

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

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

BETWEEN

TRANSPOWER NEW ZEALAND LIMITED
(ENV-2018-CHC-26)

FONTERRA CO-OPERATIVE GROUP
(ENV-2018-CHC-27)

HORTICULTURE NEW ZEALAND
(ENV-2018-CHC-28)

ARATIATIA LIVESTOCK LIMITED
(ENV-2018-CHC-29)

WILKINS FARMING CO
(ENV-2018-CHC-30)

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**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL -
REPORTING MEMORANDUM
10 July 2020**

Judicial Officer: Judge Borthwick

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**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL DISTRICT COUNCIL**
(ENV-2018-CHC-31)

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

H W RICHARDSON GROUP
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND
(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)

ALLIANCE GROUP LIMITED
(ENV-2018-CHC-39)

FEDERATED FARMERS OF NEW ZEALAND
(ENV-2018-CHC-40)

HERITAGE NEW ZEALAND POUHERE TAONGA
(ENV-2018-CHC-41)

STONEY CREEK STATION LIMITED
(ENV-2018-CHC-42)

THE TERRACES LIMITED
(ENV-2018-CHC-43)

CAMPBELL'S BLOCK LIMITED
(ENV-2018-CHC-44)

ROBERT GRANT
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, KODANSHA
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NEW ZEALAND**
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA,
WAIHOPAI RUNAKA, TE RUNANGA O AWARUA & TE
RUNANGA O ORAKA APARIMA**
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LIMITED
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) in respect of the appeals against the Council's decision on the proposed Southland Water and Land Plan (**pSWLP** or **Plan**).
- 2 This Memorandum responds to the Court's directions as set out in its Second Interim Decision¹ and its Minute dated 29 June 2020.²
- 3 The Second Interim Decision directed the parties to confer and confirm where in the pSWLP the Interpretation Statement is to be included and secondly, whether the statement needs to be introduced by reference to the persons to whom it applies.
- 4 In the Minute, the Council was directed to, having conferred with the other parties, file a reporting memorandum by Friday 10 July 2020 in response to the matters raised by the Court on:
 - (a) Sub-clause (b) of Objective 9 / 9A;³
 - (b) Objective 10;⁴
 - (c) Policy 3;⁵
 - (d) Policies 4-12A and Policy 16;⁶ and
 - (e) Policies 45-47.⁷
- 5 Counsel for the Council has conferred with the parties as to their position on the matters set out in the Second Interim Decision and the Minute.
- 6 Responses were received from the following parties:
 - (a) Gore District Council, Southland District Council, and Invercargill City Council (**Territorial Authorities**);

¹ [2020] NZEnvC 93.

² And as subsequently altered in response to a Memorandum of Counsel filed on behalf of Royal Forest and Bird Protection Society of New Zealand and Southland Fish and Game Council on 2 July 2020, extending the date for filing this Memorandum until 10 July 2020.

³ See paragraph [6] of the Court's Minute.

⁴ See paragraphs [11]-[12] of the Court's Minute.

⁵ See paragraph [19] of the Court's Minute in relation to scope to include taonga species in the Plan.

⁶ See paragraph [22] of the Court's Minute.

⁷ See paragraph [23] of the Court's Minute.

- (b) Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Runanga o Ngai Tahu (**Ngā Rūnanga**);
- (c) Waiau Rivercare Group;
- (d) Meridian Energy Limited;
- (e) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**);
- (f) Southland Fish and Game Council (**Fish & Game**);
- (g) Ravensdown Limited;
- (h) Ballance Agri-Nutrients Limited;
- (i) Federated Farmers of New Zealand (**Federated Farmers**);
- (j) Horticulture New Zealand;
- (k) Director-General of Conservation;
- (l) Fonterra Co-operative Group Limited (**Fonterra**);
- (m) DairyNZ Limited; and
- (n) Aratiatia Livestock Limited.

7 The parties' position(s) on these matters is set out below.

Location of Interpretation Statement

8 The Court directed the parties to confer and confirm where in the pSWLP the Interpretation Statement is to be included.⁸

9 The parties confirm⁹ that the Interpretation Statement should be located between the existing "Note" (under the heading "Region-wide Objectives") and Objective 1 (i.e., immediately before Objective 1).

