

**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)

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JOINT MEMORANDUM IN SUPPORT OF CONSENT ORDER

**TOPIC B4 ISSUES 1, 2, 3, 4, 5, 6, 7, 8, & 10
RELATING TO
POLICIES 28, 29, & 30, AND RULE 73**

3 February 2022

Judicial Officer: Judge Borthwick

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

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL CITY 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 joint memorandum relates to appeals against Southland Regional Council's decision on the proposed Southland Water and Land Plan (**pSWLP**), in respect of provisions relating to Topic B4 – Bed Disturbance.
- 2 The parties participated in Court-assisted mediation on these appeals on 25 and 26 May 2021.
- 3 During Court-assisted mediation the parties have reached agreement on the resolution of the following provisions under appeal:
 - (a) Issue 1 - Policy 28;
 - (b) Issues 2, 3, 4 and 5 – Policy 29;
 - (c) Issues 6, 7 and 8 – Policy 30; and
 - (d) Issue 10 – Rule 73.
- 4 This joint memorandum is filed in support of a draft consent order to resolve the appeals relating to provisions referred to at paragraph 3 above.
- 5 This joint memorandum has been signed by each of the Appellants, the Respondent, and each of the section 274 parties.

The changes agreed, the rationale for the same, and draft Consent Orders

- 6 The changes to the provisions referred to in paragraph 3, as agreed between the parties, are detailed in the draft Consent Order included at **Appendix 1** to this joint memorandum.
- 7 The changes, including the rationale for the same, are also explained in more detail in the affidavit of Matthew McCallum-Clark dated 2 February 2022, attached as **Appendix 2** to this joint memorandum. This affidavit provides an evaluation of the agreed changes in terms of section 32AA of the Act and (where relevant) the higher order policy documents, including in particular the National Policy Statement for Freshwater Management 2020 (**NPSFM**).
- 8 Counsel also record at the outset, that the parties, throughout mediation and informal discussions, were cognisant of the findings in the Court's

Interim Decisions¹ and are satisfied that all changes agreed to are consistent with those findings and/or, within the bounds of scope, bring the pSWLP closer to the direction in those decisions.

Details of appeals

- 9 The sub-sections below detail the provisions that were appealed, who appealed each provision, what those appellants sought, and who joined those appeals as section 274 parties.
- 10 As the rationale for the changes agreed and an analysis in line with section 32AA has been provided in the affidavit of Matthew McCallum-Clark, such detail is not reproduced here. Rather, cross-referencing to that reasoning is provided to assist with readability of the suite of documents filed in support of orders being made by consent.

Issue 1 - Policy 28

- 11 Policy 28 provides policy direction on the management of structures, bed disturbance activities and associated discharges in the beds and margins of lakes, rivers, and modified watercourses.
- 12 Policy 28 was appealed by Royal Forest & Bird Protection Society of New Zealand Incorporated (**Forest and Bird**).
- 13 Forest and Bird sought to delete “remedy or mitigate” from Policy 28, so that adverse effects on the listed things must be avoided.
- 14 The following parties joined this appeal as section 274 parties in relation to Policy 28:
- (a) Aratiatia Livestock Limited;
 - (b) DairyNZ Limited;
 - (c) Federated Farmers of New Zealand;
 - (d) Fonterra Co-operative Limited;
 - (e) Meridian Energy Limited;
 - (f) Gore District Council, Southland District Council & Invercargill City Council;

¹ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

- (g) Transpower New Zealand Limited;
- (h) Director-General of Conservation; and
- (i) Southland Fish and Game Council (**Fish and Game**).

- 15 Through mediation the parties agreed to amend Policy 28 as set out in the draft consent order and paragraph [15] of the affidavit of Matthew McCallum-Clark in relation to Topic B4.
- 16 The rationale for the changes agreed are also included in that affidavit at paragraphs [16] – [23].

Issues 2, 3, 4 and 5 – Policy 29

- 17 Policy 29 provides policy direction recognising the value of gravel and providing for its extraction in a way that avoids, remedies or mitigates adverse effects on groundwater quality, rivers and their margins, and meets seven other prescribed outcomes as listed in the Policy.
- 18 Policy 29 of the pSWLP has been appealed by HW Richardson Group Limited; Forest and Bird; Te Rūnanga Ngai Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga O Awarua, and Te Rūnanga O Ōraka Aparima (**Ngā Rūnanga**); Heritage New Zealand Pouhere Taonga; and the Director-General of Conservation.
- 19 HW Richardson Group Limited sought to clarify the Policy as it considered the Decisions Version drafting could lead to uncertainty in the way that it is applied, particularly in so far as it relates to the avoidance of any adverse effects.
- 20 Forest and Bird sought to amend the Policy to include a requirement to avoid adverse effects on significant indigenous vegetation and significant habitat of indigenous fauna.
- 21 Ngā Rūnanga sought that, for river based extractions, aquatic and riparian habitat is maintained or enhanced (rather than restored) after the gravel extraction activity has ceased.
- 22 Heritage New Zealand Pouhere Taonga sought to amend the Policy by inserting a sub-clause requiring that adverse effects on historic heritage values are avoided, remedied or mitigated.

