

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2018-CHC-000050

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14(1) of the First
Schedule of the Resource Management Act 1991
in relation to the Proposed Southland Water and
Land Plan

BETWEEN **Royal Forest and Bird Protection Society of New
Zealand Incorporated**
Appellant

AND **Southland Regional Council**
Respondent

**NOTICE OF RAVENSDOWN LIMITED'S
WISH TO BE A PARTY TO PROCEEDINGS PURSUANT TO
SECTION 274 OF THE RESOURCE MANAGEMENT ACT 1991**

To: The Register
Environment Court
Christchurch

1. Ravensdown Limited (**Ravensdown**) wishes to be a party an appeal by Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**) under clause 14(1) of the First Schedule of the Resource Management Act 1991 (**RMA**) in relation to the Respondent's decisions on the Proposed Southland Water and Land Plan (**pSWLP**).
2. This notice is made as Ravensdown submitted and further submitted on the provisions of the pSWLP to which this appeal relates.
3. Ravensdown is not a trade competitor for the purposes of section 308C or 308CA of the RMA.
4. Ravensdown has an interest in the following parts of the proceedings:
 - (a) Objectives 13, 13A and 13B
 - (b) Policies 4, 5, 6, 9, 10, 11 and 12 - Physiographic Zone Policies
 - (c) Policies 15A to 15C
 - (d) Policy 16 – Farming activities that affect water quality
 - (e) Policy 39 – Application of the permitted baseline
 - (f) Rule 14 – Discharge of fertiliser
 - (g) Rule 20 – Farming
5. **Objectives 13, 13A and 13B**
 - 5.1 The decisions version of Objectives 13, 13A and 13B read:

Objective 13
Enable the use and development of land and soils to support the economic, social, and cultural wellbeing of the region.

Objective 13A
The quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land.

Objective 13B
The discharges of contaminants to land or water that have significant or cumulative adverse effects on human health are avoided.
 - 5.2 Forest & Bird have appealed Objectives 13, 13A and 13B as the objectives no longer seek to maintain or enhance ecosystems and amenity, cultural and historic heritage values, nor do they ensure sustainable management or the achievement of freshwater objectives. The relief sought by Forest & Bird entails the deletion of Objectives 13A and 13B and the following amendments to Objective 13 (i.e., the

reinstatement of the notified Parts (a) to (c) of Objective 13, plus the additional amendments identified with double strike-through and underlining text):

Objective 13

Enable the use and development of land and soils ~~to support the economic, social, and cultural wellbeing of the region~~ provided:

(a) The quantity, quality and structure of soil resources are managed to avoid irreversible degradation ~~not irreversibly degraded~~ through land use activities and ~~or~~ discharges to land;

(b) The discharges of contaminants to land or water that have ~~significant~~ adverse or cumulative adverse effects on human health and recreation are avoided; and

(c) adverse effects on ecosystems (including indigenous biological diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are ~~maintained~~ safe-guarded or enhanced.

(d) Provided a, b, c are met, enable the use and development of land and soils.

5.3 Ravensdown in its submission¹ supported Objective 13 but requested an amendment to clarify that the notified version of Objective 13 aimed to avoid adverse effects on human health, not just effects on human health. Ravensdown's submission was accepted.

5.4 Ravensdown did not appeal the decisions version of Objectives 13, 13A and 13B as they reflected the outcomes sought by Ravensdown's submission. Therefore, Ravensdown opposes the relief being sought by Forest & Bird.

6. Policies 4, 5, 6, 9, 10, 11 and 12 - Physiographic Zone Policies

6.1 The pSWLP establishes different 'physiographic zones' throughout the region. The different zones represent areas with common attributes (climate, topography, geology and soils) that influence water quality as a result of how sediments, microbes and nutrients are transferred through soils, groundwater and into surface water.

