

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

**AT CHRISTCHURCH  
KI OTAUTAHI**

**ENV-2018-CHC-000036**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

of an appeal under clause 14 of the First  
Schedule of the Act

**BETWEEN**

**Director-General of Conservation  
Tumuaki Ahurei**  
Appellant  
(ENV-2016-CHC-000036)

**AND**

**Southland Regional Council**  
Respondent

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**Will Say Statement of Linda Elizabeth Kirk for  
Director-General of Conservation Tumuaki Ahurei, Appellant  
in Preparation for Topic B Expert Caucusing**

Dated 29 October 2021

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**Department of Conservation Te Papa Atawhai**

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## Introduction

1. My full name is Linda Elizabeth Kirk. My experience and qualifications are set out in my evidence in chief dated 15 February 2019.
2. I have been involved in the proposed Southland Water and Land Plan (pSWLP) process in the following ways:
  - a. Expert evidence dated 15 February 2019 (and associated Environment Court Hearing – Topic A);
  - b. Evidence as Section 274 Party in Support – Topic A, dated 1 March 2019;
  - c. Evidence as Section 274 Party in Opposition – Topic A, dated 22 March 2019;
  - d. Statement of Evidence in Reply as a Section 274 Party, dated 13 May 2020;
  - e. Brief Setting Out Position Statement in Relation to Expert Conferencing Matters on 6 & 7 August 2020; and
  - f. Environment Court facilitated mediation on Topics B1, B2, B3, B4, B7.
3. I have been asked by the Director-General of Conservation *Tumuaki Ahurei* (D-G, Director-General) to provide independent planning evidence and a “Will Say” statement ahead of the expert planning caucusing and subsequent evidence drafting in relation to the outstanding appeal Topic B matters on the proposed Southland Water and Land Plan (pSWLP):
4. In preparing this Will Say statement, the additional information and documents I have read and considered since my evidence in chief dated 15 February 2019 and statement of evidence in reply dated 13 May 2020 are the:
  - a. 1 March 2021 Decisions Version of the pSWLP;

- b. PSWLP Topic B – agreed changes to provisions – 29 October 2021<sup>1</sup> (as provided by Southland Regional Council in its email dated 29 October 2021);
- c. National Policy Statement for Freshwater Management 2020 (NPSFM);
- d. Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F); and
- e. Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017;
- f. Resource Management (Stock Exclusion) Regulations 2020;
- g. Statement of Evidence of Mr Matthew McCallum-Clark: Topic B Overview (dated 22 October 2021); and
- h. Supplementary Statement of Evidence of Mr Matthew McCallum-Clark: Topic B Overview (dated 28 October 2021),
- i. Will Say Statement of Ms Emily Funnell (dated 29 October 2021); and
- j. Dunn, Dr N., 2021, “*Memo: Assessment of Southland Regional Council proposed Southland Water and Land Plan – Rule 78 weed and sediment removal rule testing*”, dated 18 June 2021, internal memorandum, Department of Conservation (attached as Appendix 1 to Ms Funnell’s Will Say Statement, dated 29 October 2021).

### **Code of Conduct**

- 5. I confirm that I have read the code of conduct for expert witnesses as contained in section 7.1 of the Environment Court’s Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence and will do so when I give oral evidence before the Court.
- 6. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The

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<sup>1</sup> My understanding is that these are the mediated provisions that have consent orders pending

reasons for the opinions expressed are also set out in the evidence to follow.

7. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

### **Scope**

8. I have been asked by the Director-General to provide independent planning evidence and a “will say” statement ahead of the expert planning caucusing and subsequent evidence drafting in relation to the following outstanding appeal Topic B matters on the proposed Southland Water and Land Plan (pSWLP):
  - a. Policy 16(1)(a); and
  - b. Rule 78 – Weed and sediment removal for drainage maintenance.
9. As directed at paragraph 11 in the “Record of Pre-Hearing Conference Timetable Directions (Topic B)” (dated 19 October 2021), this Will Say statement identifies:
  - a. the proposed relief now sought in tracked changes of the pSWLP<sup>2</sup>;
  - b. the relevant objectives and policies of the pSWLP that support the proposed relief; and
  - c. any further technical advice that is required to inform my opinion on the wording of the Plan’s provisions.
10. In preparing this will Say statement, I have received a memorandum from Dr Nicholas Dunn (which is attached as Appendix 1 to Ms Funnell’s Will Say Statement dated 29 October 2021). This memorandum provides an analysis of the extent of co-incidence of native freshwater fish habitat that is potentially affected by Rule 78. In the proposed relief sought in

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<sup>2</sup> pSWLP is the version dated 1 March 2021 and the mediated outcomes (consent orders pending) as stated at paragraph 4 of this Will Say statement.