- 23 The Director-General of Conservation sought to include “riverine” so as to ensure that riverine habitats also have to be restored once gravel extraction activities have ceased.
- 24 The following parties joined some or all these appeals as section 274 parties in relation to Policy 29:
- (a) Director-General of Conservation;
 - (b) Federated Farmers of New Zealand;
 - (c) Fulton Hogan Limited;²
 - (d) HW Richardson Group Limited;
 - (e) Meridian Energy Limited;
 - (f) Forest and Bird;
 - (g) Fish and Game;
 - (h) Ngā Rūnanga; and
 - (i) Transpower New Zealand Limited.
- 25 Through mediation the parties agreed to amend Policy 29 as set out in the draft consent order and paragraph [26] of the affidavit of Matthew McCallum-Clark in relation to Topic B4.
- 26 The rationale for the changes agreed are also included in that affidavit at paragraphs [27] – [35].

Issues 6, 7 and 8 – Policy 30

- 27 Policy 30 provides policy direction to, in recognition of the community benefits of maintaining flood conveyance capacity and land drainage, ensure that drainage maintenance activities within artificial watercourses and the beds of modified watercourses are managed in a way that either avoids, remedies or mitigates significant adverse effects on the aquatic environment, or maintains or enhances habitat value.
- 28 Policy 30 of the pSWLP has been appealed by Fish and Game.
- 29 Fish and Game sought to amend Policy 30:

² Fulton Hogan has withdrawn its interest in the appeals.

- (a) to include the margins of artificial and modified watercourses in the chapeau;
 - (b) in relation to sub-clause (1):
 - (i) so that avoidance of adverse effects is prioritised over remediation or mitigation;
 - (ii) so that any adverse effects were avoided, remedied or mitigated as opposed to only significant adverse effects; and
 - (iii) to specify that adverse effects on the aquatic environment include effects on water quality, aquatic ecosystem health, life supporting capacity, natural character and riparian margins, mahinga kai, and indigenous vegetation and fauna.
 - (c) in relation to sub-clause (2), to specify that habitat value includes fish passage, gravel spawning habitat and bank stability; and
 - (d) insert an addition sub-clause requiring mitigation of the quantity of sediment released from drainage activities, including in overland flow entering the artificial or modified watercourse.
- 30 The following parties joined all the appeal as section 274 parties in relation to Policy 30:
- (a) Director-General of Conservation;
 - (b) Royal Forest and Bird Protection Society of New Zealand Incorporated;
 - (c) Federated Farmers of New Zealand; and
 - (d) Meridian Energy Limited.
- 31 Through mediation the parties agreed to amend Policy 30 as set out in the draft consent order and paragraph [38] of the affidavit of Matthew McCallum-Clark in relation to Topic B4.
- 32 The rationale for the changes agreed are also included in that affidavit at paragraphs [39] – [46].

Issue 10 – Rule 73

- 33 Rule 73 provides for the excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of extracting gravel or

aggregate at either a restricted discretionary or discretionary activity, subject to conditions.

- 34 Rule 73 of the pSWLP has been appealed Fish and Game.
- 35 Fish and Game sought to clarify the matters of discretion the Council is restricted to. Specifically, in relation to Rule 73(a) and (b), to clarify that “quantity” refers to the quantity of material extracted, and that the matters of discretion are conjunctive not disjunctive. In relation to Rule 73(b), it also sought to add natural character, navigational hazard, public access, and recreational values o the matters of discretion.
- 36 The following parties joined this appeal as section 274 parties in relation to Rule 73:
- (a) Director-General of Conservation; and
 - (b) Royal Forest and Bird Protection Society of New Zealand Incorporated.
- 37 Through mediation the parties agreed to amend Rule 73 as set out in the draft consent order and paragraph [49] of the affidavit of Matthew McCallum-Clark in relation to Topic B4.
- 38 The rationale for the changes agreed are also included in that affidavit at paragraphs [50] – [56].

Orders sought

- 39 All parties are satisfied that all matters proposed for the Court’s endorsement are within the scope of submissions and appeals, fall within the Court’s jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.
- 40 For the avoidance of doubt, the parties are satisfied that the amendments give effect to the National Policy Statement for Freshwater Management 2020, insofar as there is scope to do so.
- 41 The parties are also satisfied that the changes appropriately respond to the direction from the Court in its Interim Decisions.³

³ [2019] NZEnvC 208, [2020] NZEnvC 93, [2020] NZEnvC 110, and [2020] NZEnvC 191.

42 The parties therefore respectfully request that the Court make the orders sought in **Appendix 1** to this memorandum.

43 No party has any issue as to costs.

44 For completeness, it is noted that the order, if granted, resolves all appeals in relation to:

(a) Policy 29 (Issues 2, 3, 4 and 5); and

(b) Policy 30 (Issues 6, 7 and 8);

and partially resolves the appeals in relation to:

(c) Policy 28 (Issue 1). Policy 28 is also under appeal in relation to Issue 8 of Topic B7. That appeal is also proposed to be resolved by consent. See paragraphs [30] to [38] of the Joint Memorandum in relation to Topic B7 and paragraphs [41] to [47] of the affidavit of Matthew McCallum-Clark in relation to the same.

