

**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)

MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
25 September 2020

Judicial Officer: Judge Borthwick

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

DAIRYNZ LIMITED
(ENV-2018-CHC-32)

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

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

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

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

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

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

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

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

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

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

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

ROBERT GRANT
(ENV-2018-CHC-45)

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

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

PETER CHARTRES
(ENV-2018-CHC-48)

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

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

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) in respect of the appeals against the Council's decision on the proposed Southland Water and Land Plan (**pSWLP**).
- 2 This memorandum responds to the Court's directions as set out at paragraph [13] of its Minute dated 11 September 2020. The impact of the Essential Freshwater package on the pSWLP appeals is also addressed below.
- 3 In its Minute, the Court directed the Council to, having conferred with the other parties:¹
 - (a) confirm the provision text in Annexure A to the Minute dated 11 September 2020;
 - (b) propose a timetable for filing a section 32AA report;
 - (c) set out the Topic B topic groups together with a description of the issues and:
 - (i) report whether mediation, expert conferencing or, as the case may be, a hearing, is required in relation to individual topic groups;
 - (ii) if seeking (2020) mediation, propose directions as per paragraph [12] of the Minute dated 11 September 2020.
- 4 Counsel for the Council has conferred with the parties as directed, however notes that no response was received from the following parties:
 - (a) H W Richardson Group Limited;
 - (b) Dairy Holdings Limited;
 - (c) Fulton Hogan Limited;
 - (d) Grant & Rachel Cockburn;
 - (e) Hamish English;
 - (f) Invercargill Airport Limited;

¹ Minute of the Environment Court dated 11 September 2020, at [13].

- (g) Mt Peel Limited;
- (h) Murray & Tania Willans;
- (i) Owen Buckingham;
- (j) Robert Kempthorne; and
- (k) Twin Farms Limited.

5 Each aspect of the Court's directions is addressed in turn below.

The provision text in Annexure A

- 6 In its Minute, the Court stated that "any deviation [in Annexure A] from text the court has earlier provided, will be an accidental slip; it is not my intention in this Minute to amend the text of any provision the court has previously said that it will approve."² The Court directed the parties to advise if there are errors in Annexure A.
- 7 The Council has compared the provision text as set out in Annexure A with the text as set out by the Court in its previous decisions and Minutes, and where relevant the agreed position of the parties as articulated in memoranda.
- 8 Several errors in the wording set out in Annexure A, when compared with the previously approved wording, have been identified. The Council has produced a tracked version of the provisions that contain errors. This document is attached as **Appendix 1**.
- 9 In addition, the Council has also identified some minor amendments that could be made for consistency or grammatical reasons. These are also shown in **Appendix 1**.
- 10 Each of the tracked changes is accompanied by a comment explaining the origin of / reason for the suggested change.
- 11 Counsel circulated a copy of the tracked changes to the parties for their comment. No party identified any issue with the changes as set out in Appendix 1.³

² With one noted exception in relation to Policy 45.

³ Noting that no response was received from a number of parties, as set out at paragraph [] below.

- 12 Accordingly, Counsel for the Council respectfully requests that the changes set out in Appendix 1 be accepted by the Court as the correct wording of the Topic A provisions.

Timetable for filing a section 32AA report

- 13 The Court directed the Council to propose a timetable for filing a section 32AA report.
- 14 As was articulated in the Memorandum of Counsel dated 21 August 2020,⁴ Counsel considers that Objectives 2, 3, 6, 7, 9/9A, 9B, 10, 13/13A/13B, 14, 17, and 18 require review pursuant to section 32AA, due to them being amended since the Council decision.
- 15 The Court had previously sought a review of the Topic A policies as well as the objectives.⁵ In the current direction,⁶ it is not clear whether that is still the Court's intent. Counsel does not consider that a review of the policies in accordance with section 32AA is possible until the remaining provisions of the pSWLP have been considered in Topic B. It is not possible to consider whether individual policies, in isolation to the rule framework, are the most appropriate way to achieve the objectives.
- 16 Accordingly, Counsel seeks that the Court's current direction that the Council prepare and file a section 32AA report relates only on the Topic A objectives set out at paragraph [14] above.
- 17 Counsel respectfully suggests that the section 32AA analysis of the Topic A policies should occur in conjunction with the relevant Topic B topic, and as per paragraph [7] of the Court's Minute.
- 18 On this basis, and taking into account staff/consultant availability, due to both the work programmes required in relation to the Essential Freshwater package and another hearing process that Mr McCallum-Clark is involved in, the Council considers that it can complete a section 32AA report on the Topic A objectives by Friday, 30 October 2020.