⁸ Second Interim Decision, at [20].

⁹ Some parties indicated that they would either abide the decision of the Court or had no position on this matter.

Persons to whom the Interpretation Statement applies

- 10 The Court also directed the parties to confer and confirm whether the Interpretation Statement needs to be introduced by reference to the persons to whom it applies.¹⁰
- 11 The Council interprets the Court's question to be asking whether the Interpretation Statement should be introduced by clarifying that it applies to the Regional Council in making decisions, and all users of the pSWLP in interpreting and implementing the Plan.
- 12 If that interpretation is correct, the Council's preference is for there to be no introductory statement attached to the Interpretation Statement. The Council considers that the Interpretation Statement is clear that it applies to all persons who use the Plan, including the Council.
- 13 However, if there was to be an introductory statement to the Interpretation Statement, the Council would not object provided it is clear that the Interpretation Statement applies to all users of the Plan.
- 14 All other parties, with the exception of Forest & Bird and Fish & Game, either prefer that there is no introductory statement attached to the Interpretation Statement or express no opinion either way.
- 15 Forest & Bird and Fish & Game consider that the Interpretation Statement should be introduced with the following:

All persons exercising functions and powers under this Plan and all persons who use, develop or protect resources to which this Plan applies shall recognise that [Objectives 1 and 2 are fundamental to this plan ...]

Objective 9 / 9A

- 16 The Court asked whether the parties support the inclusion of sub-clause (b) (as proposed to be inserted into Objective 9 / 9A in the First Interim Decision¹¹).¹²
- 17 The Council supports the integration of objectives relating to water quality and water quantity. However, it does not support the wording as

¹⁰ Second Interim Decision, at [20].

¹¹ [2019] NZEnvC 208.

¹² Minute dated 29 June 2020, at [6] and [24(a)].

proposed to be included as sub-clause (b) of Objective 9 / 9A as it is set out in the First Interim Decision. The Council considers that there is ambiguity in the meaning of the phrase “freshwater quality objectives”. It considers that the amended wording suggested below provides more clarity, and would ensure that there is integration between both the Plan’s objectives relating to freshwater quality, and the freshwater objectives developed in accordance with the NPSFM:

(b) there is integration with objectives relating to ~~the~~ freshwater quality ~~objectives and values~~ (including the safeguarding of human health for recreation); and

Given that this Objective applies both before and after the freshwater objective and limit setting process, the Council considers this is more appropriate.

- 18 The other parties, with the exception of Forest & Bird and Fish & Game, either support the inclusion of proposed sub-clause (b) or are neutral as to its inclusion or otherwise.
- 19 Ngā Rūnanga, the Director-General of Conservation, DairyNZ, and Fonterra consider that this sub-clause provides clarity that integration between water quality and water quantity is important, particularly in a ki uta ki tai framework.
- 20 However, Ngā Rūnanga expressed similar concerns to those of the Council (as set out at paragraph 17 above) that, to avoid any confusion as to whether or not “freshwater quality objectives” is a new term, Ngā Rūnanga would prefer a reference to “objectives for freshwater quality”. It considers that there is an issue as to specifically what objectives are being referred to by this sub-clause. The position of Ngā Rūnanga is that the reference to “objectives” is to the objectives within the Plan itself, whereas Forest & Bird and Fish & Game suggest that the reference is to objectives from the National Policy Statement for Freshwater Management (**NPSFM**).
- 21 Forest & Bird and Fish & Game provided the following response:
- As proposed, the freshwater quantity objective would require particular biophysical and heritage values to be safeguarded but not recreation values. The direction relating to recreation values is part of a broader direction that there is “integration

with the freshwater quality objectives". Where this is achieved, water quantity is managed in accordance with Appendix K. The Court did not accept that the compulsory national value can be interpreted as safeguarding recreational values per se [155] and that finding has not been appealed and so is not challenged in the context of this response. However, Forest & Bird and Fish & Game note the Court's findings on the interaction between quantity and quality to determine the health of a waterbody [153] and that the quantity of surface water should be managed so that human health for recreation (at least) is safeguarded [152]. The wording of [sub-clause] (b) could be read as meaning that there must be integration with freshwater quality objectives, including to the extent that those objectives safeguard human health for recreation. The meaning of integration is, with respect, not certain.