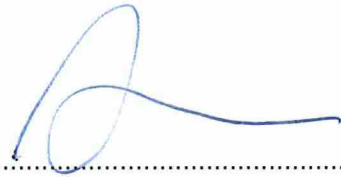
(d) Rule 73 (Issue 10). Rule 73 is also under appeal in relation to Issue 10 of Topic B7. That appeal is also proposed to be resolved by consent. See paragraphs [39] to [44] of the Joint Memorandum in relation to Topic B7 and paragraphs [52] to [57] of the affidavit of Matthew McCallum-Clark in relation to the same.

DATED this 3rd day of February 2022



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Counsel for Southland Regional Council



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Counsel for Aratiatia Livestock Limited

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B Matheson / K Forward

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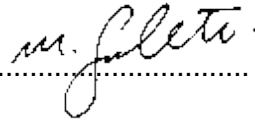
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N Garvan / T Crawford

Counsel for Transpower New Zealand Limited

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S Christensen

Counsel for Meridian Energy Limited



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S Christensen

Counsel for Meridian Energy Limited

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N Garvan / T Crawford

Counsel for Transpower New Zealand Limited

Appendix 1 – Draft consent order

**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)

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

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

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CONSENT ORDER

**TOPIC B4 ISSUES 1, 2, 3, 4, 5, 6, 7, 8, & 10
RELATING TO
POLICIES 28, 29, & 30, AND RULE 73**

Judicial Officer: Judge Borthwick

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)

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(ENV-2018-CHC-39)

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

HERITAGE NEW ZEALAND POUHERE TAONGA
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(ENV-2018-CHC-42)

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

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(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

- [A] Under section 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed in accordance with Annexure A to this Order.
- [B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

- 1 The following parties have appealed provisions of the proposed Southland Water and Land Plan as they relate to Topic B4:¹
 - (a) Director-General of Conservation;
 - (b) Heritage New Zealand Pouhere Taonga;
 - (c) HW Richardson Group Limited;
 - (d) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**);
 - (e) Southland Fish and Game Council (**Fish and Game**); and
 - (f) Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihōpai Rūnaka, Te Rūnanga o Awarua, and Te Rūnanga o Oraka Aparima (**Ngā Rūnanga**).

- 2 The Court has read and considered the joint memorandum of the parties dated 3 February 2022, which proposes to resolve the appeals that relate to:
 - (a) Policy 28 (Issue 1);
 - (b) Policy 29 (Issues 2, 3, 4 and 5); and
 - (c) Policy 30 (Issues 6, 7 and 8);and partially resolve the appeals in relation to:
 - (d) Rule 73 (Issue 10). Rule 73 was also under appeal in relation to Issue 10 of Topic B7. That appeal is also proposed to be resolved by consent. See paragraphs [39] to [44] of the Joint Memorandum in relation to Topic B7 and paragraphs [52] to [57] of the affidavit of Matthew McCallum-Clark in relation to the same.

- 3 The Court has also read and considered the affidavit of Matthew McCallum-Clark dated 2 February 2022, which provides an analysis of

¹ The particular provisions each party has appealed is set out in the joint memorandum of the parties dated 3 February 2022.

the changes proposed by the parties in terms of section 32AA of the Resource Management Act 1991 (**Act**).

- 4 The following parties gave notice of their intention to become parties under section 274 of the Act and have signed the joint memorandum of the parties dated 3 February 2022:²
- (a) Aratiatia Livestock Limited;
 - (b) DairyNZ Limited;
 - (c) Director-General of Conservation;
 - (d) Federated Farmers of New Zealand;
 - (e) Fish and Game;
 - (f) Fonterra Co-operative Group Limited;
 - (g) Forest and Bird;
 - (h) Gore District Council, Southland District Council and Invercargill City Council;
 - (i) HW Richardson Group Limited;
 - (j) Meridian Energy Limited;
 - (k) Ngā Rūnanga; and
 - (l) Transpower New Zealand Limited.
- 5 The Court is making this order under section 279(1)(b) of the Act; such order being by consent pursuant to section 297, rather than representing a decision or determination on the merits. The Court understands that for the present purposes that:
- (a) all parties to the proceedings have executed the memorandum requesting this order;
 - (b) all parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant

² The particular appeal each party has joined as a s274 party is set out in the joint memorandum of the parties dated 3 February 2022.

requirements and objectives of the Act, including in particular Part 2.

Order

6 Therefore, the Court orders, by consent, that the proposed Southland Water and Land Plan be amended as set out in **Annexure A** to this Order.

7 The Order resolves the appeals as they relate to the following provisions:

- (a) Policy 28;
- (b) Policy 29; and
- (c) Policy 30;

and partially resolves the appeals in relation to:

- (d) Rule 73.

