

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

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

A N D

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

BETWEEN **SOUTHLAND FISH AND GAME COUNCIL**
(ENV-2016-CHC-37)

**ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND
INCORPORATED**
(ENV-2016-CHC-50)

Appellants

A N D **SOUTHLAND REGIONAL COUNCIL**

Respondent

**WILL SAY STATEMENT OF EVIDENCE OF SUSAN CLARE RUSTON
ON BEHALF OF BALLANCE AGRI-NUTRIENTS LIMITED (s 274 PARTY)**

PLANNING (TOPIC B)

29 October 2021


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Introduction

1. My full name is Susan Clare Ruston.
2. I am an experienced environmental planner and Director of PPM Consulting Limited. I hold the qualification of a Bachelor of Forestry Science (Hons) degree from the University of Canterbury (1989); and an Executive Masters in Public Administration from Victoria University of Wellington (2011). I have also completed studies in Law and Mediation, Planning Law, Business Law, and Legal Method at Massey University and the University of Waikato. I am a member of the Resource Management Law Association, the New Zealand Planning Institute, and the Resolution Institute. I have over 30 years of experience in resource management and planning from within central and local government, and the private sector.

Code of Conduct

3. I confirm that for the purposes of this will say statement, and participating in the upcoming conferencing, I agree to comply with the Code of Conduct for Expert Witnesses in the 2014 Environment Court Practice Note.

Scope

4. This 'will say' statement of evidence is:
 - (a) Focused on the matters set out in the notices of Ballance Agri-Nutrients Limited (**Ballance**) to become a party (pursuant to section 274 of the Resource Management Act 1991) to the appeals filed by the Southland Fish and Game Council (**F&G**) and by the Royal Forest and Bird Protection Society of New Zealand Incorporated (**F&B**) with respect to

the decisions of Southland Regional Council on the proposed Southland Water and Land Plan (**pSWLP**); and

- (b) In accordance with the directions of the Environment Court in the Record of Pre-hearing Conference dated 22 October 2021, limited to a tracked change version of the relief sought in Topic B, and to how the proposed relief implements relevant objectives and policies.

Tracked change relief

5. **Attached** at Appendix A to this statement of evidence, is the tracked change relief I recommend to the Topic B provisions in which Ballance has an interest. For completeness these include:

Topic B2 - Policy 13

Topic B2 – Policy 15A

Topic B2 – Policy 15B

Topic B2 – Policy 15C

Topic B2 – Rule 14

Topic B5 – Policy 16

Topic B5 – Rule 20

Topic B5 – Rule 25

Topic B5 – Appendix N

Topic B issues

6. Mr McCallum-Clarke's evidence dated 22 October 2021 identifies "*the 'fundamental' issues of Topic B*" and I agree with the issues identified. With respect to the matters that Ballance is a party to (pursuant to s274 of the Act), the issues of particular interest to Ballance are ephemeral rivers, waterbody setbacks and farm environmental management plan content. On this basis, the structure of this 'will say' statement addresses these three topics in turn.

Ephemeral rivers

7. Rules 14, 20 and 25 (of which are of interest to Ballance) each include an exclusion such that a provision would not apply to ephemeral rivers.

8. There are three types of ‘rivers’ referred to in the pSWLP as follows:

The definition of an “*Intermittent river*” in the pSWLP is:

“A river which does not contain permanently flowing or standing water and where the bed is predominantly devoid of terrestrial vegetation and comprises sand, gravel, boulders, or similar material or aquatic vegetation”.

The definition of an “*Ephemeral river*” in the pSWLP is:

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

The definition of a “*Critical source area*” in the pSWLP is:

“(a) a landscape feature like a gully, swale or a depression 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) 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.”

9. The definition of ephemeral rivers has no clear connection to the bed of the waterbody, nor does it define the scale of rainfall event within which water would flow or stand. This definition differs from the definition of an intermittent river which has a clear relationship to the bed of the waterway.