To address that, Forest & Bird and Fish & Game consider that [sub-clause] (a) should include a reference to "human health for recreation" in accordance with the Court's finding at [153] as that is a compulsory value which must be provided for. In the alternative, they support the inclusion of [sub-clause] (b) but propose that [sub-clause] (b) is amended to:

(b) "there is integration with the freshwater quality objectives, such that together the freshwater quality and quantity objectives ~~and values~~ safeguard values (including human health for recreation); and

Recreation as an economic and social value should also be provided for. [Forest & Bird] and [Fish & Game] understand that the intention is that this is covered by sub-clause (c).

- 22 The Court also asked whether sub-clause (b) (referred to above) should retain or delete "and values".¹³
- 23 The Council's position is that "and values" should be deleted (in accordance with the proposed amended wording set out at paragraph 17 above).

¹³ Minute dated 29 June 2020, at [6] and [24(a)].

- 24 Forest & Bird and Fish and Game consider that sub-clause (b) should refer to values, but the reference requires amendment to clarify that the freshwater objectives (i.e., freshwater objectives pursuant to the NPSFM, which are yet to come) are to safeguard values. They consider that “freshwater quality values” is not a correct term.
- 25 All remaining parties were either neutral as to the inclusion of “values” or consider that it should not be included (including DairyNZ and Fonterra).
- 26 Ngā Rūnanga’s position that the reference to “values” in sub-clause (b) is not necessary is conditional on the basis that sub-clause (a) includes reference to the historic heritage values of waterbodies and sub-clause (c) includes reference to social and cultural wellbeing. Further, its position is also subject to “how Objectives 1 and 2 (formerly Objectives 1 and 3) are to be applied.”

Objective 10

- 27 The Court directed Meridian to confirm whether its appeal in relation to Objective 10, beyond the amendments made by the Court in the First Interim Decision¹⁴, is dismissed.¹⁵
- 28 Meridian confirms that its appeal in relation to Objective 10 may be dismissed other than in relation to the amendments made in the First Interim Decision on the basis that the Southland Regional Policy Statement’s requirement that the Plan provide for the enhancement of the Manapōuri Power Scheme (**MPS**) where over-allocation will not occur is accommodated in Objective 9B as per the First Interim Decision.
- 29 The Court also directed Meridian to identify, as directed at paragraph [225] of the First Interim Decision, the activities to which Objective 9B applies.¹⁶
- 30 In answering this question, Meridian considers the starting place is to understand the activities that Objective 9B does not apply to. Objective 9B does not apply to activities that are separately authorised under the Manapouri - Te Anau Development Act 1963. Objective 9B does not

¹⁴ First Interim Decision, Annexure 1.

¹⁵ Minute dated 29 June 2020, at [11] and [24(a)].

¹⁶ Minute dated 29 June 2020, at [11] and [24(a)].

apply to water and discharge permits that are required for the ongoing operation of the existing MPS. These are addressed in Rule 52A. Rule 52A makes replacement consents authorising the continued operation of the existing MPS a controlled activity (with a requirement that an application must be notified). Importantly, to qualify as a controlled activity any replacement consent application must conform to the requirements of the relevant flow and allocation regime to be established through the Waiau FMU objective and limit setting process to be conducted in accordance with the FMU process policies in the Plan. Objective 10 (which refers to the existing MPS) is directly applicable to activities addressed in Rule 52A.

- 31 Objective 9B applies to other activities that Meridian may propose by way of upgrading or enhancement of the MPS where resource consents are required in the same way as it applies to other infrastructure upgrades and enhancements in the region. Provided any activities proposed by Meridian are able to be undertaken within the flow and allocation regimes established for the Waiau FMU, Meridian's expectation is that such activities will likely be considered as discretionary activities. If the proposed activity falls outside of the flow and allocation regime established via the FMU process Meridian's expectation is that it would likely be assessed as a non-complying activity. Meridian is not in a position to try to catalogue what future proposals to upgrade the MPS might be advanced over the life of the Plan.