⁴ Memorandum of Counsel for Southland Regional Council dated 21 August 2020, at [8], noting that Objective 9B was inadvertently omitted from that list.

⁵ Minute of the Environment Court dated 18 August 2020, at [7]. Counsel notes that this direction was subsequently cancelled.

⁶ Minute of the Environment Court dated 11 September 2020, at [4]-[8].

Topic B topic groups and issues

- 19 The Council has prepared a table setting out the proposed topics and issues for Topic B.
- 20 The topics are the Topic B topics set out in the Court's Minute dated 25 July 2018. The issues have then been distilled from each appellant's notice of appeal, and sorted into the topic to which they relate.
- 21 Counsel notes that no specific analysis of the section 274 notices was undertaken as it is Counsel's opinion that those notices cannot raise an issue that has not otherwise been raised in the appeal to which the notice relates. Therefore, Counsel considers that the issues would not be framed any differently had the section 274 notices been considered and included in the table.
- 22 Some of the topics have "sub-topics", which further organise the issues within the wider topic. For completeness, Counsel notes that the intention is not for sub-topics to be heard or mediated separately from other sub-topics within the same topic group. The purpose of the sub-topics is simply to group similar issues together so that parties may attend some parts of the discussion on topics but not all if they so wished.
- 23 Counsel for the Council sought feedback from the parties on the Council's table of topics and issues. The feedback received, where the Council considered it appropriate, was incorporated into the final table, which is attached as **Appendix 2**.

Whether mediation, expert conferencing or a hearing is required in relation to individual topic groups

- 24 In correspondence to the parties, Counsel for the Council set out the Council's preferred approach to mediation, expert conferencing, and hearings and sought the parties' feedback. The majority of the parties agreed with (or had no opinion on) the Council's proposed approach to Topic B. Where any party proffered a different approach, their opinion is noted below.

Council's proposed approach

- 25 The Council's position is that, as a default assumption, each topic should be mediated in the first instance, with a view to parties reaching

agreement where possible, or at the least narrowing the issues that remain. If necessary, any matters requiring expert conferencing following mediation would be identified (and ideally narrowed) through the mediation process, and then referred to the relevant experts for conferencing with the specific issues identified. If necessary, mediation could then be reconvened, or the matter could proceed to hearing. Counsel considers that this is the most efficient method of resolving the appeals.

- 26 Further, experts would be encouraged to attend mediation where relevant, and if necessary, could pre-circulate will-say statements on technical matters prior to mediation. Counsel considers this should be approached on a case-by-case basis in relation to each topic and the approach agreed by the parties when timetabling directions for mediation are agreed.
- 27 The Council proposes one exception this approach in relation to Topic B6.
- 28 Meridian Energy Limited (**Meridian**) has advised that it is not prepared to mediate on the controlled activity status for the reconsenting of the Manapōuri Power Scheme where an application complies with the flow/level regime set in the pSWLP (Rule 52A). Given the activity status of a rule is fundamentally linked to the other aspects of the rule (such as the matters of control, or discretion should the activity status not be controlled) and the policies which it implements, it is the Council's position that the whole of the topic relating to Rule 52A, being Topic B6 (Infrastructure) should be referred directly to hearing.

Other parties' positions

- 29 Various parties suggested a number of other variations to the way that Topic B could proceed. We have endeavoured to set these out succinctly below, and offer our reasoning for preferring the Council's proposed approach.

Meridian

- 30 Meridian's view is that policies that are subject to unresolved appeals should in the first instance be referred to caucusing between the expert planners. Given the resolution of the objectives and some key policies in Topic A it is Meridian's view that the planners are now well-placed to

reconsider the policies that remain subject to appeals in the light of the settled objectives, and it may be that a number of outstanding policy appeals are able to be resolved or at least significantly narrowed by the planners' reconsideration of the wording. If there remain issues of policy wording with which parties are unhappy following caucusing a decision can be made at that point as to whether mediation is likely to assist or whether a hearing is more appropriate.

- 31 It is Counsel for the Council's opinion that this approach may effectively exclude some interested parties that have not engaged an expert planner from having any input on the policies of the pSWLP. Accordingly, the Council's proposed approach is preferred.
- 32 Meridian considers that Appendix E should be referred to caucusing between the water quality/ecology experts.
- 33 Meridian also considers that the rules that relate to the Manapōuri Power Scheme/Waiiau FMU should be referred to mediation following caucusing of the planners on the wording of policy 26. Meridian is open to mediation on the detail of Rules 52A/52B, but, as noted above, is not prepared to mediate on the controlled activity status for Rule 52A.
- 34 For the reasons articulated above, Counsel for the Council considers that the Council's approach is the most efficient and should be preferred.