10. Also, contrary to the definition of a critical source area, the definition of an ephemeral river does not refer to it 'delivering water or contaminants to a surface water body'. On this basis, I understand that an ephemeral river does not necessarily have to have a recognisable bed, or deliver water or contaminants to a surface water body (otherwise it would fit within the definition of intermittent river or critical source area). Rather, an ephemeral river is likely to be dry and grazable other than during rainfall events.
11. On this basis, I consider that the reference to "*river*" in the term "*ephemeral river*" is problematic, and that '*ephemeral flow path*' is a more appropriate term for this type of waterbody. If there was scope to add a new definition for ephemeral flow path, I consider that "*flowing or standing water following a 1 in XX year rainfall events*" would assist, where the scale of rainfall event to be inserted into this definition should be identified by an appropriate expert (of which I am not).
12. Grouping ephemeral flow paths with "*rivers*", including "*intermittent rivers*" is, in my opinion unnecessarily restrictive to the practical management of farming activities, particularly as they do not 'deliver surface runoff to surface water bodies'.

How provisions implement relevant Objectives and Policies

13. Renaming 'ephemeral rivers' as 'ephemeral flow paths' and excluding them from the controls in Rules 14, 20 and 25, in my opinion, better achieves Objectives 1 and 2 as these changes more clearly reflect the relationship between the freshwater and surrounding land in these instances and provides for the mauri of the water. Further to this, the same changes, in my opinion, better achieve Objectives 3 and 13 by enabling the large tracts of land in

Southland that will have ephemeral flow paths to be used for productive purposes when they are not wet.

14. For completeness, I support inclusion of provisions to control the potential effects of farming activities on rivers (including intermittent rivers) and critical source areas, as these provisions importantly contribute to improving water quality in degraded water bodies, and to the achievement of Objectives 2, 6 and 8 (amongst others); and Policies 15A and 15B.

Evidence required

15. Ballance intends to rely on the expert technical evidence of other parties.

Waterbody setbacks

16. Rules 14, 20 and 25 (of which are of interest to Ballance) each include setbacks for activities from waterbodies.
17. With respect to Rule 14, my proposed amendments generally reflect the agreed mediation amendments as at 23 April 2021. For completeness I note that there were two outstanding matters at the time of mediation and these were the setback distances where no fertiliser was to be discharged, and the exclusion of ephemeral rivers.
18. With respect to the setback distances identified in Rule 14(a)(iii), Ballance has advised me that the accuracy of fertiliser placement equipment, and compliance with the fertiliser industry's codes of best practice, provide sufficient assurance that a fertiliser setback of 3 metres is sufficient to avoid unintended movement of fertiliser to waterbodies. At the same time, the National Policy Statement for Freshwater Management 2020 and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 recognise the importance of natural inland wetlands and the heightened

importance of protecting their values. Accordingly a larger setback for such waterbodies further reduces the risk of contaminants entering sensitive environments.

19. With respect to Rule 20(a)(iii)(4) the decisions version of the pSWLP requires that *“a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 5 metres”*. Based on the evidence available at this time, I support this setback. This reflects that stock exclusion and the maintenance of a vegetated strip are both required to satisfy this rule, and that together they address potential sediment and nutrient losses. Requiring different setbacks for different slopes (as sought in the Southland Fish and Game Council Notice of Appeal) can confuse land owners, lead to unintended non-compliances and work against achieving the pSWLP’s water quality and economic objectives.
20. With respect to Rule 20(a)(iii)(5) the decisions version of the pSWLP requires that *“intensive winter grazing does not occur within 20 metres of the outer edge of the bed of any Regionally Significant Wetland or Sensitive Waterbodies listed in Appendix A, estuary or the coastal marine area”*. Based on the evidence available at this time, I support this setback. I consider that this reflects the sensitive nature of the receiving environment, and the potential effects of intensive winter grazing.
21. With respect to Rule 20(b) the decisions version of the pSWLP requires that *“*
“The use of land for a farming activity that includes intensive winter grazing on the landholding and which meets all conditions of Rule 20(a) other than condition (iii)(3) is a permitted activity, provided that:

(i) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake,

river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 20 metres.”