8 There is no order as to costs.

DATED this day of 2022

J E Borthwick
Environment Judge

ANNEXURE A

Topic B4 – Agreed changes to provision(s)

Amended text for Policy 28, Policy 29, Policy 30 and Rule 73 (deleted text in strikethrough, new text underlined):

Policy 28 – Structures and bed disturbance activities of rivers (including modified watercourses) and lakes

a. ~~Except where Policy 28b applies, m~~Manage structures, bed disturbance activities and associated discharges in the beds and margins of lakes, rivers and modified watercourses, to avoid where reasonably practicable, or otherwise remedy or mitigate adverse effects on:

1. water quality and quantity;
2. habitats, ecosystems and fish passage;
3. indigenous biological diversity;
5. the spiritual and cultural values and beliefs of the tangata whenua;
6. mātaihai and taiāpure;
7. public access (except in circumstances where public health and safety are at risk) and amenity values;
8. natural character values and outstanding natural features;
9. river morphology and dynamics, including erosion and sedimentation;
10. flood risk;
11. infrastructural assets;
12. navigational safety; and
13. landscape values.

b. The loss of river extent and values is avoided, unless the Southland Regional Council is satisfied:

- (i) that there is a functional need for the activity in that location; and
- (ii) that the effects of the activity are managed by applying the effects management hierarchy*

*As defined in the NPS-FM (2020)

Policy 29 – Provide for the extraction of gravel

Recognise the value of gravel and provide for its extraction to meet the social, economic and cultural needs of the community in a way that;

- a. avoids, remedies or mitigates adverse effects on land, groundwater quality, rivers and their margins; and recreational values and;
- b. for river bed based extractions:
1. ~~for river based extractions, requires the restoration of aquatic, riverine and riparian habitat~~ is restored or enhanced once the gravel extraction activity has ceased;
 2. results in no long-term net loss of habitat in the river channel, bed or floodplain;
 - 2a. ensures that the rate and volume of gravel extraction is sustainable;
 3. ensures no degradation of flood protection and erosion control infrastructure and the integrity of physical resources;
 4. does not adversely affect the Ngāi Tahu cultural values and interests associated with the land or river, including taonga species habitat, mahinga kai, mātaītai and taiāpure;³
 - ~~5. results in no long term adverse effects on recreational values; and~~
 6. maintains public access (except in circumstances where public health and safety are at risk);
 7. protects historic heritage values; and
 8. protects areas of significant indigenous vegetation and significant indigenous fauna.

Policy 30 – Drainage maintenance

In recognition of the community benefits of maintaining flood conveyance capacity and land drainage, ensure that drainage maintenance activities within artificial watercourses and the beds of modified watercourses and their margins are managed in a way that ~~either~~:

1. avoids, where reasonably practicable, or otherwise remedies or mitigates significant adverse effects on the aquatic environment and riparian habitat in modified watercourses and significant adverse effects on aquatic and riparian habitat in artificial watercourses; or
2. maintains or enhances habitat value, including fish passage, gravel spawning habitat and bank stability; and

³ Mātaītai and taiāpure are defined in the Introduction to the Plan on page 10.

3. in addition to 1 or 2, minimises the quantity of sediment released from drainage maintenance activities.

Rule 73 – Gravel extraction

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

- (a) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel or aggregate is associated with the maintenance of structures which is otherwise authorised under Rule 66) is a restricted discretionary activity provided the following conditions are met:
- (ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule; and
 - (i) the quantity of gravel removed is less than 120 cubic metres per year; and
 - (ii) there is no extraction from flowing water; and
 - (iii) the area is left level and tidy on completion of the activity.

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

1. the quantity of material extracted and location of the extraction; and
 2. any effects on infrastructure, river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character and amenity values, navigation hazard, public access, recreation values and the spiritual and cultural values and beliefs of the tangata whenua.
- (b) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel is associated with the maintenance of structures which is otherwise authorised under Rule 66) for flood or erosion control or the protection of infrastructure is a restricted discretionary activity provided the following conditions are met:

(ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule.

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

1. the quantity of material extracted and location of the extraction; and
2. the design of the works ~~and the quantity of material extracted~~; and
3. any effects on infrastructure, flood risk, river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character, navigation hazard, public access, recreational values and the spiritual and cultural values and beliefs of the tangata whenua.

...

Appendix 2 – Affidavit of Matthew McCallum-Clark dated 2 February 2022

**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)

(Continued next page)

AFFIDAVIT OF MATTHEW MCCALLUM-CLARK

**TOPIC B4 ISSUES 1, 2, 3, 4, 5, 6, 7, 8, & 10
RELATING TO
POLICIES 28, 29, & 30, AND RULE 73**

2 February 2022

Judicial Officer: Judge Borthwick

Respondent's Solicitor
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WYNNWILLIAMS

Solicitor: P A C Maw
(philip.maw@wynnwilliams.co.nz)

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

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

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT
COUNCIL & INVERCARGILL CITY 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

I, Matthew Eaton Arthur McCallum-Clark, of Christchurch, Consultant, solemnly and sincerely affirm:

- 1 My qualifications and experience are set out in my Statement of Evidence in Chief dated 14 December 2018.
- 2 While this affidavit in part records the reasoning and conclusion of the parties present at mediation, in places I express my professional opinion. For this material, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the evidence of another person, my opinions are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 3 This affidavit seeks to provide an evaluation in terms of section 32AA of the Resource Management Act 1991 (**Act**) to accompany the draft consent order to which this affidavit relates.¹ Within the context of the section 32AA assessment, I have also assessed the higher order policy documents including in particular, the National Policy Statement for Freshwater Management 2020 (**NPSFM**).
- 4 As with any negotiated outcome, the position arrived at by the parties does not necessarily reflect my professional opinion of what the best wording would be. In my opinion, in part, some of the wording is acceptable rather than preferred. That said, the agreed outcome was the result of considerable discussion and investment in time and thought, which I respect. I have attempted to set out below the reasoning that the Court has required to be provided, based on my understanding and recollections of the discussion that occurred.