Alliance Group Limited

- 35 Like Meridian, Alliance Group considers that caucusing between the planning experts (rather than mediation) on the outstanding policies seems like the better first step.
- 36 For the same reasons as set out above in relation to Meridian, the Council prefers its approach.

Director-General of Conservation

- 37 The Director-General of Conservation agrees that all topics should be mediated, and does not seek any matters be referred direct to hearing. However, he considers there are some topics and sub-topics that may be assisted by expert advice ahead of mediation, and if there is disagreement between experts then conferencing. The topics/sub-topics identified are:

- (a) Topic B1: Water Takes – Appendix L.5 regarding methodology for groundwater zone allocation;
- (b) Topic B2: Water quality and discharges – Appendix E metrics;
- (c) Topic B3: Wetlands/ Indigenous Biodiversity – Appendix A Regionally Significant Wetlands; and
- (d) Topic B4: Bed disturbance regarding habitat of non-migratory galaxiids and other freshwater species.

38 The Director-General of Conservation suggests that, in the first instance, appellants provided an expert report on these issues to share with other parties. The parties will then be able to advise if there is any potential disagreement which could require expert conferencing.

39 Counsel for the Council considers that the Director-General of Conservation's suggestion can be accommodated by the provision of will-say statements from the experts prior to mediation, when relevant.

Ngā Rūnanga

40 Ngā Rūnanga consider that expert caucusing will be required for topics B2, B4 and B5, and that it would be beneficial to have expert caucusing prior to those mediations.

41 As for the Director-General of Conservation above, Counsel for the Council considers that Ngā Rūnanga's suggestion that expert caucusing is required prior to some topics being mediated can be appropriately accommodated by the provision of will-say statements from the experts prior to mediation, when relevant.

42 Ngā Rūnanga also suggested that a preliminary expert conference (prior to all mediation) would be appropriate as it had identified two questions that appear to be fundamental to many of the issues to be discussed in mediation. Ngā Rūnanga consider it would be helpful for the experts to answer these two questions at the outset:

- (a) What is a river? (This might involve discussion on what is ephemeral and what is a stormwater flow path).
- (b) What is a wetland/ what wetlands need to be protected?

43 Counsel for the Council considers that these are legal questions as opposed to technical questions, and that they can be appropriately

answered either in the preparation for or at the first mediation that deals with these issues. Accordingly, it is not considered necessary to schedule expert conferencing prior to mediation to deal with these issues.

DairyNZ Limited and Fonterra Co-operative Group

- 44 DairyNZ and Fonterra consider that some matters would benefit from expert conferencing in the first instance, due to their specificity and technical detail. These parties suggest that an effort be made either through direct discussions between experts or more formal conferencing to resolve these prior to mediation. The issues identified as suitable for direct discussions/conferencing are:
- (a) Should permitted activity water take data be recorded daily or weekly? (Topic B1)
 - (b) Should the plan clarify that IPENZ practice notes may not be applicable to all above ground tanks? (Topic B2)
 - (c) Should the incidental discharges authorised by this rule be subject to a pond drop test? (Topic B2)
 - (d) Should the 35m³ threshold for inspection and certification be for each component of a system, rather than the whole system? (Topic B2)
 - (e) Should above ground storage tanks be subject to visual inspection, and not require a leak detection system? (Topic B2)
 - (f) Should the repair of storage facilities be a permitted activity under this rule? (Topic B2)
- 45 If there are matters that cannot be agreed by experts, they would then be brought into any subsequent mediation.
- 46 As for the Director-General of Conservation and Ngā Rūnanga above, Counsel for the Council considers that where direct negotiation is not able to resolve the above issues, the provision of will-say statements from relevant experts prior to mediation would address this concern without the need for separate expert conferencing.

Is mediation sought in 2020?