22. Based on the evidence available at this time, I support this setback. I consider that this reflects the need for additional controls of contaminant losses when other mechanisms (as listed in 20(a)(iii)(3)) for the same outcome have not been adopted.
23. Rule 25(a)(ii) of the decisions version of the pSWLP requires that *“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;”*
24. Based on the evidence available at this time, I support this setback. As previously discussed, while Southland Fish and Game Council are seeking graduated setback requirements based on slope categories, this approach can confuse land owners, lead to unintended non-compliances and work against achieving the pSWLP’s water quality and economic objectives.

How provisions implement relevant Objectives and Policies

25. In my opinion, increasing the fertiliser discharge setback from natural inland wetlands better supports, in particular, Objectives 14 and 15 (along with the other water quality objectives) and Policies 15A and 15B of the pSWLP.
26. Further to this, setbacks generally are an important method for achieving all of the objectives and policies in the pSWLP that are related to maintaining or improving water quality. However, the size of the setback determines the loss of productive use of land and the associated economic and social costs to communities. Based on the evidence before me, I understand that setbacks of

greater than 20m offer little marginal gain in contaminant management, and at the same time increase the loss of productive use of the land. The marginal gain in contaminant management comes at an increasing cost to the economy. Working within the limit of effectiveness of a 20m setback, in my opinion, better supports Objectives 3 and 13, while also supporting achievement of the pSWLP water quality objectives.

Evidence required

27. Ballance intends to rely on the expert technical evidence of other parties.

Farm environmental management plan content

28. Farm Environmental Management Plans are key instruments for ensuring that the pSWLP water quality objectives are met. They direct onsite risk identification and management that is tailored to the characteristics of specific properties and farm types.
29. With respect to Farm Environmental Management Plans (Appendix N) of the pSWLP, the key changes sought in Appendix A of this evidence are:
- a) Recognition that Freshwater Farm Plans in accordance with Part 9A of the Act may be a requirement in Southland in the future, and their relationship with Farm Environmental Management Plans under the pSWLP;
 - b) Mapping of critical source areas of the landholding;
 - c) Mapping of the slope of land where cultivation or intensive winter grazing is to occur;
 - d) That the Farm Environmental Management Plan must be prepared by a Certified Nutrient Management Advisor;
 - e) That an environmental risk management plan must be undertaken;
 - f) That specific farming practices will be implemented, within identified timeframes, to ensure set objectives are met with respect to irrigation

design, installation and management; nutrient and soil management; management of waterbodies and critical source areas; collected animal effluent management; and drainage;

- g) That planning good management practices addresses the coming 10 year period; and
- h) Establishing the requirements for certification, auditing and reviewing of Farm Environmental Management Plans.

How provisions implement relevant Objectives and Policies

- 30. Each of the changes in Appendix A of this evidence, with respect to Farm Environmental Management Plans, in my opinion strengthens the identification and management of environmental risks on farms. This in turn, better supports achievement of Objectives 1, 2, 6, 8 and 9/9A, and Policies 15A, 15B, 16 and 17.

Evidence required

- 31. Ballance intends to rely on the expert technical evidence of other parties.

Other matters

- 32. In addition to the preceding “fundamental issues of Topic B”, Ballance is also a party to the F&G appeals on Policies 13 and 16; and to the F&B appeals on Policies 13, 15A, 15B, 15C and 16.
- 33. Policy 13 was the subject of Topic B2 mediation and is identified in the Memorandum of Counsel for Southland Regional Council dated 24 September 2021 (page 19) as being unresolved. I understand that the question of whether the decision version of Policy 13 should be replaced with the notified version was deferred for consideration given its relationship to Policies 15A and 15B. For completeness, I do not recommend further changes to the agreed

mediated version of Policy 13 following my considerations of Policies 15A and 15B. Rather I consider the mediated version of Policy 13 supports achievement of Objectives 3 and 13, and Objectives 1, 2 and 6 (amongst others).