Appendix 1, I have confined the relief sought to the appeal matters of the Director-General's appeal, that being non-diadromous galaxias.<sup>3</sup>

11. However, that is not to limit the advice provided by Dr Dunn as Ms Funnell's Will Say Statement has used this as a basis to extend the application of Rule 78 beyond non-diadromous galaxias. In my opinion, this is a technical matter that can be canvassed further in the expert conferencing that is scheduled in November-December 2021.

### **Position Statement**

12. In preparing this Will Say Statement, I reiterate that the proposed relief sought is confined to the matters on Policy 16 and Rule 78 as sought in the Director-General's Appeal.<sup>4</sup>
13. In Appendix 1 to this Will Say Statement, is a table which sets out my position with regards to Policy 16 and Rule 78. The proposed relief sought is highlighted in red, and shown in ~~strikethrough~~ for matters to be deleted or underlined for additional wording.
14. The Director-General's Appeal also sought an amendment to Policy 16 to include "*other intensive farming activities*". I understand that this relief is no longer being pursued by the Director-General, and I have not included it in Appendix 1.
15. The table in Appendix 1 also shows the relevant objectives and policies of the pSWLP that, in my opinion, support the proposed amendments sought.



Linda Elizabeth Kirk

29 October 2021

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<sup>3</sup> I note that the term "non-migratory galaxias" has now been more correctly referred to as "non-diadromous galaxias" since the Director-General's appeal notice in 2018. Refer to Funnell 29 October 2021, paragraph [9].

<sup>4</sup> Notice of Appeal dated 17 May 2018, paragraph 8.1 relief

## Appendix 1: Kirk's Amendments sought on Policy 16 and Rule 78 of pSWLP

Amendments sought (in red)	Relevant pSWLP provisions to support amendments
<p><b>Policy 16 – Farming activities that affect water</b></p> <p>1. Minimising the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and groundwater) from farming activities by:</p> <p>(a) <b>strongly</b> discouraging the establishment of new dairy farming of cows or new intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and</p> <p>....</p>	<p><b>Objectives</b></p> <p>1, 2, 3, 4, 6, 7, 13, 14, 15, 17, 18</p> <p><b>Policies</b></p> <p>1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15A, 15B, 15C, 17, 18, 32, 33, 33A, 39, 39A</p>
<p><b>Rule 78 – Weed and sediment removal for drainage maintenance</b></p> <p>(a) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall, and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:</p> <p>(ai) general conditions (e), (f), (g), (h) and (l) set out in Rule 55A;</p> <p>(i) the activity is undertaken solely to maintain or restore the drainage capacity of a modified watercourse that has previously been modified or maintained for drainage maintenance or restoration purposes at that location;</p> <p>(ii) the activity is restricted to the removal of aquatic weeds and plants or sediment deposits;</p> <p>(iia) the removal of river bed material other than aquatic weeds, plants, mud or silt is avoided as far as practicable;</p>	<p><b>Objectives</b></p> <p>1, 2, 3, 4, 6, 7, 13, 14, 15, 17, 18</p> <p><b>Policies</b></p> <p>1, 2, 3, 4, 5, 6, 9, 10, 11, 12, Policy A4 of the National Policy Statement for Freshwater Management 2014 (as amended in 2017), 13, 15A, 15C, 28, 30, 32, 39A</p>