- 47 The Council's proposed order of topics for mediation is as follows (noting that Topic B6 is considered appropriate to proceed directly to hearing):
- (a) Topic B7;
 - (b) Topic B1;
 - (c) Topic B2;
 - (d) Topic B5;
 - (e) Topic B4;
 - (f) Topic B3.
- 48 Given it is the end of September, and the Council proposes to have completed a section 32AA report on the Topic A provisions by the end of October, a final decision on the Topic A provisions is not expected until at least November.
- 49 Counsel for the Council does not consider it is possible to mediate on the substantive issues until a final decision on the Topic A objectives has been issued.
- 50 Accordingly, Counsel for the Council suggests that Topic B7 may be able to be scheduled for mediation in late November or early December, but that the remaining topics would be most appropriately set down for mediation early in the new year.
- 51 In relation to Topic B6, Counsel considers that this can be set down at any time following the issue of a final decision on the Topic A provisions (or at the least the objectives).

How to manage the effects of the Essential Freshwater package on appeals

- 52 The gazettal of the National Policy Statement for Freshwater Management 2020 ("NPSFM 2020"), the Resource Management (National Environmental Standard for Freshwater) Regulations 2020 ("NES") and the Resource Management (Stock Exclusion) Regulations 2020 ("Stock Exclusion Regulations") have implications for the Topic B provisions, and parties may be assisted by the Council providing information to the parties in relation to those implications:

- (a) The Council needs to implement the NPSFM 2020 as soon as practicable, and by 2025 at the latest. The Court will need to give effect to the NPSFM 2020 as far as the scope of appeals permits.⁷ Some aspects of the NPSFM 2020 can be implemented within the scope of appeals on the pSWLP, where-as other aspects cannot. Regardless of the Council's position on the merit of particular appeal points, it might be useful for the parties to understand the Council's position on whether the appeal point provides scope to implement parts of the NPSFM 2020.
- (b) The NPSFM 2020 also has implications for the FMU plan change processes. These are separate to the pSWLP, but there are interactions between the pSWLP and the FMU plan changes. The parties were assisted by the Council setting out in advance of Topic A the provisions of the National Policy Statement for Freshwater Management 2017 were intended to be implemented by the pSWLP and which provisions were intended to be implemented by the FMU plan change processes yet to come. A similar overview with respect to the NPSFM 2020 might also assist the parties.
- (c) Where the NPSFM 2020 has prescriptive procedural requirements, the Council will need to revisit processes that have already occurred in producing the decisions version of the pSWLP, in order to implement the NPSFM 2020. Parties may decide that they do not wish to pursue aspects of their appeals relating to matters that the Council will shortly be required to revisit.
- (d) Plans may not duplicate or conflict with the NES, but Plans may have more stringent, and in some cases more lenient, provisions than the NES.⁸ The Council's preliminary analysis is that the pSWLP does not duplicate the NES, but there may be some conflict. Further, it is possible that some appeal relief would so duplicate or conflict. Resolution of appeals is likely to be assisted if the parties are aware of appeal points that the Council considers duplicates or conflicts with the NES.

⁷ *Hawke's Bay Fish and Game Council v Hawke's Bay Regional Council* [2014] NZHC 3191 at [183].

⁸ NES, Reg 6.

- (e) The Stock Exclusion Regulations provide default stock exclusion requirements which may result in some appeal points being moot. However, Plans may contain more stringent rules than the Stock Exclusion Regulations.⁹
- 53 The Council and parties consider that it would be of assistance in progressing the appeals and refining the matters requiring discussion at mediation if the Council's position on how the matters set out above apply to each Topic was circulated in advance of mediation.
- 54 Accordingly, a direction is sought that 4 weeks prior to mediation on a Topic, the Council is to provide the parties a statement in relation to the issues covered by that Topic, addressing:
- (a) Which parts of the NPSFM 2020 the Council intends to implement in the pSWLP.
 - (b) Which appeal points the Council considers provide scope to implement those parts of the NPSFM 2020 identified pursuant to a. above.
 - (c) Whether any provisions in the Topic are considered to duplicate or conflict with the NES or Stock Exclusion Regulations, or cover similar matters such that some appeal points may become moot.
 - (d) Whether any appeal points in the Topic seek relief that is considered to duplicate or conflict with the NES.
 - (e) Whether any appeal points in the Topic seek relief that is moot as a result of the Stock Exclusion regulations.

Directions

- 55 Counsel respectfully seeks the following directions:
- (a) That the Court approve the version of the provisions set out in Appendix 1 in its final decision on the Topic A provisions.
 - (b) That the Court direct the Council to file a section 32AA report on objectives 2, 3, 6, 7, 9/9A, 9B, 10, 13/13A/13B, 14, 17, and 18, by Friday 30 October 2020.

⁹ Stock Exclusion Regulations, CI 19.

