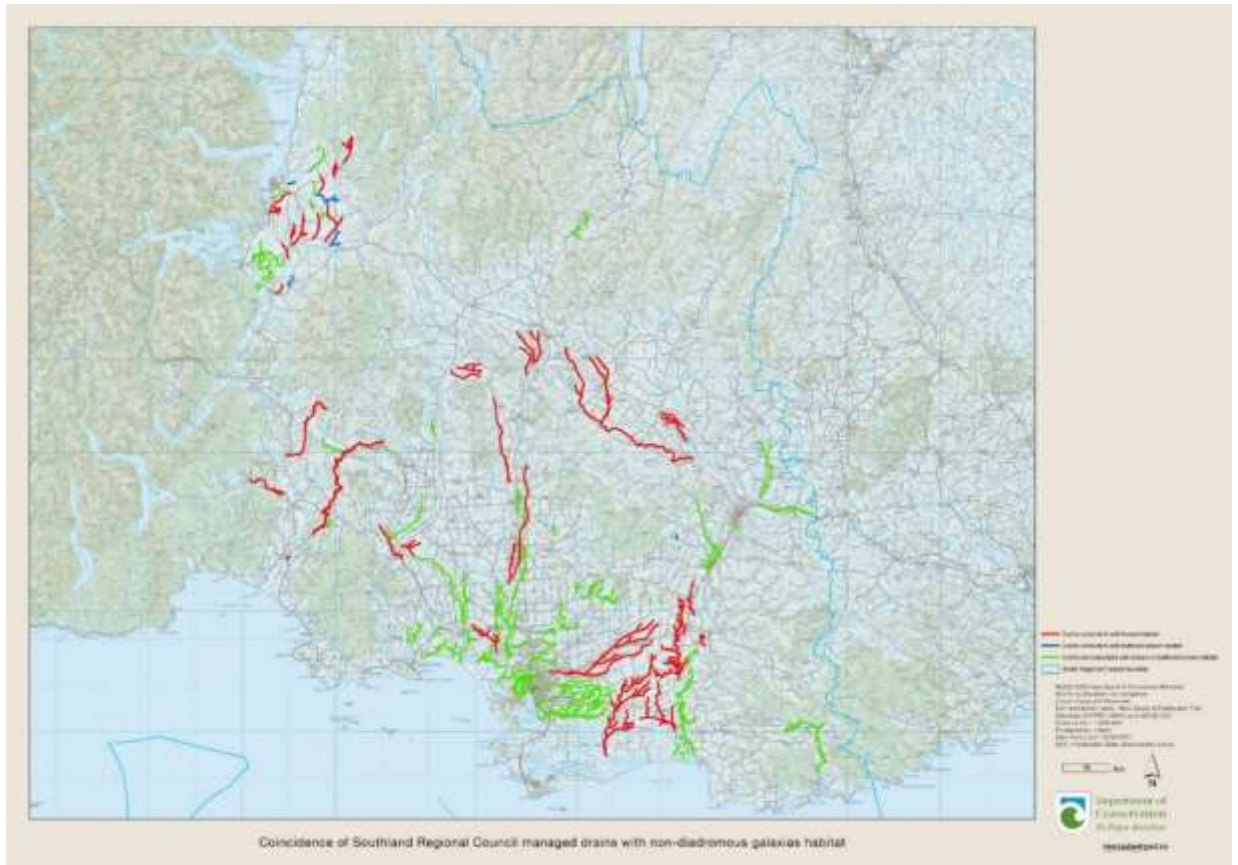
Include one map of “catchments in need of improvement” as provided for in Figure 4 of Dr Snelder’s Statement of Evidence (dated 11 February 2021) (note that Figure 4 needs to be retitled to reflect “catchments in need of improvement” terminology):



