

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV-2018-CHC-000037

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 **Southland Fish and Game Council**
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 to an appeal by Southland Fish and Game Council (**Fish & Game**) 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) Objective 7
 - (b) Objectives 13, 13A and 13B
 - (c) Objective 18
 - (d) Policies 4, 5, 6, 9, 10, 11 and 12 - Physiographic Zone Policies
 - (e) Policy 15C – Maintaining and improving water quality after FMU processes
 - (f) Policy 16 – Farming activities that affect water quality
 - (g) Policy 39 – Application of the permitted baseline
 - (h) Policy 45 – Priority of FMU values, objectives, policies and rules and Policy 47 – FMU processes
 - (i) Rule 14 – Discharge of fertiliser
 - (j) Rule 20 – Farming
 - (k) Appendix N – Farm Environmental Management Plan Requirements
5. The various reasons for the Fish & Game's appeal are outlined in paragraphs 7(a)(i) to (xiv) and (b) to (f) of the notice of appeal. The reasons for the appeal are identified as: the effects on the quality of freshwater (paragraphs 7(a)(i) to (xiv)); responding to the science (paragraph 7(b)); operative plan and community involvement to date (paragraph 7(c)); higher order policy documents (paragraph 7(d)); effects on waterbodies (paragraph 7(e)); and, section 32 evaluations (paragraph 7(f)). In relation to each provision of the pSWLP which has been appealed, the notice of appeal does not identify a specific reason for seeking the relief sought.

6. **Objective 7**

6.1 The decisions version of Objective 7 reads:

Any further over-allocation of freshwater (water quality and quantity) is avoided and any existing over-allocation is phased out in accordance with freshwater objectives, freshwater quality limits and timeframes established under Freshwater Management Unit processes.

6.2 Fish & Game, in its appeal, requests the following relief:

Any further over-allocation of freshwater (water quality and quantity) is avoided and any existing over-allocation is phased out in accordance with freshwater objectives, freshwater quality limits and timeframes established under Freshwater Management Unit processes or earlier when considering relevant consent applications.

6.3 Ravensdown in its submission¹ supported Objective 7 but requested amendments to clarify what over-allocation of water quality meant in the context of the Freshwater Management Unit (FMU) process that is to be undertaken as part of Council's Progressive Implementation Programme and the objectives and policies of the National Policy Statement for Freshwater Management and the pSWLP. Ravensdown's submission was accepted in part.

6.4 Ravensdown did not appeal the decisions version of Objective 7 as it was comfortable with this objective given the overall outcomes sought by the pSWLP objectives and the FMU process policies. Ravensdown therefore opposes the relief being sought by the Fish & Game.

7. **Objectives 13, 13A and 13B**

7.1 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.

7.2 The relief requested by Fish & Game entails the deletion of Objectives 13A and 13B and the following amendments to Objective 13 (or an alternative amendment, as provided in the appeal, that contains slightly different wording while reflecting a similar intent):

Objective 13

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

¹ Submission point 661.7.

- (a) Land use activities or discharges to land that have significant or cumulative adverse effects on the quantity, quality and structure of soil resources are avoided;
- (b) The discharges of contaminants to land or water that have significant or cumulative adverse effects on human health are avoided; and
- (c) Significant or cumulative adverse effects on surface and groundwater quality, surface and groundwater quantity, aquatic ecosystem health, life-supporting capacity, mahinga kai, outstanding natural features and landscapes, indigenous vegetation and fauna, recreational values, amenity values and natural character are avoided.

7.3 Ravensdown in its submission² 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.

7.4 Ravensdown did not appeal the decisions version of Objectives 13, 13A and 13B as they reflected the outcomes sought by Ravensdown's submission. Ravensdown opposes the relief being sought by Fish & Game, as proposed part (c) of the objective relates to matters provided for in other pSWLP objectives.

8. **Objective 18**

8.1 The decisions version of Objective 18 reads:

All activities operate in accordance with "good (environmental) management practice" or better to optimise efficient resource use, safeguard the life supporting capacity of the region's land and soils, and maintain or improve the quality and quantity of the region's water resources.

8.2 Fish & Game, in its appeal, requests the replacement of the objective with the following:

All activities implement the best practicable option to optimise efficient resource use and achieve the following:

- (a) Soil conservation;
- (b) Maintain and improve water quality;
- (c) Maintain or improve water quantity; and
- (d) Maintain and improve ecosystems in freshwater.

8.3 Ravensdown in its submission³ opposed the objective and requested its deletion as the utilisation of 'good management practices', which is an industry agreed tool supported by Ravensdown, is a method which can be used to achieve the objectives of the pSWLP. Ravensdown's submission was rejected.

8.4 Ravensdown did not appeal the decisions version of Objective 18. Ravensdown support the utilisation a 'good (environmental) management practice' as a tool to be used by the farming community, and therefore opposes the relief sought by Fish &

² Submission point 661.9.