- (c) That the Court cancel its direction (if any) for the Council to complete a section 32AA report on the Topic A policies prior to the commencement of Topic B.
- (d) That Topic B6 be set down for hearing.
- (e) That all other topics be mediated in the first instance. If necessary, any matters requiring expert conferencing following mediation would be identified through the mediation process, and then referred for conferencing on the specific issues identified. If necessary, mediation could then be reconvened, or the matter could proceed to hearing. If necessary, experts could pre-circulate will-say statements on technical matters prior to mediation.
- (f) That the order of topics for mediation is as follows:
 - (i) Topic B7;
 - (ii) Topic B1;
 - (iii) Topic B2;
 - (iv) Topic B5;
 - (v) Topic B4;
 - (vi) Topic B3.
- (g) If Topic B7 is to be scheduled for mediation in 2020, that the Council provide a memorandum by Friday, 2 October 2020 enclosing a schedule setting out the timetabling steps for the mediation of Topic B7.
- (h) The directions set out at paragraph [54] above.

DATED this 25th day of September 2020



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

Appendix 1

Objective 13

Provided that:

- (a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and
- (b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and
- (c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded;

then land and soils may be used and developed to enable the economic, social and cultural wellbeing of the region.

Objective 17

Preserve the natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats, and protect them from inappropriate use and development.

Policy 5

In the Central Plains physiographic zone:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
 - i. identifying contaminant pathways to ground and surface water bodies;
 - ii. requiring implementation of good management practices to manage erosion and adverse effects on water quality from contaminants transported via overland flow, artificial drainage and deep drainage;
 - iii. having particular regard to adverse effects of on water quality from contaminants transported via artificial drainage and deep drainage, overland flow, when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
2. avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of the proposed activity.

Commented [WW1]: Counsel notes that this change has been suggested for purely grammatical reasons. If the Court does not agree with the suggestion, we will not pursue it.

Commented [WW2]: Counsel notes that this change has been suggested for purely grammatical reasons. If the Court does not agree with the suggestion, we will not pursue it.

Commented [WW3]: This comma was included in the first Interim Decision (Annexure 1), the Council's Decisions Version, and the parties agreed wording filed on 4 August 2020.

Commented [WW4]: Erosion appears to have been erroneously carried over from Policy 4 (which rightly includes erosion) in the risk-based wording for this policy in the first Interim Decision. The parties' agreed wording filed on 4 August 2020 did not include "erosion".

Commented [WW5]: Counsel notes that there appears to be an error in the first Interim Decision. The risk-based wording identifies overland flow as the contaminant pathway whereas for the effects-based wording it identifies artificial drainage and deep drainage. In the Council's Decision Version the contaminant pathways is artificial drainage and deep drainage. For these reasons, it is assumed that there was an error in the first Interim Decision and that the contaminant pathway in this policy should be artificial drainage and deep drainage.

Policy 6

In the Gleyed physiographic zone avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:

1. identifying contaminant pathways to ground and surface water bodies;
2. requiring implementation of good management practices to manage ~~erosion and~~ adverse effects on water quality from contaminants transported via ~~artificial drainage, and~~ overland flow ~~where relevant~~; and
3. having particular regard to adverse effects ~~on water quality from~~ contaminants transported via ~~artificial drainage, and~~ overland flow ~~where relevant~~ when assessing resource consent applications and preparing or considering Farm Environmental Management Plans.

Commented [WW6]: Erosion appears to have been erroneously carried over from Policy 4 (which rightly includes erosion) in the risk-based wording for this policy in the first Interim Decision. The parties' agreed wording filed on 4 August 2020 did not include "erosion".

Commented [WW7]: As for Policy 5 above, the risk-based and effects-based wording in the first Interim Decision do not match. The Council's Decisions Version has the contaminant pathways as "artificial drainage, and overland flow where relevant". For these reasons, it is assumed that there was an error in the first Interim Decision and that the contaminant pathway in this policy should be artificial drainage and overland flow where relevant.

Policy 10

In the Oxidising physiographic zone:

1. avoid, as a first priority, risk to water quality from contaminants, and where avoidance is impractical, requiring risk to water quality from contaminants to be minimised by:
 - i. identifying contaminant pathways to ground and surface water bodies;
 - ii. requiring implementation of good management practices to manage adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage where relevant;
 - iii. having particular regard to adverse effects on water quality from contaminants transported via deep drainage, and overland flow and artificial drainage ~~where relevant~~ when assessing resource consent applications and preparing or considering Farm Environmental Management Plans; and
2. avoid dairy farming and intensive winter grazing where contaminant losses will increase as a result of a proposed activity.