6.2 The region's physiographic zone groupings covered by the decision version Physiographic Zone Policies include: Alpine; Central Plains; Gleyed, Bedrock/Hill Country and Lignite-Marine Terraces; Old Mataura; Oxidising; Peat Wetlands; and, Riverine. The Physiographic Zone Policies aim to avoid, remedy or mitigate adverse effects on water quality (and from erosion in the Alpine zone), by a range of specific measures for each zone. As a broad overview, the measures include: the implementation of good management practices in relation to specified activities; having regard to specific effects when assessing consent application and preparing or considering Farm Environmental Management Plans (**FEMP**); and, prohibiting or generally not granting resource consents for specific farming activities.

6.3 Forest & Bird has appealed the Physiographic Zone policies on the basis that the policies do not require activities to maintain, or improve where degraded, water quality. The relief sought by Forest & Bird is as follows:

¹ Submission point 661.9.

- (a) Reinstate Policies 7 and 8 which provided a framework for the Bedrock/Hill Country and Lignite-Marine Terrace physiographic zones (accommodated in Policy 6 of the decisions version of the pSWLP).
- (b) Amend all the policies so that they only provide for activities where water quality will be maintained, or enhanced where degraded.
- (c) Delete all references to “generally” in relation to not granting resource consents.
- (d) Amend Policies 4, 9, 10 and 11 to identify that dairy farming, intensive winter grazing and cultivation will be prohibited where these policies apply.
- (e) Amend Part 3 of Policies 9 to 12, to read:

...where continuation of the activity will not achieve maintenance (or enhancement where required) of water quality, and where contaminant losses will increase as a result of the proposed activity.

6.4 Ravensdown in its submissions² supported these policies in part. The submission requested that the intent of the policies be retained but requested rewording to simplify the policies and to group similar zones into individual policies. Ravensdown’s submission was accepted in part.

6.5 Ravensdown did not appeal the decisions version of these policies as they generally reflected the outcomes sought in its submissions. Therefore, Ravensdown opposes the relief being sought by Forest & Bird.

7. Policies 15A to 15C

7.1 The decisions version of Policy 15A to 15C (which evolved from submissions on notified Policy 15) read:

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, remedying or mitigating the adverse effects of new discharges, so that beyond the zone of reasonable mixing, those standards or sediment guidelines will continue to be met; 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.*

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*

² Submission point 661.12 to 661.20.

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.*

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.

7.2 Forest & Bird has appealed these policies as:

- (a) Policy 15A does not provide for the maintenance of water quality as the policy only requires the guidelines to be met and this could result in water quality degradation.
- (b) Policy 15B does not require water quality improvement, rather it will 'hold the line' and only require applicant's to demonstrate how and when improvement will occur.
- (c) Policy 15C. Reference to non-regulatory methods is unnecessary, the policy only refers to improving water quality where a freshwater objective is not met and does not recognise over-allocation where water quality has been allocated beyond a limit and water quality improvement may be an appropriate response even if water quality is not degraded.

7.3 The relief sought by Forest & Bird in its notice of appeal is as follows:

- (a) Policy 15A. Amend the policy to ensure that it is consistent with maintaining water quality and delete references to "remedy or mitigate".
- (b) Policy 15B. Amend the policy to require all new discharges to contribute to the enhancement of water quality, provide guidance to consent authorities to distinguish between minor and major improvements as well as timeframe requirements and delete references to "remedy or mitigate".
- (c) Amend Policy 15C as follows:

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 it has been allocated beyond a limit or freshwater objectives are not being met and otherwise maintain or improve water quality where freshwater objectives are being met."

7.4 Ravensdown in its submission³ opposed Policy 15 in part, with the submission seeking retention of the policy and its intent to maintain water quality where the identified

³ Submission point 661.23.

standards are met and improve water quality where they are not. In its submission, Ravensdown requested amendments in relation to aspects of the policy wording. Ravensdown's submission was rejected.