Catchment degradation status for all indicators
Degraded catchment Not-degraded

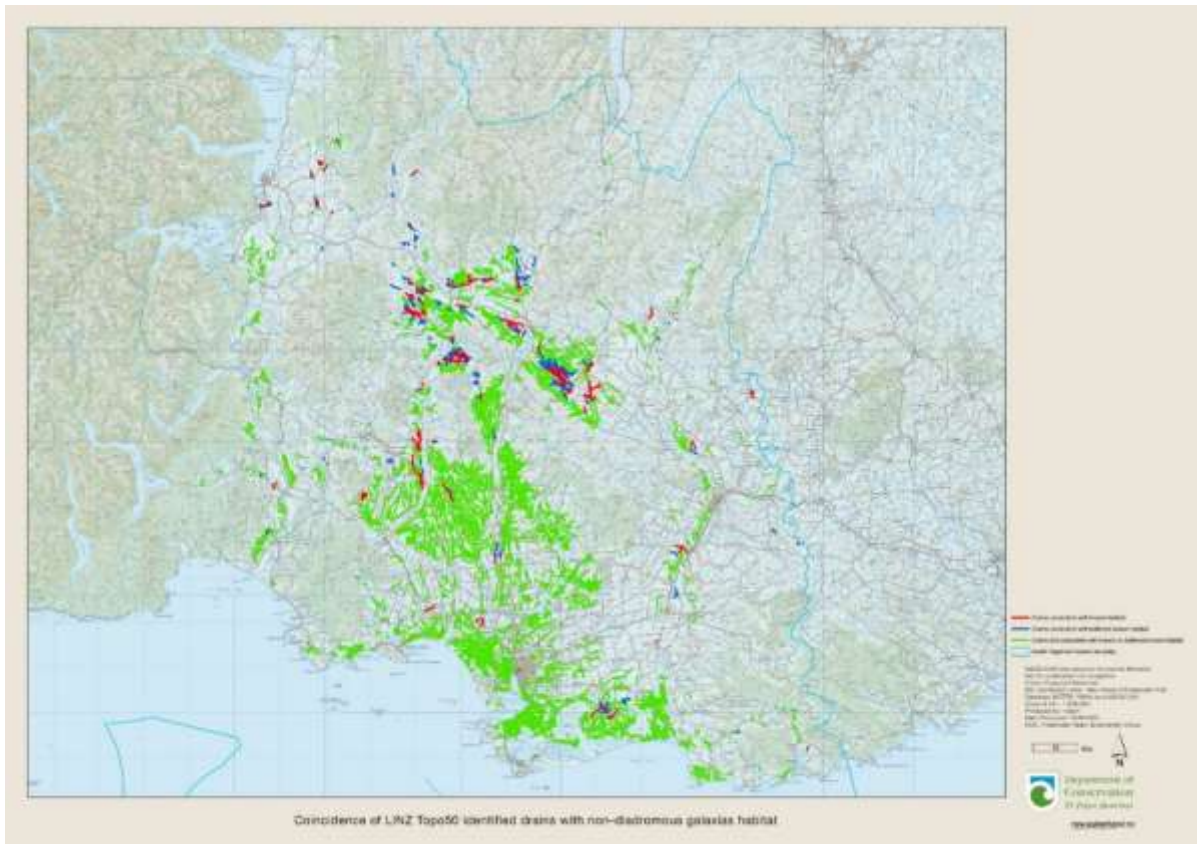
Schedule X Maps³⁸:

Map 1: Southland Regional Council managed drains coincidence with non-diadromous galaxias habitat



³⁸ Dunn, Dr N., 2021, "Memo: Assessment of Southland Regional Council proposed Southland Water and Land Plan – Rule 78 weed and sediment removal rule testing", dated 18 June 2021, internal memorandum, Department of Conservation.

Map 2: LINZ Topo50 identified drains coincidence with non-diadromous galaxias habitat



Map 3: LINZ Topo50 identified drains coincidence with lamprey/kanakana and tuna habitat in the Waituna catchment of Matura and Waikawa

Map to be developed.