Commented [WW8]: The risk-based wording in the first Interim Decision does not include a comma, while the effects-based wording does. The Council's Decisions Version does include a comma, however it includes a comma for all physiographic policies. The parties' agreed wording filed on 4 August 2020 did not include a comma. For consistency with all other physiographic policies, Counsel considers this comma should be deleted.

Commented [WW9]: The Council's Decisions Version included "where relevant". Both the risk-based and effects-based wording in the first Interim Decision did not include "where relevant". The parties' agreed wording filed on 4 August 2020 included "where relevant". As deep drainage is the primary contaminant pathway for this physiographic zone, it follows that one should only have to have particular regard to the adverse effects from overland flow and artificial drainage where those contaminant pathways are relevant. Further, "where relevant" is included in ii. above. For these reasons, Counsel considers the omission of "where relevant" was a mistake in the first Interim Decision and should be corrected.

Policy 45

In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections of this Plan 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 a plan (including Freshwater Objectives) must give effect to the Region-wide **o**bjectives.

FMU provisions developed for a specific geographical area will not initiate a plan change to the Region-wide objectives or Region-wide policies.

Advice Note: It would be unfair if changes are made to Region-wide objectives and Region-wide policies based on decisions for individual FMUs in specific parts of Southland, without the involvement of the wider Regional communities.

Commented [WW10]: Counsel suggests the case of this "objectives" is changed to lower case for consistency, to match the other changes made by the Court to the paragraph above in its Minute dated 11 September 2020.

Appendix 2

Overview of Topics in Topic B:

<p>Topic B1: Water Takes</p>	<ul style="list-style-type: none"> - Policies 20, 25, 42 - Rules 49, 50, 54 - Appendices J, K, L.5
<p>Topic B2: Water Quality/Discharge (in conjunction with Wastewater and Agricultural Effluent)</p>	<ul style="list-style-type: none"> - Policies 13, 14, 15, 15A, 15B, 15C, 16A, 17, 17A - Rules 5, 6, 9, 13, 14, 15, 26, 28, 29, 32B, 32D, 33, 33A, 35 - Appendices E, G - Definition of 'stormwater'
<p>Topic B3: Wetlands/Indigenous Biodiversity</p>	<ul style="list-style-type: none"> - Policy 32 - Rules 51, 74 - Appendices A, Q - Definitions of 'natural wetland', 'wetland'
<p>Topic B4: Bed disturbance</p>	<ul style="list-style-type: none"> - Policies 28, 29, 30 - Rules 59, 73, 78 - Definitions of 'gravel', 'sediment'
<p>Topic B5: Farming</p>	<ul style="list-style-type: none"> - Policies 16, 18 - Rules 20, 24, 25, 35A, 70 - Appendix N - Definitions of 'intensive winter grazing', 'significant de-vegetation', 'feed pad/lot', 'sloping ground', 'cultivation'
<p>Topic B6: Infrastructure</p>	<ul style="list-style-type: none"> - Policies 26, 26A - Rules 49, 52, 52A, new 52B - Appendix E
<p>Topic B7: Other (remaining provisions)</p> <ul style="list-style-type: none"> - Consent application policies - Burning - Heritage 	<ul style="list-style-type: none"> - Policies 20, 24, 28, 39, 39A, 40 - Rules 32B, 43, 53, 55, 57, 58, 59, 59A, 60, 61, 62, 63A, 64, 66, 67, 68, 72, 73, 75, 77, 78, 79 - Appendices N, S - Section title for bed disturbance