7.5 Ravensdown did not appeal the decisions version of Policy 15A to 15C as it was comfortable with this policy given the overall outcomes sought by the pSWLP objectives and the FMU process policies. Ravensdown therefore opposes the relief being sought by Forest & Bird.

8. **Policy 16 - Farming activities that affect water quality**

8.1 The decisions version of Policy 16 establishes the policy framework for minimising the adverse environmental effects from farming activities. Policy 16 states that:

- (a) Under Part (1), specific intensive farming activities (i.e., new or expanded dairy farming and intensive winter grazing):
 - a. are to be discouraged from establishing close to identified significant wetlands and waterbodies (Part (1)(a));
 - b. prior to the FMU process these activities will generally not be granted consent if effects on water bodies cannot be avoided or mitigated or if existing water quality is degraded and thus overallocated (Part (1)(b));
 - c. after the development of objectives under the FMU process, consent will generally not be granted for these activities if freshwater objectives are not met or if overall water quality is not maintained (Part (1)(c));
- (b) Under Part (2), all farming activities are to implement FEMPs and manage sediment run-off and nutrient and microbial discharges.
- (c) Under Part (3), when considering resource consent applications when multiple farming activities can be provided for by one resource consent and granting a consent duration of at least 5 years.

8.2 Forest & Bird has appealed Policy 16 on the basis that aspects of the policy are uncertain, inadequate and/or do not provide clear policy direction. The relief sought by Forest & Bird is as follows:

- (a) Amend the policy so that adverse effects on water quality are avoided, and all other adverse environmental effects are avoided, remedied or mitigated.
- (b) In Part (1)(a) of the policy, replace “discouraging” with “avoiding”.
- (c) In Parts (1)(b) and (1)(c) of the policy, delete “generally” and “or mitigated” throughout these parts of the policy.

8.3 Ravensdown in its submission⁴ opposed Policy 16 in part, with the submission seeking retention of the policy and requesting various amendments in relation to aspects of the policy wording. Ravensdown's submission was rejected.

⁴ Submission point 661.24.

8.4 Ravensdown did not appeal the decisions version of Policy 16 as it was considered that the policy provided a clear and structured resource management approach to avoiding, remedying and mitigating adverse effects of farming activities both pre and post the FMU processes. Ravensdown therefore opposes the relief being sought by Forest & Bird.

9. **Policy 39 - Application of the permitted baseline**

9.1 The decisions version of Policy 39 reads:

When considering any application for resource consent for the use of land for a farming activity, the Southland Regional Council will consider all adverse effects of the proposed activity on water quality, whether or not this Plan permits an activity with that effect.

9.2 Forest & Bird has appealed Policy 39 on the basis that all effects on water quantity, as well as water quality, should be considered when assessing resource consent applications. The relief sought by Forest & Bird is as follows:

... the Southland Regional Council ~~will~~ shall consider all adverse effects of the proposed activity on water quality and quantity, whether or not this ...

9.3 Ravensdown in its submission⁵ opposed Policy 39 and requested its deletion on the basis that the policy was contrary to the permitted baseline principle and that permitted effects are effectively less than minor and such effects should not be required to be revisited as part of a resource consent application. Ravensdown's submission was rejected.

9.4 Although Ravensdown's concern remain, as expressed in its submission and in evidence presented at the hearing, Ravensdown did not appeal the decisions version of Policy 39. Given that under this appeal this policy will be revisited, Ravensdown has an interest in any changes that may eventuate.

10. **Rule 14 - Discharge of fertiliser**

10.1 The decisions versions of Rule 14 reads:

- (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 rivers), artificial watercourse, modified watercourse, or natural wetland or into groundwater; and*
 - (ii) *there is no fertiliser discharged when the soil moisture exceeds field capacity; and*
 - (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 any lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse, or wetland:*

⁵ Submission point 661.26.