34. Policies 15A and 15B were the subject of Topic B2 mediation and are identified in the Memorandum of Counsel for Southland Regional Council dated 24 September 2021 (page 19) as being unresolved. I understand the wording of Policy 15A was agreed in the Topic B2 hearing, as stated in paragraph 6.6.4 of the Mediated Agreement dated 1 April 2021. With respect to Policy 15B, I have considered the questions listed in Issues 7 and 8 on page 19 of the Memorandum of Counsel for Southland Regional Council dated 24 September 2021 and consider that no changes are needed to Policy 15B.
35. Policy 15C was the subject of Topic B2 mediation and is identified in the Memorandum of Counsel for Southland Regional Council dated 24 September 2021 (page 19) as being unresolved. I understand that all parties, other than DairyNZ and Fonterra, agreed to delete Policy 15C, and for completeness and I continue to support its deletion.
36. Policy 16 addresses farming activities that affect water quality. Appendix A of this evidence proposes amendments to Policy 16 that ensures that “any new, or further intensification of any existing dairy farming of cows or intensive winter grazing activities, where the activity would increase contaminant losses to Regionally Significant Wetlands and Sensitive Water Bodies” are avoided; and new or further intensification of any existing dairy farming of cows or intensive winter grazing activities that would adversely affect other waterbodies are strongly discouraged. In my opinion this improves clarity of the policy and better supports achievement of Objectives 1, 2, 6, and 8 (amongst others), and Policies 15A and 15B.

Conclusions

37. For the reasons outlined in this evidence, I consider that the changes indicated in Appendix A of this evidence better deliver on the objectives and policies of the pSWLP.

Sue Ruston

29 October 2021

Appendix A – tracked change relief sought by Ballance

Guidance for interpreting the following tracked changes:

- Amendments made through Mediation Agreements are shown in blue underlining for additions and red ~~strikethrough~~ for deletions.
- Ballance Agri-Nutrients Limited's requested tracked changes to the decisions version of the pSWLP and any mediated agreements are in red underlining for additions and red ~~strikethrough~~ for deletions.

1. TOPIC B2 – POLICY 13

1. Recognise that the use and development of Southland's land and water resources, including for primary production, enables people and communities to provide for their social, economic and cultural wellbeing.
2. Manage land use activities and discharges (point source and non-point source) to enable the achievement of Policies 15A, 15B and 15C.

2. TOPIC B2 – 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.~~

3. TOPIC B2 - 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 discharges 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. requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where 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.

4. TOPIC B2 – POLICY 15C, MAINTAINING AND IMPROVING WATER QUALITY AFTER FMU PROCESSES

~~Following the establishment of freshwater objectives and limits under Freshwater Management Unit processes, and including through implementation of non-regulatory methods, improve water quality where it is degraded to the point where freshwater objectives are not being met and otherwise maintain water quality where freshwater objectives are being met.~~

5. TOPIC B2 – RULE 14, DISCHARGE OF FERTILISER

- (a) The discharge of fertiliser onto or into land in circumstances where contaminants may enter water is a permitted activity provided the following conditions are met:

- (i) other than for incidental discharges of windblown fertiliser dust, there is no direct discharge of fertiliser into a lake, river (excluding ephemeral flow paths rivers), artificial watercourse, modified watercourse, or natural wetland or into groundwater;

- (ii) there is no fertiliser discharged when the soil moisture exceeds field capacity;

~~(iii) there is no fertiliser discharged directly into or within 3 metres of the boundary of any significant indigenous biodiversity site identified in a district plan that includes surface water; and~~

~~(iv) where a lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse or wetland:~~

~~(1) has riparian planting from which stock is excluded, fertiliser may be discharged up to the paddock-side edge of the riparian planting but not onto the riparian planting, except for fertiliser required to establish the planting; or~~

~~(2) does not have riparian planting from which stock is excluded, fertiliser is not discharged directly into or within 3 metres of the bed or within 3 metres of a wetland.~~

(iii) there is no fertiliser directly discharged within:

(1) 3 metres of the boundary of any significant indigenous biodiversity site identified in a district plan that includes surface water;

(2) any area of riparian planting (except for fertiliser required to establish the planting);

(3) 3 metres of the bed of a lake, river (excluding ephemeral flow paths rivers), artificial watercourse or modified watercourse whether or not there is riparian planting; and

(4) 10 metres of a natural wetland.

- (b) The discharge of fertiliser onto or into land in circumstances where the fertiliser may enter water that does not meet the conditions of Rule 14(a) is a non-complying activity.