Objective 9B

- 32 The Court asked the parties whether any issue arises from the evidence of Mr Feierabend that Objective 9B provides a suitable basis for any future enhancement of the Manapōuri Power Scheme, given that neither the Court nor the parties considered Objective 9B with this purpose in mind.¹⁷
- 33 The Council does not consider any issue arises from Meridian's position that Objective 9B would provide for any future enhancement of the Manapōuri Power Scheme.

¹⁷ Minute dated 29 June 2020, at [12] and [24(a)].

- 34 All other parties either agree that no issue arises or are neutral (either in that they provided no response in relation to this matter or that they considered it beyond their appeal or interests).
- 35 Meridian submits that the suitability of Objective 9B as the basis for any future enhancements of the MPS is consistent with the view of the Council's planner, Mr McCallum-Clark (see the Hearing Transcript, page 364, lines 13-20).
- 36 Ngā Rūnanga notes that while it is a matter for Meridian as to whether it is satisfied with Objective 9B, Ngā Rūnanga does not necessarily agree with the Meridian position that the word "upgrade" will provide a pathway for Meridian's "enhancement" of infrastructure under Objective 9B.

Taonga species

- 37 After stating that the planners are to comment on the wording of Policy 3, the Court noted that the outcomes for taonga species would be more certain if they were included in the Plan. If not listed in the Plan, the parties are to comment whether there is scope (and any appetite) for this to occur under any appeal.¹⁸
- 38 The Council considers that the outcomes for taonga species are already set out in Objective 15; taonga species and their related habitats are to be recognised and provided for. Accordingly, from the Council's perspective there is no need to amend the pSWLP to add other outcomes.
- 39 Further, the appeal lodged by Southland Fish and Game Council in relation to Objective 15 has been withdrawn, and accordingly, that Objective is no longer under appeal. As such, there is no scope to amend that provision to add additional (or other) outcomes for taonga species.
- 40 The views received from the parties were varied. The majority of the parties either confirmed that they did not wish to comment, or did not provide a specific response, in relation to this matter. Of the parties that did provide comment:

¹⁸ Minute dated 29 June 2020, at [19] and [24(a)].

- (a) The Territorial Authorities confirmed that they have no appetite for further changes to Policy 3.
- (b) Ngā Rūnanga consider there is no clear scope under its appeal in that there was no appeal on Objective 15 or Policy 3, despite the fact that the importance of taonga species is identified in the reasons for the appeal. However, Ngā Rūnanga considers that the Plan should be addressing outcomes for taonga species and one way it might do this is through the development and use of the cultural indicators of health.
- (c) Forest & Bird and Fish & Game consider that an appropriate place to provide outcomes for taonga species could be in the cultural indicators of health (Topic B). They consider there is scope to address taonga species within the cultural indicators of health as they are an indicator of whether a water body is hauora or whether it is degraded. Policy 3 could be amended to more expressly refer to the relationship between habitat that is hauora and taonga species. They consider there is scope to amend the reference to habitat, which was inserted as a result of an appeal point by Fish & Game.
- (d) DairyNZ and Fonterra consider that if scope exists to make this change, it would appear appropriate to refer this matter to expert conferencing.

Physiographic Zone Policies

- 41 The Court directed the parties to confer and the Council report on whether there is agreement in principle to either a risk-based or effects-based policy approach to the Physiographic Zone Policies.¹⁹
- 42 The Council reports that there is no agreement in principle to either a risk-based or effects-based policy approach.
- 43 The Council supports a risk-based approach to the Physiographic Zone Policies. It considers that this better aligns with the way that physiographics works (in that they take a risk-based approach).

¹⁹ Minute dated 29 June 2020, at [22] and [24(a)].