- (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.*
- (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.*

10.2 Forest & Bird have appealed permitted activity Rule 14(a) as they consider a 3m buffer is not sufficient to protect significant indigenous biodiversity, there is no minimum width specified to protect waterways and ephemeral rivers should be not excluded as they have high ecological values. The relief sought by Forest & Bird is as follows:

- (a) Amend the rule to provide a minimum setback of 10m in all circumstances.
- (b) Delete “(excluding ephemeral rivers)” from Conditions (a)(i) and (iv).

10.3 Ravensdown in its submission⁶ supported the permitted activity rule (Rule 14(a)) in part. The intent of the rule and permitted activity status for the discharge of fertiliser was supported, with amendments requested to clarify under which circumstances some of the proposed setbacks from indigenous biodiversity sites apply (i.e., when the site included surface water). Ravensdown's submission was rejected, although this related to the activity status of fertiliser discharges where the permitted activity conditions were not met (rather than the amendments sought to the permitted activity conditions).

10.4 Ravensdown did not appeal the decisions version of this rule as it was considered that the permitted activity conditions reflected ‘good management practice’ for fertiliser application activities and these requirements were generally achievable and should be able to be met when applying fertiliser to land. As the permitted activity rule effectively reflects the outcomes sought by Ravensdown, and given potential practicality issues associated with Forest & Bird’s proposed amendments to Rule 14, the relief being sought by Forest & Bird is opposed.

11. **Rule 20 – Farming**

11.1 The decisions version of Rule 20 provides for farming activities as either permitted, restricted discretionary, discretionary or prohibited activities. The only prohibited activity is dairying or intensive winter grazing at altitudes greater than 800masl (Rule 20(c)). Permitted farming activities, under Rules 20(aa), (a) and (b), include: farming activities in ephemeral rivers provided no other rules apply (Rule 20(aa)); landholdings less than 20ha; small dairy farms (<20 cows); existing dairy farms that are effectively the same nature of operation as existed in June 2016 (Rule 20(a)(ii)); intensive winter grazing provided specified conditions are met (Rules 20(a)(iii) and (b)); and, all other farming activities (Rule 20(a)(iv)). These activities then either become restricted

⁶ Submission point 661.35.

discretionary or discretionary activities depending on which rules/conditions can or cannot be complied with (Rules 20(d) and (e) respectively). FEMPs are a condition of Rule 20(a) and (d).

11.2 Forest & Bird have appealed Rule 20 for the following reasons:

- (a) Providing for specific farming activities to take place in ephemeral rivers is inappropriate due to the high environmental values associated with these waterbodies and their potential to be critical source areas (Rule 20(aa)).
- (b) Horticulture on small allotments can also contribute nutrients to water bodies and this should be managed.
- (c) Setbacks are inadequate.
- (d) Farming activities that do not meet the permitted activity standards should be a non-complying activity.

11.3 The relief sought by Forest & Bird is as follows:

- (a) Delete Rule 20(aa).
- (b) Add intensive horticulture to Rule 20(a).
- (c) Amend the rules to including ephemeral streams, rather than excluding them, and provide for increased setbacks.
- (d) Amend Rule 20(d) to provide for farming activities as a non-complying activity (rather than discretionary) where the permitted activity standards are not complied with.

11.4 Ravensdown in its submission⁷ supported the overall intent of Rule 20, but sought various changes to the structure of the rules. Ravensdown's submission was accepted in part.

11.5 Ravensdown did not appeal the decisions version of this rule as it was considered that the rule was consistent with the pSWLP's policy framework and represented a reasonable rule hierarchy for farming activities in the region. Ravensdown therefore opposes the relief being sought by Forest & Bird.

12. Ravensdown agrees to participate in mediation or alternative dispute resolution of the proceedings.



Carmen Taylor
Planz Consultants Limited
On behalf of Ravensdown Limited

Dated: 22 June 2018

⁷ Submission point 661.37.

Address for service:

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A copy of this notice has been served on the following parties:

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