³ Submission point 661.10.

Game in relation to the proposed utilisation of ‘best practicable option’ instead of ‘good (environmental) management practice’.

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

- 9.1 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.
- 9.2 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.
- 9.3 The relief sought by Fish & Game in its appeal is to amend the Physiographic Zone policies as follows:
- (a) Aiming to *“avoid, where practicable, or otherwise remedy or mitigate”*.
 - (b) Replace the requirement to implement *“good management practice”* with a requirement to implement *“best practicable option”*.
 - (c) Rather than specifying resource consents for specific activities will generally not be granted, stated that the granting of such resource consents will be *“strongly discouraged”*.
- 9.4 Ravensdown in its submissions⁴ 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.
- 9.5 Ravensdown did not appeal the decisions version of these policies as they generally reflected the outcomes sought in its submissions. In relation to this appeal, Ravensdown supports the utilisation a ‘good management practice’ as a tool to be used by the farming community, and therefore opposes the relief sought by the Fish & Game in relation to the proposed utilisation of ‘best practicable option’ instead of ‘good management practice’.

⁴ Submission point 661.12 to 661.20.

10. **Policy 15C - Maintaining and improving water quality after FMU processes**

10.1 The decisions version of Policy 15C (evolved from submissions on notified Policy 15) reads:

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.

10.2 Fish & Game has appealed this policy and requested the deletion of Policy 15C.

10.3 Ravensdown in its submission⁵ opposed Policy 15 in part, with the submission seeking retention of the policy and requested amendments in relation to aspects of the policy wording. Ravensdown's submission was rejected.

10.4 Ravensdown did not appeal the decisions version of Policy 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 Fish & Game.

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

11.1 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.

11.2 Fish & Game, in its appeal, requests a number of changes to Policy 16. The relief sought includes:

- (a) Replacing references to 'minimising', 'managing' or 'avoiding or mitigating' adverse environment effects to ensuring that such effects are 'avoided, where

⁵ Submission point 661.23.

practicable, or otherwise remedied or mitigated' (Parts (1), (1)(b)(i), (2)(b), (2)(c) of the policy.

- (b) Seeking to avoid and/or strongly discourage the granting of resource consents for the intensive farming activities covered by Part (1) of this policy (Parts (1)(a) to (c))
- (c) As one option, seeking to remove reference to the approach after the completion of the FMU process by deleting Part (1)(c) of the policy.
- (d) Requiring FEMPs to set out the best practicable option to manage adverse effects on water quality, amongst other changes, while also listing a range of "maintaining practices" (Part (2)).
- (e) Specifying that a consent term of at least 5 years applies if the activity is consistent with Policy 40 (Part (3)(b)).

11.3 Ravensdown in its submission⁶ 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.

11.4 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 Fish & Game.

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

12.1 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.

12.2 Fish & Game, in its appeal, requested the following amendments to this policy:

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

12.3 Ravensdown in its submission⁷ 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.

12.4 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.

⁶ Submission point 661.24.

⁷ Submission point 661.26.

13. **Policy 45 - Priority of FMU values, objectives, policies and rules and Policy 47 - FMU processes**

13.1 The decisions versions of Policies 45 and 47 read:

Policy 45 – Priority of FMU values, objectives, policies and rules

In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Region-wide Policies. Any provision on the same subject matter in the relevant FMU section of this Plan prevails over the relevant provision within this the Region-wide Objectives and Region-wide Policy sections, unless it is explicitly stated to the contrary.

As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.

Note: It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.

Policy 47 – FMU processes

The FMU sections will:

1. *identify values and establish freshwater objectives for each Freshwater Management Unit, including where appropriate at a catchment or sub-catchment level, having particular regard to the national significance of Te Mana o te Wai, and any other values developed in accordance with Policies CA1-CA4 and Policy D1 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017); and*
2. *set water quality and water quantity limits and targets to achieve the freshwater objectives; and*
3. *set methods to phase out any over-allocation, within a specified timeframe; and*
4. *assess water quality and quantity taking into account Ngāi Tahu indicators of health.*

13.2 Fish & Game, in its appeal, requested the following amendments to these policies:

Policy 45 – Priority of FMU values, objectives, policies and rules

... the Region-wide Objectives and Region-wide Policy sections, unless ~~it is explicitly stated to the contrary~~ the provisions in the relevant FMU Section of this plan is not more lenient or less protective of water quality, quantity or aquatic ecology than the Region wide Objectives and Region-wide Policies.

...

~~Note: It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.~~

Policy 47 – FMU processes

The FMU sections will support the implementation of the region-wide objectives by:

1. *identifying values and establishing specific freshwater objectives ...; and*
2. *set water quality and water quantity limits and targets to achieve the region-wide and specific freshwater objectives; and*
3. *....*

13.3 Ravensdown in its submissions⁸ supported Policies 45 and 47 and requested the retention to the policies, with an amendment to the title to Policy 45 requested. Ravensdown's submission were accepted in part.