- 44 The Director-General of Conservation, Forest & Bird and Fish & Game, and Ngā Rūnanga also support a risk-based approach:
- (a) The Director-General's preference is for a risk-based policy approach with the inclusion of the physiographic zone maps and a comprehensive description of the contaminant risks arising in each zone. It considers that this would:
 - (i) give better effect to the Plan structure;
 - (ii) help apply the Interpretation Statement to implement Objectives 1 and 2 in these policies to drive positive change; and
 - (iii) help to provide tangible ways for the Plan user to implement Objective 1 to sustainably manage contaminant risk across land, water and associated ecosystems.
 - (b) Forest & Bird and Fish & Game consider that the physiographic zone approach is a risk-based approach. The risk is inherent in the zone and underpins the array of management approaches based on risk (see section 3.4 of Section 32 analysis). The level of flexibility to undertake activities reflects the vulnerability of waterbodies in the zone due to the risks inherent in the contaminant transport pathways. The critical change to the policies from Forest & Bird and Fish & Game's perspective is that the language "generally not grant" was changed to "avoid [activity] where contaminant losses will increase as a result of the proposed activity". This approach reflects the lack of flexibility in some zones because of the high risk. The Court has directed a response on the other part of the physiographic zone policies, which in the decisions version required "avoid, remedy or mitigate adverse effects ..." and in the Court's Interim Decision version requires "avoid where practicable ...". The only question is whether this part of the policy refers to avoiding risk or avoiding effects. Because the policies are inherently risks based, Forest & Bird and Fish & Game agree that the policy wording should refer to avoiding where practicable risks rather than effects.
 - (c) Ngā Rūnanga agrees with the rationale provided by Forest & Bird and Fish & Game and the Director-General of Conservation for a risk-based approach, in that it appears the most effective way to

address physiographics being in the Plan. Ngā Rūnanga also agrees with the comments of the Court in the First Interim Decision (paragraphs [299] – [304]), that suggest that a risk-based approach is applicable. The comments include that:

- (i) The physiographic zones do not ascribe outcomes for water quality limits or targets over a period of time.
- (ii) The value of the physiographic zone lies in the identification of broad-scale risks to each zone.
- (iii) Risks at the scale of an individual property may overlap with, but are not the subject matter of, the physiographic zones.
- (iv) The Physiographic Zone Policies do not use the language of risk but instead refer to avoiding, remedying or mitigating adverse effects. This effects-based language assumes an adverse effect can be directly attributed to the activities occurring on an individual property, whereas the evidence presented to the Court did not support this.

- 45 Contrary to this view, Ravensdown, Ballance Agri-Nutrients, and Federated Farmers support an effects-based approach. They consider that an effects-based approach is more consistent with the focus of the RMA. In contrast, risk concepts are too broad as they include both low probability/high consequence events as well as high probability/low consequence events; risk also includes opportunity lost from missing a positive event. Risk may or may not result in an effect, but it is the effect that the RMA is managing.
- 46 The remaining parties did not express a view on whether a risk-based or effects-based approach is preferred.
- 47 Fonterra and DairyNZ consider that it would appear appropriate to refer this matter to expert conferencing. The Territorial Authorities will keep a watching brief on this matter (despite not commenting on the approach to the policies) and their planner would participate should the Physiographic Zone Policies be referred to expert conferencing.
- 48 While it is noted that the Court has not sought a response on this point, Forest & Bird and Fish & Game, Ngā Rūnanga, and the Council wish to address the heading to Policies 4-12. At paragraph [320] of the First Interim Decision, the Court states “[s]ubject to confirmation that the

policies apply only to farming activities, amend the heading to Policies 4-12 to read ‘Physiographic Zone Policies for Farming Activities.’” Forest & Bird and Fish & Game, Ngā Rūnanga, and the Council consider that the Physiographic Zone Policies do not only apply to farming activities, notwithstanding that they do focus on farming. To narrow these policies to only apply to farming activities may create a gap in the Plan for other types of discharges, such as those from industrial activities. Counsel for the Council notes that the Council’s current interpretation and implementation of these policies is that they apply to all activities, not just farming activities.

- 49 An additional matter that the Council wishes to raise is the use of the words “where practicable” in the first limb of the Physiographic Zone Policies. The Council considers that this introduces uncertainty, and the policies do not provide guidance if the avoidance is not practicable. The Council suggests that the planners discuss this wording at expert conferencing, with a view to assisting the implementation of the policies, but without changing the intent (as set out at paragraph [304] of the First Interim Decision).