6. TOPIC B5 - POLICY 16, FARMING ACTIVITIES THAT AFFECT WATER QUALITY

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

- (a) ~~discouraging 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, where the activity would increase contaminant losses to, in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and

- (b) ~~ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications~~ decision makers strongly discouraging the granting of any resource consents to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities ~~will generally not be granted~~ where:

- (i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided, where reasonably practicable, or otherwise remedied or mitigated; or

- (ii) existing water quality is already degraded to the point of being overallocated; or

- (iii) water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines; and

- ~~(c) ensuring that, after the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities:~~

- ~~(i) will generally not be granted where freshwater objectives are not being met; and~~

~~(ii) where freshwater objectives are being met, will generally not be granted unless the proposed activity (allowing for any offsetting effects) will maintain the overall quality of groundwater and water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes.~~

2. Requiring all farming activities, including existing activities, to:
 - (a) implement a Farm Environmental Management Plan as set out in Appendix N;
 - (b) actively manage sediment run-off risk from farming and hill country development by identifying critical source areas and implementing good management 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
 - (c) manage collected and diffuse run-off and leaching of nutrients, microbial contaminants and sediment through the identification and management of critical source areas within individual properties.
3. When considering a resource consent application for farming activities, consideration should be given to the following matters:
 - (a) whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be addressed in a single resource consent; and
 - (b) granting a consent duration of at least 5 years, where doing so is consistent with Policy 40.

7. TOPIC B5 - RULE 20, FARMING

Advice note: For regulations on intensive winter grazing refer to the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

- (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~~ flow path is a permitted activity.
- (a) The use of land for a farming activity is a permitted activity provided the following conditions are met:
 - (i) the landholding is less than 20 hectares in area; or

- (ii) where the farming activity includes a dairy platform on the landholding, the following conditions are met:
- (1) the dairy platform has a maximum of 20 cows; or
 - (2) the dairy platform had a dairy effluent discharge permit on 3 June 2016 that specified a maximum number of cows; and
 - (3) cow numbers have not increased beyond the maximum number specified in the dairy effluent discharge permit that existed on 3 June 2016; and
 - (4) from ~~1 May 2019~~ [Date to be inserted], a certified Farm Environmental Management Plan for the landholding is prepared, ~~and~~ implemented and audited in accordance with Appendix N; and
 - (5) the landowner provides to the Southland Regional Council on request:
 - (A) a written record of the good management practices, including any newly instigated good management practices in the preceding 12 months, occurring on the landholding; and
 - (B) the Farm Environmental Management Plan prepared in accordance with Appendix N;
 - (6) the land area of the dairy platform is no greater than at 3 June 2016; and
 - (7) no part of the dairy platform is at an altitude greater than 800 metres above mean sea level; and
- (iii) where the farming activity includes intensive winter grazing on the landholding, the following conditions are met:
- ~~(1) from 1 May 2019, intensive winter grazing does not occur on more than 15% of the area of the landholding or 100 hectares, whichever is the lesser area;~~
 - (2) from 1 May 2019, a Farm Environmental Management Plan for the landholding is prepared and implemented in accordance with Appendix N;
 - (3) from 1 May 2019, all of the following practices are implemented:
 - (A) if the area to be grazed is located on sloping ground, stock are progressively grazed (break-fed or block-fed) from the top of the slope to the bottom, or a 20 metre 'last-bite' strip is left at the base of the slope;
 - (B) when the area is being break-fed or block-fed, the stock (excluding sheep and deer) are back fenced to prevent stock entering previously grazed areas;

