

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-26 to 50

Under the Resource Management Act 1991 (**RMA**)

In the matter of appeals under clause 14 of Schedule 1 of the RMA relating to the proposed Southland Water and Land Plan (**pSWLP**)

Between **Gore District Council, Southland District Council and Invercargill City Council (TLAs)**

Appellants in ENV-2018-CHC-31, and section 274 party to appeals: ENV-2018-CHC-37 Southland Fish & Game Council; ENV-2018-CHC-39 Alliance Group Limited; ENV-2018-CHC-40 Federated Farmers of New Zealand; ENV-2018-CHC-50 Royal Forest and Bird Protection Society of New Zealand; ENV-2018-CHC-41 Heritage New Zealand Pouhere Taonga; ENV-2018-CHC-47 Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua & Te Rūnanga o Oraka Aparima

And **Southland Regional Council (Environment Southland)**
Respondent

Topic B2 Policy 15A / 15B – Statement of Evidence of Janan Dunning

10 June 2022

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Introduction

- 1 My full name is Janan Saul Dunning.
- 2 I am a Principal Planner with Stantec New Zealand.
- 3 My qualifications and experience are set out in my evidence in chief dated 22 March 2019 on behalf of the Gore District Council, the Southland District Council and the Invercargill City Council (the TLAs).
- 4 I confirm that I have read the Code of Conduct for expert witnesses in the Environment Court's Practice Note 2014. I have complied with the Code of Conduct when preparing this statement. The opinions I express are my own and are within my area of expertise unless stated otherwise. I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

Scope of evidence

- 5 Policies 15A and 15B are the remaining matters of interest to the TLAs and I have limited the scope of my evidence to those matters. In preparing my evidence I have read and considered:
 - (a) The Court's Interim Decisions¹
 - (b) The joint memorandum in support of Consent Order issued 3 February 2022²
 - (c) Amended provisions in Appendix A of the Southland Regional Council's Memorandum dated 22 March 2022³
 - (d) The Minute of the Environment Court dated 31 March 2022
 - (e) The affidavit of Matthew McCallum-Clark dated 2 February 2022⁴ and Mr McCallum-Clark's supplementary statement of evidence dated 6 April 2022.

¹ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

² Joint Memorandum in support of consent order, specified Topic B2 and B1 Issues; 3 February 2022

³ Southland Regional Council Final Consolidated Tracked Changes, 22 March 2022

⁴ Affidavit of Matthew McCallum-Clark, Topic B2 Issues, 2 February 2022

- (f) Submissions of Counsel for The Royal Forest and Bird Protection Society and The Southland Fish and Game Council dated 11 April 2022.

Policy 15A – Maintain water quality where standards are met

- 6 The version of Policy 15A agreed at mediation is set out in paragraph 18 of Mr McCallum-Clark's supplementary statement⁵, and in Attachment A to my evidence. The mediated version made it clear that:
- (a) the policy applies to all discharges to water that meets the proposed Plan's Appendix E Water Quality Standards or the Appendix C ANZECC sediment guidelines; and
 - (b) discharges to water will be consistent with the policy if receiving water quality continues to meet the Appendix E standards or the ANZECC Appendix C guidelines beyond the mixing zone on commencing a discharge.

In my view, the policy clearly emphasises that adverse effects beyond the reasonable mixing zone are to be avoided unless it is not reasonably practicable to do so⁶. Only then may the alternative of remedying or mitigating adverse effects be contemplated. To be consistent with the policy, the effects of a discharge must not reduce water quality below the specified standards beyond the mixing zone.

- 7 Mr McCallum-Clark proposes alternative wording⁷, replacing 'remedying or mitigating' with 'minimising'. In the absence of a suitable definition, 'minimising' an adverse effect is problematic in my view as there is no defined (or potentially definable) limit to when an adverse effect could be considered minimised.
- 8 Mr McCallum-Clark notes⁸ that the Planning Joint Witness Statement (JWS) on Subtopic B5 defined 'minimise' as: "*To reduce to the smallest amount reasonably practicable*". If the JWS definition (or a suitable alternative) is adopted, an element of practicality will apply to determining whether an effect has been 'minimised'. That is, a reasonable limit will be definable based on the practicalities of a given circumstance. In effect, the

⁵ Supplementary Statement of Evidence – Matthew McCallum-Clark, 6 April 2022

⁶ My understanding of 'practicable' aligns with the Court's 'wide meaning' as set out in paragraph 13 of the Court's Minute dated 31 March 2022, and the considerations described in paragraphs 16 to 19 of that Minute.

⁷ Paragraph 21, Supplementary Statement of Evidence – Matthew McCallum-Clark, 6 April 2022

⁸ Paragraph 24, Supplementary Statement of Evidence – Matthew McCallum-Clark, 6 April 2022

policy will then direct adverse effects to be avoided where reasonably practicable, or otherwise *'reduced to the smallest amount reasonably practicable'*.

- 9 Inserting 'minimising' into Policy 15A would be consistent with Policy 17A⁹ which directs *'the operation of, and discharges from, community sewerage schemes'* to *'minimise adverse effects on water quality'*.
- 10 Provided a suitable definition of 'minimise' is included in the proposed Plan I am not opposed to Mr McCallum-Clark's alternative, although in my view, needing to refer to a definition to understand the policy could add complexity and potential interpretation issues.
- 11 If a suitable definition for 'minimising' is not included in the proposed Plan, I prefer the mediated version of Policy 15A for the reasons outlined in paragraph 6 of my evidence.