Introduction

- 5 This affidavit relates to those issues under Topic B4 where an outcome has been agreed between the parties, namely:
 - (a) Issue 1 - Policy 28;
 - (b) Issues 2, 3, 4 and 5 – Policy 29;

¹ Minute of the Environment Court dated 22 October 2020, at [12].



- (c) Issues 6, 7 and 8 – Policy 30; and
- (d) Issue 10 – Rule 73.

6 In this affidavit I first set out the relevant legal tests under s32AA of the Act and then provide an evaluation in accordance with s32AA for each of the provisions that have been agreed.

Section 32AA of the Act

7 Section 32AA of the Act requires:

- (1) *A further evaluation required under this Act—*
 - (a) *is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*
 - (b) *must be undertaken in accordance with section 32(1) to (4); and*
 - (c) *must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and...*

8 The core of section 32 of the Act is in sub-section (1), which requires a decision-maker to (relevantly):

- ...
- (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
- ...

9 Sub-section (2) specifies how the analysis under section 32(1)(b)(ii) is to be undertaken. In summary, this requires an assessment of the benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions, and an assessment of the risk of acting or not acting if there is uncertain or insufficient information.



- 10 Section 32(3) is not relevant given the proposed Southland Water and Land Plan (**pSWLP**) is not an amending proposal, rather it is a whole new plan.
- 11 Section 32(4) may be relevant where the provision is a rule and will impose a greater or lesser restriction on an activity to which a national environmental standard applies than the existing restrictions in that standard.

Evaluation in accordance with section 32AA for each provision where a change has been agreed

- 12 In accordance with the requirements of sections 32(1) and 32(2), in relation to each provision where a change has been agreed I:
- (a) list the most relevant objectives;
 - (b) explain the "other reasonably practicable options" for achieving the objectives;
 - (c) summarise the reasons for the changes agreed; and
 - (d) provide an assessment of benefits, costs, and risks as required by section 32(2).

Issue 1 - Policy 28

- 13 Policy 28 of the pSWLP has been appealed by Royal Forest & Bird Protection Society of New Zealand Incorporated.
- 14 The following parties joined this appeal as section 274 parties in relation to Policy 28:
- (a) Aratiatia Livestock Limited;
 - (b) DairyNZ Limited;
 - (c) Federated Farmers of New Zealand;
 - (d) Fonterra Co-operative Limited;
 - (e) Meridian Energy Limited;
 - (f) Gore District Council, Southland District Council & Invercargill City Council;
 - (g) Transpower New Zealand Limited;



- (h) Director-General of Conservation; and
- (i) Southland Fish and Game Council.

15 The mediated outcome for Policy 28 is (deleted text in strikethrough and new text underlined):

Policy 28 – Structures and bed disturbance activities of rivers (including modified watercourses) and lakes

- a. Except where Policy 28b applies, mManage structures, bed disturbance activities and associated discharges in the beds and margins of lakes, rivers and modified watercourses, to avoid where reasonably practicable, or otherwise remedy or mitigate adverse effects on:
 1. water quality and quantity;
 2. habitats, ecosystems and fish passage;
 3. indigenous biological diversity;
 5. the spiritual and cultural values and beliefs of the tangata whenua;
 6. mātaihai and taiāpure;
 7. public access (except in circumstances where public health and safety are at risk) and amenity values;
 8. natural character values and outstanding natural features;
 9. river morphology and dynamics, including erosion and sedimentation;
 10. flood risk;
 11. infrastructural assets;
 12. navigational safety; and
 13. landscape values.
- b. The loss of river extent and values is avoided, unless the Southland Regional Council is satisfied:
 - (i) that there is a functional need for the activity in that location; and
 - (ii) that the effects of the activity are managed by applying the effects management hierarchy*

*As defined in the NPS-FM (2020)

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Relevant objectives

- 16 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Policy 28 is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 14, Objective 17 and Objective 18.

Reasonably practicable options

- 17 Section 32(1)(b)(i) requires the identification of “other reasonably practical options” for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording set out in tracked changes in paragraph 15 above.