- (C) transportable water trough(s) are provided in or near the area being grazed to prevent stock accessing a lake, river (excluding ephemeral ~~rivers~~ flow paths), artificial watercourse, modified watercourse or natural wetland for drinking water;
 - (D) if supplementary feed (including baleage, straw or hay) is used in the area being grazed it is placed in portable feeders;
 - ~~(E) if cattle or deer are being grazed the mob size being grazed is no more than 120 cattle or 250 deer; and~~
 - (F) critical source areas ~~(including swales)~~ within the area being grazed that accumulate runoff from adjacent flats and slopes are grazed last;
- (4) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 5 metres;
 - (5) from 1 May 2019, intensive winter grazing does not occur within 20 metres of the outer edge of the bed of any Regionally Significant Wetland or Sensitive Waterbodies listed in Appendix A, estuary or the coastal marine area; and
 - ~~(6) no intensive winter grazing occurs at an altitude greater than 800 metres above mean sea level; and~~
- (iv) for all other farming activities, from ~~1 May 2020~~ [Date to be inserted] a certified Farm Environmental Management Plan is prepared, ~~and~~ implemented and audited in accordance with Appendix N.
- (b) The use of land for a farming activity that includes intensive winter grazing on the landholding and which meets all conditions of Rule 20(a) other than condition (iii)(3) is a permitted activity, provided that:
 - (i) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of a lake, river (excluding ephemeral ~~rivers~~ flow paths where intensive winter grazing is permitted under Rule 20(aa)), artificial watercourse, modified watercourse or natural wetland for a distance of at least 20 metres.
 - (c) Despite any other rule in this Plan, the use of land for a dairy platform or intensive winter grazing at an altitude greater than 800 metres above mean sea level is a prohibited activity.
 - (d) The use of land for a farming activity that does not meet ~~s all any~~ any conditions of Rule 20(a) other than (i), (ii), ~~(iii)(1), or~~ (iii)(4) or (iii)(5) or does not meet

condition (i) of Rule 20(b) is a restricted discretionary activity, provided the following conditions are met:

- (i) a certified Farm Environmental Management Plan is prepared, ~~and~~ implemented and audited in accordance with Appendix N; and
- (ii) the application includes the following material, prepared by a suitably qualified person:
 - (1) an assessment that shows that the annual amount of nitrogen, phosphorus, sediment and microbiological contaminants discharged from the landholding will be no greater than that which was lawfully discharged annually on average for the five years prior to the application being made; and
 - (2) for any mitigation proposed, a detailed mitigation plan (taking into account contaminant loss pathways) that identifies the mitigation or actions to be undertaken including any physical works to be completed, their timing, operation and their potential effectiveness.

The Southland Regional Council will restrict its discretion to the following matters:

1. the quality of and compliance with the Farm Environmental Management Plan for the landholding;
2. whether the assessment undertaken under Rule 20(d)(ii) above takes into account reasonable and appropriate good management practices to minimise the losses of contaminants from the existing farming activity;
3. good management practices to be undertaken, including those to minimise the discharge of nitrogen, phosphorus, sediment and microbiological contaminants to water from the use of land, taking into account contaminant loss pathways;
4. the potential benefits of the activity to the applicant, the community and the environment;
5. the potential effects of the farming activity on surface and groundwater quality and sources of drinking water; and
6. monitoring and reporting undertaken to assess the effectiveness of any mitigation implemented. (e) The use of land for a farming activity that is not specified as a permitted, restricted discretionary or prohibited activity under Rule 20 is a discretionary activity.

8. TOPIC B5, RULE 25 - CULTIVATION ON SLOPING GROUND

- (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~~ flow paths where cultivation is permitted under Rule 20(aa)), headwater seep / spring, tarn, 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~~ flow paths 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; and
 - (v) cultivation is not undertaken in critical source areas for the purpose of establishing forage crops used for intensive winter grazing.
- (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;

2. 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.

9. Topic B5, APPENDIX N – FARM ENVIRONMENTAL MANAGEMENT PLAN REQUIREMENTS

A Farm Environmental Management Plan must be:

- a) A certified Freshwater Farm Plan prepared, implemented and audited in accordance with regulations prepared in accordance with Part 9A of the Resource Management Act 1991 and which apply within the Southland region under an Order in Council; or
- b) If Freshwater Farm Plans, in accordance with Part 9A of the Resource Management Act 1991, are not yet required in the Southland region in accordance with an Order in Council, a Farm Environmental Management Plan in accordance with Parts A to C below.