B1 Water takes -Issues	Provisions	Appellants	Comments
Should 'including for primary production' be deleted?	Policy 20(1A)	Ngā Rūnanga Forest & Bird	
Should 'industries that process perishable foods' be deleted, or otherwise clarified?	Policy 25	Ngā Rūnanga	
Is 'avoid, remedy, or mitigate' appropriate to include or should the wording be altered? If so, how?	Policy 20(1) Policy 20(2)	Forest & Bird Fish & Game	
Should the reference to 'water quality' in Policy 20(d)(2) also specify temperature and oxygen content?	Policy 20	Fish & Game	
Is the wording 'will generally only be granted at a reduced rate' appropriate in Policy 42(2)?	Policy 42	Fish & Game Wilkins	
Should Appendix O be referred to by Policy 20, or reflect limits to improving water efficiency in older industrial or trade infrastructure?	Policy 20	Alliance	
Should Policy 42(5) require that Alliance's takes are subject to minimum flows or levels?	Policy 42	Alliance	
Should Rule 49 enable the consideration of all non-consumptive takes, diversions and use of water as a restricted discretionary activity?	Rule 49	Alliance	
Should compliance with Appendix R only apply to permitted activities or be deleted from Rule 49?	Rule 49	Alliance	
Should Rule 49(a)(vi)(1) to (5) be retained or deleted?	Rule 49	Federated Farmers	
Do annual verifications (as required by Rule 49(a)(vii)) provide any greater benefit than 5-yearly verifications?	Rule 49	Federated Farmers	
Should existing priority takes be a controlled activity under Rule 50?	Rule 50	Alliance	
Should Alliance's sites be included in Appendix J as drinking water protection zones?	Appendix J	Alliance	
Should the groundwater zone allocations be based on a different methodology?	Appendix L.5	Wilkins DOC	
Should the rate of take for permitted activity pump testing be removed/amended?	Rule 54(c)	Wilkins	

Should permitted activity water take data be recorded daily or weekly?	Rule 54(a)	Fonterra	
Should the relief sought in submission point 752.186 be granted?	Appendix K	Fish & Game	

B2 Water quality and discharges -Issues	Provisions	Appellant	Comments
Sub-Group – Industrial and Community Discharges			
Should reference to primary production be deleted from this policy?	Policy 13	Fish & Game, Forest & Bird, Ngā Rūnanga	
Should the policy be premised on sustainable use and development?	Policy 13	Forest & Bird	
Should the decision version be replaced with the notified version as it is now no longer protection oriented, or is redundant?	Policy 13	Ngā Rūnanga	
Should Policy 14 only apply if a discharge to land is practicable and appropriate?	Policy 14	Alliance	
Should new and replacement resource consents be treated the same in these policies?	Policies 15A, 15B	Fish and Game	
Should Policy 15, ahead of FMU processes, require maintenance of water quality where Appendix E quality standards are met, and improvement, where practicable, where Appendix E standards are not met, with Policies 15A and 15B being deleted?	Policy 15	Alliance	
Should Policy 15B require more certainty that water quality from existing discharges will be improved?	Policy 15B	Forest & Bird	
Should Policy 15C be deleted as the FMU processes will provide this guidance?	Policy 15C	Ngā Rūnanga, Fish & Game	
Should the decision version of Policies 15A, 15B and 15C be replaced with the s42A report version?	Policy 15	Ngā Rūnanga	
Should the policies require avoidance of adverse effects, or have a hierarchy of avoid, remedy and mitigate, rather than minimisation of effects?	Policies 15, 16A, 17A	Fish & Game, Forest & Bird	
Will BPO always be an adequate response?	Policy 16A	Forest & Bird	
Should the Policy refer to 'progressive' reductions and is that sufficiently specific?	Policy 17A	Ngā Rūnanga	
Should the discharge of any raw sewerage be a non-complying activity?	Rules 5, 6 and 15	Fish and Game, Ngā Rūnanga	
Should the discharge of treated effluent into water be a discretionary activity?	Rule 33A	GDC, SDC, ICC	

Should “stormwater” include other contaminants?	Rule 15 and/or definition	GDC, SDC, ICC	
Should the 20m waterbody setback apply to community sewerage schemes constructed prior to notification of the pSWLP?	Rule 33	GDC, SDC, ICC	
Should discharges into listed wetlands or waterbodies in Appendix A be a non-complying activity?	Rules 5 and 6	Fish & Game	
Should achieving the Appendix E water quality standards be a condition of the rules?	Rules 5, 6 and 15	Fish & Game, Forest & Bird, Alliance	
Should re-consenting existing discharges be discretionary activities?	Rules 5 and 6	Alliance	
Should discharges from stormwater systems, on-site effluent systems, composting and pit toilets be required to be set-back at least 50m from mātaihai reserves and taiāpure?	Rules 15, 26, 28 and 29	Ngā Rūnanga	
Should fine sediment be added and MCI, QMCI and Clarity changed?	Appendix E	Fish & Game	
Should the standards be amended so they take appropriate account of existing land use, existing water quality and natural variability?	Appendix E	Alliance	
Should Mataura River at Mataura River Bridge be deleted from the list of popular bathing sites in Appendix G?	Appendix G	Alliance	
Sub-group – Point-source Farming Discharges			
Should the policy require avoidance of (significant) adverse effects, or have a hierarchy of avoid, remedy and mitigate, rather than minimisation of effects?	Policy 17	Fish & Game, Forest & Bird	
Should Policy 17(1) be deleted, as guidance is given by Policies 15 and 16?	Policy 17	Ngā Rūnanga	
Should the requirement to comply with agrichemical manufacturers recommendations be deleted?	Rule 9	Director-General of Conservation	
Should further standards be added and existing ones strengthened, including adding Appendix E water quality standards?	Rule 13	Fish & Game, Forest & Bird	
Should an exclusion from standards be added to enable periodic cleaning of drains?	Rule 13	Federated Farmers	
Should the setback be increased to 10m and there be a specification of a minimum width for riparian planting?	Rule 14	Forest & Bird	
Should restrictions apply to natural wetland or all wetlands?	Rule 14	HortNZ	
Should the requirement to map and provide information on sub-surface drains be removed?	Rules 13, 35 + ors	Federated Farmers	Note: Issue applicable to multiple provisions

