

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

UNDER the Resource Management Act
1991

IN THE MATTER of appeals pursuant to clause 14
of the First Schedule to the Act

BETWEEN **Southland Fish and Game Council**
(ENV-2018-CHC-37)

**Royal Forest and Bird Protection
Society of New Zealand Inc**
(ENV-2018-CHC-50)

**Federated Farmers of New
Zealand**
(ENV-2018-CHC-40)

AND **Southland Regional Council**

MEMORANDUM OF COUNSEL FOR BALLANCE AGRI-NUTRIENTS LIMITED

13 JULY 2022


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MAY IT PLEASE THE COURT

1. This Memorandum of Counsel is filed on behalf of Ballance Agri-Nutrients Limited (**Ballance**) in response to the direction to circulate final wording for the proposed Southland Water and Land Plan (**SWLP**) provisions.¹
2. In relation to the provisions that formed part of the disputed hearing, Ballance has an interest in Rule 14, Rule 20, Policies 15A, 15B, 16 and 16A, Appendix N, Schedule X, and the definitions of “critical source area”, “ephemeral river” and “minimise”.
3. Ballance’s final wording is recorded in the June consolidated version of the SWLP, except for the changes highlighted in yellow in Schedule 1 which Ballance proposes following the hearing of evidence.
4. As envisaged by the Court’s directions, Ballance may propose further refinements to the provisions discussed in the upcoming conference, particularly in relation to Policy 16(1)(b) and (ba) and any amendments required to Appendix N Part B clause (6) to ensure consistency with Policy 16.

DATED this 13th day of July 2022



Megan Exton

Counsel for Ballance Agri-Nutrients Limited

¹ Minute of the Environment Court dated 11 July 2022.

Schedule 1

- Amendments set out in the 10 December 2021 JWS – blue tracking
- Post JWS amendments – red tracking
- Post June consolidated version amendments – yellow highlight

EXPLANATORY NOTE²

Use of the term degraded in this regional plan differs to the definition of degraded in the National Policy Statement for Freshwater Management 2020 as this plan has not been prepared in accordance with the national objectives framework and has not identified target attribute states or environmental flows and levels.

DEFINITION – CRITICAL SOURCE AREA

- (a) a landscape feature like a gully, swale or a depression ~~(including ephemeral flow paths)~~³ 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.~~

POLICY 15B

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

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

² If the term “degraded” is used to describe the water bodies identified in Schedule X then Ballance proposes an explanatory note setting out how that term is being used in the SWLP.

³ Ballance was previously neutral on whether this term is removed or not. However, following the hearing of evidence it has refined its position and prefers that these words be deleted.

1a. For other new discharges:

- i. where the discharge is replacing an existing discharge(s) within the same landholding, ensuring no net increase of adverse effects on water quality or sediment quality so that the exceedance of those standards or sediment guidelines is not exacerbated; and
 - ii. where (i) does not apply, avoiding where reasonably practicable ~~and or~~ otherwise remedying or mitigating any adverse effects ~~of other new discharges~~ on water quality or sediment quality so that ~~would exacerbate~~ the exceedance of those standards or sediment guidelines is not, ~~as a minimum, exacerbated~~; and
2. requiring any application for replacement of an expiring discharge permit, or seeking a discharge permit for an existing but previously unconsented discharge, to demonstrate how and by when adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated, so that beyond the zone of reasonable mixing water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

APPENDIX N⁴

...

Part A – Farm Environmental Management Plans

The following Farm Environmental Management Plan (FEMP) Purpose Statement must be included in all FEMPs prepared in accordance with this appendix.

FEMP Purpose Statement

This FEMP contributes to the management of Southland’s water and land resources under the Southland Water and Land Plan (the SWLP) which embodies ki uta ki tai and upholds Te Mana o Te Wai. These concepts are to be at the forefront of water and land management in the FEMP.

The SWLP must give effect to the Objectives of the SWLP, including Objectives 1 and 2 which are fundamental to the SWLP. These objectives are:

⁴ Only parts that are subject to further amendment to the June consolidated version are included.

Objective 1 (of the SWLP) - 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 (of the SWLP) - The mauri of water provides for te hauora o te taiao (health and mauri of the environment), te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).

This FEMP must contribute to achieving Objectives 1 and 2.

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

...

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:

...

(g) Habitat management: To manage activities within waterways, natural wetlands, and their margins, so that in-stream and riparian habitat values are not diminished, and where practicable are improved.

...

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

1. Farm Environmental Management Plan Certification

(a) The FEMP must be certified, prior to implementation on the farm, by an **independent** Suitably Qualified Person (SQP) that has been approved as such by the Chief Executive of Southland Regional Council.

(b) The purpose of FEMP certification is to confirm that the farming activities on the farm will be carried out in a way that will achieve the Objectives in this Appendix; **will contribute to achieving Objectives 1 and 2 set out in the FEMP Purpose Statement; and will comply with any resource consent for the property.**

(c) The FEMP must be re-certified, prior to implementation, following any amendments to the FEMP carried out in accordance with Part C(3)(a) of this appendix.

(d) Within one month of a FEMP being certified, a copy of the certified FEMP must be provided to the Southland Regional Council.

...

3. Review and Amendment of the Farm Environmental Management Plan

The FEMP must be reviewed, by the landholding owner, or their agent, as follows:

(a) when there is a material change (including a change in crop area, crop rotation length, type of crops grown, stocking rate or stock type)⁵ to the nature of the farming activities occurring on the landholding, and where that material change is not provided for within the landholding's certified FEMP; and

(b) at least once every 12 months; and

(c) to respond to the outcome of an audit.

The outcome of the review is to be documented and amendments to the FEMP must be made where Part C(3)(a) applies and in circumstances where the annual review identifies that amendments are required.

⁵ This change clarifies what is meant by "material change" and uses wording contained in clause (4).