Part A – Farm Environmental Management Plans

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

1. the material set out in Part B below; or
2. industry prepared FEMP templates and guidance material, with Southland-specific supplementary material added where relevant, so that it includes the material set out in Part B below.

Part B – Farm Environmental Management Plan Content

~~1. A written FEMP that is:~~

- ~~(a) prepared and retained, identifying the matters set out in clauses 2 to 5 below;~~
- ~~(b) reviewed at least once every 12 months by the landholding owner or their agent and the outcome of the review documented; and~~
- ~~(c) provided to the Southland Regional Council upon request.~~

2.1. The FEMP contains the following landholding details:

- (a) physical address;
- (b) description of the landholding ownership and the owner's contact details;
- (c) legal description(s) of the landholding; ~~and~~

- (d) the type of farming activities occurring on the landholding, including the areas of the farm where specific types of farming occurs; and
- (e) a list of all resource consents held for the landholding and their expiry dates.
32. The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:
- (a) the boundaries;
 - (b) the physiographic zones (and variants where applicable) and soil types (or Topoclimate South soil maps);
 - (c) all lakes, rivers, streams, ponds, artificial watercourses, modified watercourses and natural wetlands where water is present permanently or intermittently;
 - (d) any critical source areas;
 - (d) all existing and proposed riparian vegetation and fences (or other stock exclusion methods) adjacent to water bodies;
 - (f) places where stock access or cross water bodies (including bridges, culverts and fords);
 - (g) all known subsurface drainage system(s) and the locations of the drain outlets;
 - (h) all land that may be cultivated and land to be cultivated over the next 12-month period;
 - (i) all land that may be intensively winter grazed and the land to be planted for winter grazing for the next period 1 May to 30 September; and
 - (j) for land to be cultivated or intensively winter grazed:
 - (i) critical source areas;
 - (ii) intended setbacks from any lake, river (including any intermittent river but excluding ephemeral rivers-flow paths), artificial watercourses, modified watercourse or natural wetland; and
 - (iii) the slope of the land where the cultivation or intensive winter grazing is to occur with a slope greater than 20 degrees.

43. Nutrient Budget

~~For all landholdings over 20ha,~~ The FEMP contains a nutrient budget (which includes nutrient losses to the environment) calculated using the latest version of the OVERSEER model in accordance with the latest version of the OVERSEER Best Practice Data Input Standards (or an alternative model risk assessment tool approved by the Chief Executive of Southland Regional Council), and which is repeated:

- (a) where a material change in land use associated with the farming activity occurs (including a change in crop area, crop rotation length, type of crops grown, stocking rate or stock type) at the end of the year in which the change occurs, and also every three years after the change occurs; and
- (b) each time the nutrient budget is repeated all the input data used to prepare it shall be reviewed by or on behalf of the landholding owner, for the purposes of ensuring the nutrient budget accurately reflects the farming system. A record of the input data review shall be kept by the landholding owner.

The nutrient budget must be prepared by a Certified Nutrient Management Advisor.

4. Environmental risk management

The FEMP must include an assessment, of the potential environmental risks, including to water quality, associated with the farming activities on the landholding and how the identified environmental risks will be managed, reduced and/or mitigated.

Examples of farming activities which have potential environmental risks, included, but are not limited to, irrigation, application of nutrients, effluent application, stock management, cultivation, and drainage maintenance.

5. Farm Environmental Management Plan - Objectives

The FEMP must identify defined and auditable descriptions of farming practices that will be implemented, including implementation timeframes where necessary, in a manner consistent with the following objectives:

(a) **Irrigation system designs and installation:** To ensure that all new and upgraded irrigation systems meet industry best practice standards.

(b) **Irrigation management:** To ensure efficient on-farm water use that meets crop demands and minimises contaminant losses to waterbodies.

(c) **Nutrient and soil management:** To ensure that nutrient and sediment losses from farming activities to ground and surface water are minimised, and avoid inefficient nutrient use.

(d) **Waterbodies and critical source area management:**

To exclude stock from waterbodies in accordance with national regulation and the rules of the pSWLP, and to minimise stock damage to the beds and margins of all other waterbodies.

To minimise nutrient, sediment and microbial pathogens to surface water and groundwater.