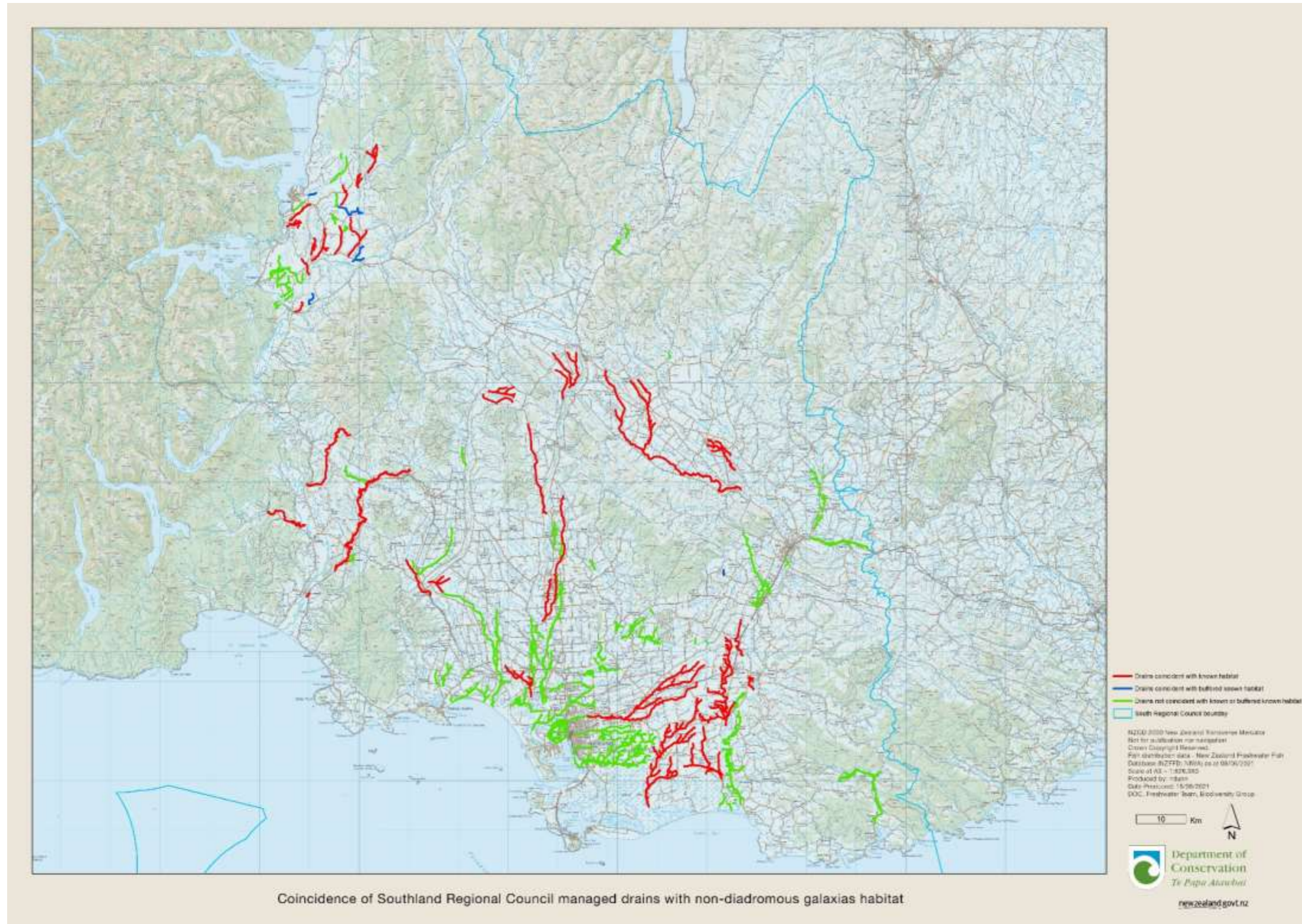
- (iii) any incidental bed disturbance is only to the extent necessary to undertake the activity and must not result in lowering of the bed below previously modified levels and the gravel removed shall comprise not more than 5% of the total sediment removed;
- (iv) upon completion of the activity, fish passage is not impeded as a result of the activity;
- (v) the operator takes all reasonable steps to return any fish captured or stranded by the activity to water immediately;
- (vi) between the beginning of June and the end of October, there is no disturbance of the spawning habitat of trout; ~~and~~
- (xiii) where the modified watercourse is spring-fed, removal of aquatic weeds and plants is only to the extent that is necessary to undertake the activity and is kept to the absolute minimum, and
- (ix) the modified watercourse is not a habitat of threatened non-diadromous galaxias as shown in Schedule X.

**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.*

- (b) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall and any associated bed disturbance and discharge resulting from the carrying out of the activity that cannot meet one or more of the conditions of Rule 78(a) is a discretionary activity.

**Schedule X Maps<sup>5</sup>:**

**Map 1: Southland Regional Council managed drains coincidence with non-diadromous galaxias habitat**



<sup>5</sup> Dunn, Dr N., 2021, "Memo: Assessment of Southland Regional Council proposed Southland Water and Land Plan – Rule 78 weed and sediment removal rule testing", dated 18 June 2021, internal memorandum, Department of Conservation.



**Map 2: LINZ Topo50 identified drains coincidence with non-diadromous galaxias habitat**