Explanation and reasons for the changes agreed

- 18 At the outset, in my opinion, the inclusion or deletion of “avoid where reasonably practicable, or otherwise remedy or mitigate” in Policy 28 would result in slightly different outcomes. This was confirmed in mediation discussions where consideration was given to how the policy will reflect Te Mana o te Wai and the National Policy Statement for Freshwater Management 2020 (NPSFM). The amendment to Policy 28 to “avoid where reasonably practicable, or otherwise remedy or mitigate” is prioritising the health of the water by placing a greater emphasis on the duty to avoid adverse effects in the first instance before considering whether adverse effects can be remedied or mitigated.
- 19 Overall, the parties were cognisant of the need to give effect to the NPSFM as set out in Policy 7 and in particular Clause 3.24. While including the NPSFM river policy as set out in Clause 3.24(1) is not occurring until the pSWLP is fully operative, Policy 28 of the pSWLP has been amended to reflect the effects management hierarchy of the NPSFM, including through the inclusion of a functional need for an activity to occur in the bed of a river or lake.
- 20 When considering the mediated position on Policy 28 in light of the Topic A decisions on the Objectives, I am of the opinion that the provision is well aligned with Objectives 1, 2 and 3. Avoiding adverse effects of gravel extraction activities in the first instance reflects Objective 2 and the importance of the mauri of water. While the amended Policy is

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putting the mauri of the water first, Objective 3 acknowledges the importance of structures and bed disturbance activities to the economic, social and cultural wellbeing of the region. This is reflected in the inclusion of the effects management hierarchy, which allows for some activities to occur, where there is a functional need for that activity to occur in or over the beds of rivers.

Benefits, costs and risk assessment

- 21 With respect to the assessment of benefits, costs and risks set out in section 32(2), I am of the opinion that the amended Policy is more directive and limiting, such that it will enable necessary and well-managed activities in rivers and lakes, and discourage other activities. The agreed prioritisation of the avoidance of adverse effects over the options to remedy or mitigate, while still providing for activities that have a functional need to be located in the beds and margins of rivers and lakes, results in a shift toward greater protection. This is likely to reduce the effects on river and lake beds and their margins, and better achieve the objectives of the pSWLP and the NPSFM. There will likely be some costs and additional mitigation and off-setting required for activities that have a functional need to locate in river and lake beds, and there may be some activities that are not able to occur. While this is a potential cost, it is clearly signalled in the NPSFM that it is an inevitable cost.
- 22 In terms of section 32(2)(c), there is some risk due to a lack of information on what activities currently occur in river and lake beds and the degree of change that may be required to those existing activities to meet this Policy. Many activities and structures in river and lake beds are historic and have a long serviceable life, particularly in the case of infrastructure, and may not have existing resource consents. Some uncertainty may remain about long-term maintenance, upgrading and operation of these activities and structures, given that Council and landowners may not have good records or monitoring information. That said, the revised policy is closely aligned with the NPSFM requirements and those risks and uncertainties are inevitable.
- 23 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 15 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

Issues 2, 3, 4 and 5 – Policy 29

- 24 Policy 29 of the pSWLP has been appealed by HW Richardson Group Limited; Royal Forest and Bird Protection Society of New Zealand; Te Rūnanga Ngai Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga O Awarua, and Te Rūnanga O Ōraka Aparima; Heritage New Zealand Pouhere Taonga; and the Director-General of Conservation.
- 25 The following parties joined some or all these appeals as section 274 parties in relation to Policy 29:
- (a) Director-General of Conservation;
 - (b) Federated Farmers of New Zealand;
 - (c) Fulton Hogan Limited;²
 - (d) HW Richardson Group Limited;
 - (e) Meridian Energy Limited;
 - (f) Royal Forest and Bird Protection Society of New Zealand Incorporated;
 - (g) Southland Fish and Game Council;
 - (h) Te Rūnanga Ngai Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua and Te Rūnanga o Ōraka Aparima; and
 - (i) Transpower New Zealand Limited.
- 26 The mediated outcome for Policy 29 is (deleted text in strikeout, new text underlined):

Policy 29 – Provide for the extraction of gravel

Recognise the value of gravel and provide for its extraction to meet the social, economic and cultural needs of the community in a way that:

- a. avoids, remedies or mitigates adverse effects on land, groundwater quality, rivers and their margins; and recreational values and;
- b. for river bed based extractions:

² Fulton Hogan has withdrawn its interest in the appeals.

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1. ~~for river based extractions, requires the restoration of aquatic, riverine and riparian habitat~~ is restored or enhanced once the gravel extraction activity has ceased;
2. results in no long-term net loss of habitat in the river channel, bed or floodplain;
- 2a. ensures that the rate and volume of gravel extraction is sustainable;
3. ensures no degradation of flood protection and erosion control infrastructure and the integrity of physical resources;
4. does not adversely affect the Ngāi Tahu cultural values and interests associated with the land or river, including taonga species habitat, mahinga kai, mātaītai and taiāpure;³
5. ~~results in no long-term adverse effects on recreational values; and~~
6. maintains public access (except in circumstances where public health and safety are at risk);
7. protects historic heritage values; and
8. protects areas of significant indigenous vegetation and significant indigenous fauna.

Relevant objectives

- 27 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether the amended Policy 29 is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 9/9A, Objective 14, Objective 17 and Objective 18.


Reasonably practicable options

- 28 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording shown in tracked changes in paragraph 26 above.

³ Mātaītai and taiāpure are defined in the Introduction to the Plan on page 10.