Policy 16

- 50 The Court also asked whether Policy 16 is linked to the Physiographic Zone Policies in a way that necessitates they be considered together.²⁰
- 51 The Council, Ngā Rūnanga, Forest & Bird and Fish & Game, and the Director-General of Conservation consider that, while Policy 16 and the Physiographic Zone Policies are linked²¹ in that Policy 16 provides clarity as to how the Physiographic Policies apply in relation to farming, that linkage does not necessitate that they be considered together. Consideration of Policy 16 can, and in Ngā Rūnanga’s opinion, should, occur following the finalisation of the Physiographic Zone Policies (i.e., in Topic B). In these parties’ opinions, this would be an efficient and logical approach.

²⁰ Minute dated 29 June 2020, at [22] and [24(a)].

²¹ The Physiographic Zone Policies manage higher risk activities from identified contaminant pathways in each zone. Policy 16 provides for further actions where farming activities adversely affect water quality. This is also the case for other policies dealing with other activities.

- 52 Federated Farmers considers that a final decision on the Physiographic Zone Policies (especially the second limb of the Court's Interim Decision version of these policies) should be delayed until there is an opportunity for them to be considered alongside Policy 16 (and Rule 20) during the Topic B hearings. Its reasons for this position include:
- (a) Although Policy 16 is broader in some respects than the Physiographic Zone Policies (in that it covers existing and new activities), there are some inconsistencies between them and it is unclear how they will work together in practice.
 - (b) The Physiographic Zone Policies now talk about "avoid" all contaminant loss increases (irrespective of the state of the water in which they might occur, i.e., whether a water body is degraded or not is irrelevant) and these policies look to apply whether they occur pre or post any limit setting.
 - (c) It is unclear whether "avoid" means prohibit and how this fits in with Policy 16 (and Rule 20). As an example, Policy 16(1)(c) talks about ensuring that after limit setting, applications to establish new or further intensify existing dairy farming etc. where freshwater objectives are being met will generally not be granted unless the proposed activity will maintain overall water quality. Because of the wording in the Physiographic Zone Policies' second limb, it will be irrelevant whether a proposal can maintain overall water quality or not as the Physiographic Zone Policies mean you have to avoid any contaminant loss increase. This part of Policy 16 will not be relevant in the relevant physiographic zones post limit setting. Further, the Physiographic Zone Policies are region wide and apply throughout the FMU process and can't be changed (pursuant to Policy 45). It is unclear how the limit setting can apply in practice given the combination of "avoid" in the Physiographic Zone Policies and Policy 45.
 - (d) It is also slightly confusing how Policy 16 and the Physiographic Zone Policies' second limb will interact pre-limit setting, especially Policy 16(1)(b)(i).
- 53 Ravensdown and Ballance Agri-Nutrients support Federated Farmers' position, in that they also consider that the Physiographic Zone Policies

should remain interim until the Court hears evidence on Policy 16, to ensure that all of the policies are properly considered in the round.

- 54 Fonterra and DairyNZ consider that there would be efficiencies in considering the Physiographic Zone Policies at the same time as Policy 16. While not intrinsically linked, Policy 16 introduces controls on certain activities dependant on their location in close proximity to Regionally Significant Wetlands and Sensitive Water Bodies. In light of the changes proposed by the Court to the second limb of the Physiographic Zone Policies it would be sensible to consider the two together. It would also appear appropriate to refer this matter to expert conferencing.
- 55 The Territorial Authorities intend to keep a watching brief on this matter (despite not commenting on whether the policies require consideration together) and their planner would participate should the Physiographic Zone Policies be referred to expert conferencing.
- 56 The remaining parties have not expressed an opinion on this matter.