13.4 Ravensdown did not appeal the decisions version of these policies as they generally reflected the outcomes sought in its submissions. As the policies reflect the outcomes sought by Ravensdown, the relief being sought by Fish & Game is opposed.

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

14.1 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:*

(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.*

14.2 Fish & Game, in its appeal, seek to amend Conditions (i) and (iv) of the permitted activity rule (Rule 14(a)) as follows:

(i) *... no direct discharge of fertiliser into a lake, river ~~(excluding ephemeral rivers)~~ (including an ephemeral or intermittent river), artificial watercourse, ...*

(iv) *where any lake, river ~~(excluding ephemeral rivers)~~ (including an ephemeral or intermittent river), artificial watercourse, ...*

14.3 Ravensdown in its submission⁹ 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

⁸ Submission points 661.30 and 661.32 respectively.

⁹ Submission point 661.35.

some of the proposed set back from indigenous biodiversity sites applies (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).

- 14.4 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 Fish & Game's proposed amendments to Rule 14, the relief being sought by Fish & Game is opposed.

15. **Rule 20 – Farming**

- 15.1 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 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).

- 15.2 Fish & Game, in its appeal, requests a number of amendments to Rule 20. The amendments sought include:

- (a) Deletion of Rule 20(aa) which permits farming in ephemeral rivers provided no other rules apply.
- (b) Various amendments to the conditions of permitted activity Rules 20(a) and 20(b), including requiring the specific farming activities to not be occurring on specific sloping land, within 'critical source areas' or ephemeral or intermitted rivers, as well as headwater seeps, springs or tarns.
- (c) Various amendments to the matters to which Council must restrict its discretion in relation to restricted discretionary Rule 20(d), including but not limited to, references to 'best practicable option' rather than 'good management practices' (Matters 2 and 3) and expanding the list of potential adverse effects to be considered (Matter 5).
- (d) Amending the activity status of Rule 20(e) which provides for farming activities that do not comply with the conditions of Rule 20(d) or condition (iv) of Rule 20(a) to a non-complying activity (rather than discretionary activity).

- 15.3 Ravensdown in its submission¹⁰ supported the overall intent of Rule 20, but sought various changes to the structure of the rules. Ravensdown's submission was accepted in part.
- 15.4 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 Fish & Game.
16. **Appendix N - Farm Environmental Management Plan Requirements**
- 16.1 The decisions version of Appendix N identifies the requirements for FEMP, which must be prepared for all farming activities in the region. Part A identifies that a FEMP must be based on either the material listed in Part B of this appendix, or an industry prepared FEMP template or guidance material with supplementary material added where relevant to ensure Part B material is included. Part B of the Appendix N specifies:
- (a) the requirement of an FEMP, its annual review and provision to Council upon request (Part B(1)).
 - (b) Landholding details (Part B(2)).
 - (c) Map and/or aerial photograph requirements in relation to the landholding (Part B(3)).
 - (d) Nutrient budget requirements (Part B(4)).
 - (e) Good management practice requirements (Part B(5)).
- 16.2 Fish & Game, in its appeal, has requested various amendments and additions to Appendix N, including but not limited to:
- (a) Specifying the farming activities taking place within the landholding (Part B(2)).
 - (b) Requiring the map and/or aerial photographs to also identify ephemeral or intermittent streams and slopes greater than 4 degrees, rather 20 degrees (Part B(3)).
 - (c) New Part B(5), requiring the identification of environmental effects and risks.
 - (d) New Part B(6) providing objectives, and description of how these objectives will be met (where relevant), in relation to irrigation systems and installation, irrigation management, nutrient and soil management, waterways and wetland management, collected animal effluent management and drainage maintenance.
 - (e) New Part B(7), requiring, for each of the relevant Part B(6) objectives, measurable targets and associated performance review and reporting.
 - (f) In relation to good management practices (now Part B(8)), amending references to 'reducing', or 'minimising' to 'avoiding, where practicable, or otherwise

¹⁰ Submission point 661.37.

mitigating' specific potential effects including on water quality and aquatic habitat value, as well as measuring and recording performance in relation to these practices.

- 16.3 Ravensdown in its submissions¹¹ supported the intent and role that FEMP will play in managing the adverse environment effects of farming activities. While supporting Appendix N, Ravensdown sought various amendments to refine and focus the appendix and to also ensure that the requirements of the FEMP was achievable and realistic. Ravensdown's submission was accepted in part.
- 16.4 Ravensdown did not appeal the decisions version of this appendix as it was considered that the appendix has been appropriately simplified and condensed and generally reflected the outcomes sought by Ravensdown. Ravensdown therefore opposes the relief being sought by Fish & Game.
17. 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

¹¹ Submission point 661.43.

Address for service:

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

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