Explanation and reasons for the changes agreed

- 29 Except for the addition of the requirement to protect historic heritage values and areas of significant indigenous vegetation and fauna, the amendments to the policy are minor in that they predominantly provide clarity for users of the pSWLP on the expectations around gravel extraction activities. The separation of the Policy into two clauses (a and b), the relocation of recreational values into clause a, and the addition of 'riverine' habitat alongside aquatic and riparian habitat are all considered to be largely editorial in nature rather than having a significant implication for decisions made under the pSWLP. On this basis, pursuant to section 32AA(1)(c) this section 32 analysis will necessarily be brief.
- 30 It became apparent through mediation discussions that the Decisions Version of the Policy was being interpreted differently across the parties. The amendments proposed and agreed at mediation has resulted in a clearer Policy, a unified understanding of how the Policy is to be applied, and consequently there was agreement between parties that this will result in a more effective Policy for users of the pSWLP.
- 31 The inclusion of significant indigenous vegetation and significant indigenous fauna as elements to be protected while undertaking river based extractions recognises that there can be adverse effects from these kinds of activities which need to be managed appropriately in order to achieve of the objectives of the pSWLP (in particular Objective 14) and give effect to the National Policy Statement for Freshwater Management 2020.
- 32 It is notable that Objective 14 of the pSWLP was amended through the Topic A decisions of the Court to include the enhancement of indigenous ecosystems and habitats within rivers and their margins. The addition of clause 8 to the Policy is a meaningful way in which the amendment to this Objective can be reflected in the pSWLP provisions.
- 33 The additional requirement to protect historic heritage values recognises that there can be adverse effects on heritage values as a result of gravel extraction activities and it is appropriate for these effects to be managed through this policy. This addition pulls through the requirement in Objective 9/9A to manage the quantity of water in surface water bodies



so that historic heritage values of waterbodies and their margins are safeguarded.

Benefits, costs and risk assessment

- 34 With respect to the assessment of benefits, costs and risks set out in section 32(2), for the 'editorial' changes referred to in paragraph 29 above, I consider that their inclusion or otherwise would result in little to no difference in benefits and costs. I consider there will be environmental, social and cultural benefits from requiring the protection of areas of significant indigenous vegetation and significant indigenous fauna or historic heritage values when undertaking river based gravel extraction activities. The costs of this change are expected to be limited, as the activity is expected to be able to continue in an effective manner in areas where significant indigenous vegetation and significant indigenous fauna or areas of historic heritage are not present, or the effects on that vegetation, fauna or heritage can be effectively managed.
- 35 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 26 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

Issues 6, 7 and 8 – Policy 30

- 36 Policy 30 of the pSWLP has been appealed by Southland Fish and Game Council.
- 37 The following parties joined all the appeal as section 274 parties in relation to Policy 30:
- (a) Director-General of Conservation;
 - (b) Royal Forest and Bird Protection Society of New Zealand Incorporated;
 - (c) Federated Farmers of New Zealand; and
 - (d) Meridian Energy Limited.
- 38 The mediated outcome for Policy 30 is (deleted text in strikethrough, new text underlined):

Policy 30 – Drainage maintenance

In recognition of the community benefits of maintaining flood conveyance capacity and land drainage, ensure that drainage maintenance activities within artificial watercourses and the beds

of modified watercourses and their margins are managed in a way that either:

1. avoids, where reasonably practicable, or otherwise remedies or mitigates significant adverse effects on the aquatic environment and riparian habitat in modified watercourses and significant adverse effects on aquatic and riparian habitat in artificial watercourses; or
2. maintains or enhances habitat value, including fish passage, gravel spawning habitat and bank stability; and
3. in addition to 1 or 2, minimises the quantity of sediment released from drainage maintenance activities.

Relevant objectives

- 39 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Policy 30 is the most appropriate way to achieve the objectives, the most relevant objectives are Objective 1, Objective 2, Objective 3, Objective 6, Objective 9B, Objective 14, Objective 15, Objective 17 and Objective 18.

Reasonably practicable options

- 40 Section 32(1)(b)(i) requires the identification of "other reasonably practicable options" for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording set out in tracked changes in paragraph 38 above.

Explanation and reasons for the changes agreed

- 41 In my opinion, the agreed changes to the provision are more likely to result in improved environmental outcomes although with some additional financial costs to the community. This was confirmed during mediation discussion where it was agreed that adverse effects of drainage maintenance activities are not restricted to the beds of rivers but also apply to the river margins.
- 42 Those present at the mediation were cognisant of the need to align with the higher order provisions of the pSWLP and the NPSFM. Prioritising the avoidance of adverse effects in the first instance, and deleting 'significant' in relation to the avoidance of adverse effects on modified watercourses, is consistent with the NPSFM and Te Mana o te Wai.

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Avoiding, in the first instance, any adverse effects of the drainage maintenance activity (on modified watercourses) places priority on the wellbeing of the water.

- 43 As a whole, these changes are expected to provide greater guidance to prioritise the protection of aquatic and riparian habitat and reduction of sediment loss, particularly for modified watercourses. These changes are more aligned with Te Mana o te Wai and the NPSFM (especially clause 3.24) and the Objectives of the pSWLP addressed in paragraph **Error! Reference source not found.** By differentiating between modified and artificial watercourses, and continuing to recognise that some effects may be unavoidable in modified watercourses, the changes are considered to also achieve Objective 9B in relation to infrastructure.