(e) **Collected animal effluent management:** To manage animal effluent systems to control and minimise contaminant losses to waterbodies; and

(f) **Drainage maintenance:** To manage drainage maintenance activities to ensure that contaminant losses to waterbodies are controlled and minimised.

The FEMP may also identify additional objectives relevant to the farming activities occurring on the landholding and/or to address environmental risks identified in accordance with Part (4) above. Where additional objectives are identified, the FEMP must identify defined and auditable descriptions of farming practices that will be implemented, including implementation timeframes where necessary, in a manner consistent with the identified objective.

6. Good Management Practices

The FEMP contains a good management practices section which identifies:

- (a) the good management practices implemented since 3 June 2016; and
- (b) the good management practices which will be undertaken over the coming 12-month period, as well as those planned for the next 10 years, including implementation timeframes. These must include practices for:
 - (i) the reduction of sediment and nutrient losses from critical source areas, particularly those associated with overland flow;
 - (ii) cultivation (including practices such as contour ploughing, strip cultivation or direct drilling);
 - (iii) the use of land for intensive winter grazing ~~(including those practices specified in Rule 20(a)(iii));~~
 - (iv) riparian areas (including those from which stock are excluded under Rule 70) and the type of riparian vegetation to be planted, how it will be maintained and how weeds will be controlled; ~~and~~
 - (v) minimising of the discharge of contaminants to surface water or groundwater from drainage maintenance activities; and
 - (vi) minimising of the discharge of contaminants to surface water or groundwater, with particular reference to the contaminant pathways identified for the landholding.
- (c) The records to be kept for measuring implementation, performance and achievement of good management practices.

The FEMP must also set out practices, requirements and actions that go beyond good management practices where they are required in

accordance with any conditions attached to resource consents associated with the landholding or to achieve the objectives in Part B(5) above.

Examples of general good management practices are provided on the Southland Regional Council, DairyNZ and Beef and Lamb New Zealand websites and in the document titled “Industry-agreed Good Management Practices relating to water quality, Version 2, 18 September 2015”.

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

1. Farm Environmental Management Plan Certification

The FEMP must be certified, prior to implementation on the farm, by a Certified Nutrient Management Advisor. The certifier must be a Certified Nutrient Management Advisor.

The purpose of FEMP certification is to confirm that the FEMP complies with the requirements of this appendix.

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

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

2. Auditing of the certified Farm Environmental Management Plan

Within 12 months of the landholding’s first FEMP being certified, the landholding owner must arrange for an audit of the farming activities compliance with the certified FEMP. Thereafter, the frequency of auditing will be in accordance with the conditions of consents held for the landholding, or alternatively, auditing timeframes associated with the audit grade assigned. The auditor must be a Certified Nutrient Management Advisor.

Note: Southland Regional Council will provide, on its website, a schedule of the auditing frequency required for each FEMP based on the audit grade assigned to each landholding.

After completing the audit, the auditor must prepare a report stating whether the landholding compliance with the certified FEMP, or whether it does not achieve compliance and a compliance grade in accordance with Southland Regional Council’s grading schedule.

Where the audit concludes that the farming activities do not comply with the certified FEMP, the report must identify the reasons that the farm failed to achieve compliance and identify when compliance must be achieved and how it may be achieved. The auditor must provide the landholding owner with sufficient time, but no more than three months, to achieve compliance in accordance with the actions identified in the report and/or provide the landholding owner with a reasonable opportunity to respond. After the prescribed period for addressing the

issues identified in the audit report has expired, the auditor must prepare a final audit report that:

- (a) sets out the auditor's findings, including the findings of the first report and an update on these findings;
- (b) stating whether compliance has been achieved and the final compliance grade; and
- (c) any other recommendations from the auditor.

Within one month, of the final audit report being prepared, the audit report must be provided to the Southland Regional Council by the auditor.

3. Review and Amendment of the Farm Environmental Management Plan

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

- (a) when there is a material change to the nature of the farming activities occurring on the landholding, and where that material change is not provided for within the landholding's certified FEMP;
- (b) at least once every 12 months; and
- (c) to respond to audit outcomes.

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.