Policy 15B – Improve water quality where standards are not met

- 12 The mediated version of Policy 15B is included in Attachment A of my evidence. Policy 15B applies to discharges that affect water that does not currently meet the Appendix E standards or the ANZECC Appendix C guidelines.
- 13 Mr McCallum-Clark's proposed amendments to Policy 15B(1) require all new point source discharges after reasonable mixing to maintain the quality of the receiving water that prevails at that time but does not require it to be improved. New discharges to water that further reduce water quality beyond the mixing zone will not be consistent with this policy or help to achieve the Plan's objectives¹⁰. Although both the mediated and the amended versions direct the maintenance of water quality, implementing Policy 15B(1) may help to achieve water quality improvements although as incidental rather than specific policy outcomes.
- 14 Mr McCallum-Clark's proposed changes to Policy 15B(1a) are shown in red:
 - 1a. *maintained by* *avoiding where reasonably practicable and otherwise ~~minimising remedying or mitigating~~ any adverse effects of other new discharges on water quality or sediment quality from new discharges to land, new discharges to groundwater or new diffuse discharges to*

⁹ Policy 17A – Community sewerage schemes and on-site wastewater systems

¹⁰ For example, Objectives 2, 4 – 6, 8, 14, 15 and 18.

water so that ~~would exacerbate~~ the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated; and

- 15 As with Policy 15B(1), the proposed changes to Policy 15B(1a) clarify that the clause applies to new discharges other than point source discharges to water addressed by clause (1), and that water quality is to at least be maintained 'as a minimum' (i.e. not made worse, and preferably improved).
- 16 Policy 15B(2) requires applications for replacement discharge permits and, with Mr McCallum-Clark's changes variations, to describe methods and programmes to avoid adverse effects on water quality where practicable, or otherwise remedy or mitigate them to improve water quality. Methods and programmes can be reflected in consent conditions and their implementation monitored and enforced. The changes to Policy 15B(2) proposed broaden the policy to include variations and more clearly seeks improvements in water quality. The changes improve the policy's alignment with the relevant objectives, particularly Objective 6(a).
- 17 The proposed changes to 15B(1) and 15B(1a) may help achieve incidental water quality improvements over time, despite not aligning well with the policy's 'improvement' heading. Tangible water quality improvements are more likely to be achieved however as discharge permits are replaced or varied and Policy 15B(2) is implemented.

Conclusion

- 18 It is important to avoid adverse effects on water quality where it is reasonably practicable to do so. It is also essential to recognise that it is not always practicable (including technically or economically feasible) to avoid all adverse effects. It is therefore essential in my view to provide a policy avenue for adverse effects on water quality to alternatively be remedied or mitigated, or minimised if a suitable definition is adopted.
- 19 Overall, I agree with the changes to Policies 15A and 15B proposed in Mr McCallum-Clark's supplementary evidence¹¹ provided 'minimising' is suitably defined in the proposed Plan. If a suitable definition is not included, I prefer the retention of the mediated versions of both policies.

Janan Dunning, 10 June 2022

¹¹ The changes to Policy 15A and 15B(2) generally align with other provisions of the proposed Plan, particularly Objectives 1 – 3, 5, 6, 8 and 14, and policies 17A and 26A regarding TLA infrastructure. The proposed changes to Policies 15B(1) and (1a) do not align well with the stated '*improve water quality*' purpose of Policy 15B.

Attachment A:

Mediated version of Policy 15A – Maintain water quality where standards are met

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by:

1. ~~avoiding, where reasonably practicable, or otherwise remedying or mitigating any the adverse effects of new discharges, so that beyond the zone of reasonable mixing, those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges); and~~
2. ~~requiring any application for replacement of an expiring discharge permit to demonstrate how the adverse effects of the discharge are avoided, remedied or mitigated, so that beyond the zone of reasonable mixing those standards or sediment guidelines will continue to be met.~~

Mediated version of Policy 15B – Improve water quality where standards are not met

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:

1. ~~avoiding where practicable and otherwise remedying or mitigating any adverse effects of new point source discharges to surface water on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and~~
 - 1a. avoiding where reasonably practicable and otherwise remedying or mitigating any adverse effects of other new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines; and
2. ~~requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated, so that beyond the zone of reasonable mixing water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).~~

Supported Amendments to Policies 15A and 15B

Policy 15A – Maintain water quality where standards are met

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality including by:

1. ~~avoiding, where reasonably practicable, or otherwise remedying or mitigating any the adverse effects of new discharges, so that beyond the zone of reasonable mixing, those standards or sediment guidelines will continue~~
avoiding, where reasonably practicable or otherwise minimising any

to be met (beyond the zone of reasonable mixing for point source discharges).

Policy 15B – Improve water quality where standards are not met

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, ~~improve~~ water quality will be including by:

1. maintained by avoiding ~~where practicable and otherwise remedying or mitigating~~ any adverse effects of new point source discharges to surface water on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and

1a. maintained by avoiding where reasonably practicable and otherwise ~~minimising remedying or mitigating~~ any adverse effects ~~of other new discharges on water quality or sediment quality from new discharges to land, new discharges to groundwater or new diffuse discharges to water so that would exacerbate~~ the exceedance of those standards or sediment guidelines is, as a minimum, not exacerbated; and

2. improved by requiring any application for the replacement of an expiring discharge permit, or the varying or seeking a different discharge permit for an existing activity, to demonstrate how and by when adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated, ~~so that beyond the zone of reasonable mixing~~ water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

Joint Witness Statement Topic B5 - Definition of 'Minimise':

"To reduce to the smallest amount reasonably practicable".