Policies 45-47

- 57 The Court directed the parties to confer and advise whether any further change is supported for Policies 45-47 in view of the likely amendments to the National Policy Statement for Freshwater Management (**NPSFM**).²²
- 58 The Council considers that if changes are required in light of any new or amended NPSFM, the appropriate time to consider this is after the new/amended NPSFM has been finalised and issued. It is not possible to speculate as to its contents at this time.
- 59 Ngā Rūnanga, Meridian, Ravensdown, Ballance Agri-Nutrients, Fonterra, and DairyNZ agree with the Council's position, and the Director-General of Conservation agrees that until such time as the new NPSFM is available, and the existence of any transitional provisions is known, it is difficult to further answer this question.
- 60 Ballance Agri-Nutrients and the Director-General of Conservation note that they support the First Interim Decision's amendments to these policies. The Director-General of Conservation would also support the deletion of the advice note to Policy 45 as it considers that this is now

²² Minute dated 29 June 2020, at [23] and [24(a)].

unnecessary. It has also identified a consequential amendment that is needed to the Introduction of the Plan, as follows:

Delete the words “or replaced” in the fourth paragraph under “Framework of this Plan and Freshwater Management Units” on page [7] of the Decisions Version:

“the region-wide objectives, policies and rules in the Plan may be added to ~~or replaced~~ by the freshwater objectives, ...”

- 61 Forest & Bird and Fish & Game consider that reference in Policy 47 to “the National Policy Statement for Freshwater Management 2014 (as amended in 2017)” and the references to specific policies within it will need amendment. In addition, the requirement to “have particular regard to” the national significance of Te Mana o Te Wai may not reflect the correct legal relationship between the pSWLP freshwater objectives and the place of Te Mana o Te Wai in the NPSFM (current or proposed). Replacing this with “upholds Te Mana o Te Wai” would be more appropriate and reflective of the Interpretation Statement. Other amendments may also be warranted but it is too early to say.
- 62 A neutral response, or no response, was received from the remaining parties in relation to this question.

Other matters

- 63 Ravensdown notes that it agrees with the proposed wording changes to Objective 6 and Objective 18.
- 64 Meridian notes that the Court’s Minute discusses the critical importance of Objective 18 and suggests at [17] the wording of this objective will be referred to the planners to discuss in conferencing. At [290] of the First Interim Decision the Court states that it “will seek submissions/evidence on whether the objective would be strengthened by focusing on behavioural change outcome”. Meridian notes that the proposed rewording of Objective 18 in the First Interim Decision is a significant departure from the Decisions Version, and requires all persons to demonstrate improved land use and water management practice. The reworded objective appears not to contemplate that some existing land uses and water management practices will be efficient, and it considers that it would be unreasonable and unnecessary to require those uses and practices to change. Meridian seeks a direction from the Court as to

how/when the Court proposes to hear from the parties in relation to this objective.

- 65 The Council, Director-General of Conservation, Ravensdown, Ballance Agri-Nutrients, Federated Farmers, and Horticulture New Zealand (noting that Horticulture New Zealand has indicated that it intends to take a watching brief role in relation to Topic A) would prefer, from an efficiency and effectiveness point of view (in relation to both cost and time), that prior to any expert conferencing the parties are given the opportunity to explore whether agreement can be reached on the matters proposed for expert conferencing in the Minute dated 29 June 2020, and/or whether these issues can be narrowed or clarified.²³ If the parties are unable to agree, and therefore expert conferencing is required, Counsel for the Council suggests that the parties report to the Court on the issues that remain to be resolved via conferencing and seek directions for such conferencing to be set down. If agreement cannot be reached, Ravensdown (and others) consider that conferencing should only be convened if it is necessary, and that it is critical that all parties agree in advance on what can and cannot be the subject of wording changes (i.e., the ambit of the issues that are to be discussed).

Directions sought

- 66 The following directions are sought from the Court:
- (a) Meridian seeks a direction from the Court as to how/when the Court proposes to hear from the parties in relation to Objective 18.

²³ It is Counsel for the Council's understanding that any matters that were noted in the First Interim Decision as an issue that the parties will be directed to file further evidence and/or submissions on, but have not been addressed in the Court's Minute dated 29 June 2020, are now able to be resolved by the Court without hearing further from the parties.

- (b) That the parties be directed to confer to explore whether agreement can be reached on the matters proposed for expert conferencing in the Minute dated 29 June 2020, and/or whether these issues can be narrowed or clarified. The parties are to report to the Court by 7 August 2020 setting out any issues that remain to be resolved via conferencing and seek directions for such conferencing to be set down.

DATED this 10th day of July 2020



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P A C Maw / A M Langford
Counsel for the Southland Regional Council