Benefits, costs and risk assessment

- 44 With respect to the assessment of benefits, costs and risks required by section 32(2), I am of the opinion that the outcomes of the mediation may result in some cost to the community with regard to drainage maintenance activities. These costs may arise through the need for more expensive or better quality maintenance works in order to protect the values of the watercourse without compromising the drainage functions.
- 45 In terms of risk, there are some risks relating to a lack of information regarding the extent and nature of habitats and aquatic species present in the watercourses managed for drainage purposes. This does introduce an element of uncertainty with this assessment of benefits and costs. However, in line with Te Mana o Te Wai and the NPSFM, the changes to this Policy weight the response to this uncertainty in favour of the environment and water.
- 46 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 38 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.

Issue 10 – Rule 73

- 47 Rule 73 of the pSWLP has been appealed Southland Fish and Game Council.

48 The following parties joined this appeal as section 274 parties in relation to Rule 73:

- (a) Director-General of Conservation; and
- (b) Royal Forest and Bird Protection Society of New Zealand Incorporated.

49 The mediated outcome for Rule 73 is (deleted text in ~~strikeout~~, new text underlined):

Rule 73 – Gravel extraction

Note: In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.

- (a) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel or aggregate is associated with the maintenance of structures which is otherwise authorised under Rule 66) is a restricted discretionary activity provided the following conditions are met:
 - (ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule; and
 - (i) the quantity of gravel removed is less than 120 cubic metres per year; and
 - (ii) there is no extraction from flowing water; and
 - (iii) the area is left level and tidy on completion of the activity.

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

1. the quantity of material extracted and location of the extraction; and
2. any effects on infrastructure, river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character and amenity values, navigation hazard, public

access, recreation values and the spiritual and cultural values and beliefs of the tangata whenua.

- (b) The excavation or disturbance of the bed of a lake, river or modified watercourse for the purpose of extracting gravel or aggregate (except where the extraction of gravel is associated with the maintenance of structures which is otherwise authorised under Rule 66) for flood or erosion control or the protection of infrastructure is a restricted discretionary activity provided the following conditions are met:
- (ai) the general conditions set out in Rule 55A other than conditions (i), (j) and (k) of that Rule.

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

1. the quantity of material extracted and location of the extraction; and
2. the design of the works ~~and the quantity of material extracted;~~ and
3. any effects on infrastructure, flood risk, river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character, navigation hazard, public access, recreational values and the spiritual and cultural values and beliefs of the tangata whenua.

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Section 32(4)

- 50 Section 32(4) may be peripherally relevant as the Resource Management (National Environmental Standard for Freshwater) Regulations 2020 (**NES-F**) regulates reclamation of a riverbed. It is possible, depending on how the activity is undertaken, for gravel extraction to also trigger the rule in the NES-F. However, for the purposes of this assessment, section 32(4) does not need to be considered as there is no direct overlap between Rule 73 and the NES-F.

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Relevant objectives

- 51 While all the objectives of the pSWLP are relevant and have been considered, in terms of assessing whether Rule 73 is the most appropriate way to achieve the objectives, the most relevant objectives for this provision are Objective 1, Objective 2, Objective 3 and Objective 17.
- 52 Section 32(1)(b)(i) requires the identification of “other reasonably practicable options” for achieving the objectives. The reasonably practicable options I have identified and considered are the Decisions Version wording, and the agreed wording set out in tracked changes in paragraph 49 above.
- 53 In my opinion, the amendment to Rule 73(a) to include “the quantity of material extracted and location of extraction...” provides more clarity to the users of the pSWLP and consistency between parts of the rule, but is editorial in nature and so is not addressed in further detail (pursuant to section 32(1)(c)).
- 54 Making the matters of discretion largely the same between the two sub clauses is efficient and effective given the same kinds of effects are being managed. The parties were in agreement that the additional matters of discretion in Rule 73(b) are well aligned with the matters in Policy 29 of the pSWLP and also Clause 3.24 of the NPSFM.

Benefits, costs and risk assessment

- 55 With respect to the assessment of benefits, costs and risks set out in section 32(2), I am of the opinion that the outcomes from each of the two options of the wording of this Policy are difficult to distinguish, particularly in light of the wider objective and policy context of the pSWLP and the NPSFM. There is likely to be a small benefit relating to the additional matters of discretion in sub clause (b) of the Rule, as it will ensure both consistent assessment of effects and will ensure matters such as public access and natural character are able to be considered and therefore better achieve the objectives of the pSWLP. Given the potentially larger scale of the activities provided for in sub-clause (b) of the Rule, the parties considered it was appropriate that the additional issues be able to be considered, and would better align with the NPSFM and the objectives of the pSWLP.



56 Overall, having considered the options, the wording of the provision agreed by the parties (and set out at paragraph 49 above) is considered to be the most appropriate way to achieve the objectives of the pSWLP.



.....
Matthew McCallum-Clark

Affirmed at Kaiapoi)
this 2nd day of February)
2022, before me:)



.....
A Solicitor/Deputy Registrar of the High Court of New Zealand/
Justice of the Peace

Toni Laura Dempsey
Solicitor
Christchurch