Should the plan clarify that IPENZ practice notes may not be applicable to all above ground tanks?	Policy 17, Rule 32B	Fonterra	
Should only new effluent storage facilities be subject to a setback from drinking water abstraction points?	Rule 32B	Federated Farmers	
Should approval be able to be given by a broader range of suitably qualified people?	Rule 32B	Federated Farmers	
Should the incidental discharges authorised by this rule be subject to a pond drop test?	Rule 32B, 32D	Fonterra	
Should the 35m ³ threshold for inspection and certification be for each component of a system, rather than the whole system?	Rule 32B, 32D	Fonterra	
Should above ground storage tanks be subject to visual inspection, and not require a leak detection system?	Rule 32D	Fonterra	
Should the repair of storage facilities be a permitted activity under this rule?	Rule 32D	Fonterra	

B3 Wetlands and indigenous biodiversity - Issues	Provisions	Appellants	Comments
B3-wide issue – responding to NPSFM 2020 and NES provisions	Most	N/A	
Should Policy 32 include reference to maintaining indigenous biodiversity?	Policy 32	Forest & Bird	
Should minor diversions of water from all wetlands (including Regionally Significant Wetlands) be discretionary or non-complying?	Rule 51	Forest & Bird	
Should commercial peat harvesting in a Regionally Significant Wetland be a non-complying activity?	Rule 74	Fish & Game	
Should Rule 74(c) specify that grazing by stock or drainage activities are land uses?	Rule 74	Fish & Game	
Should additional detail be added to the Note in Appendix A?	Appendix A	Fish & Game	
Should removal of plant species for mahinga kai be included as a purpose under Rule 74(a)?	Rule 74	Ngā Rūnanga	
Should the drainage of any natural wetland be a prohibited activity?	Rule 74	Ngā Rūnanga	
Should Rule 74(ab) be deleted?	Rule 74	Ngā Rūnanga	
Should additional waterbodies from the deleted Appendix Q be incorporated into Appendix A?	Appendix A Appendix Q	Ngā Rūnanga	

Should Appendix A revert to the notified version, by removing the added waterbodies? Should the Regionally Significant Wetlands on the Te Anau Downs station be removed from Appendix A?	Appendix A	Federated Farmers Peter Chartres	
Should the definition of 'natural wetland' be amended?	Definition of 'natural wetland'	Horticulture NZ	
Should either the definition of 'wetland' or references to wetlands in rules be amended?	Definition of 'wetland'	Horticulture NZ	

B4 Bed disturbance - Issues	Provisions	Appellants	Comments
B4-wide issue – responding to NPSFM 2020 and NES provisions	Most	N/A	
Is 'remedy or mitigate' appropriate to include or should the wording be deleted?	Policy 28	F&B	
How are gravel extraction activities able to remedy or mitigate effects on cultural values or recreational values?	Policy 29	HWRG	
Should the adverse effects on significant indigenous vegetation and significant habitat of indigenous fauna be included in the policy?	Policy 29	Forest and Bird	
After gravel extraction should the area be 'restored' or 'enhanced'?	Policy 29	Ngā Rūnanga	
Should the policy include the restoration of riverine habitats also?	Policy 29	DGC	
Should the adverse effects on water quality, aquatic ecosystem health, life supporting capacity, natural character and riparian margins, mahinga kai, indigenous vegetation and fauna be specifically referenced in the policy?	Policy 30	Fish and Game	
Should fish passage, spawning habitat and bank stability be referred to in the policy?	Policy 30	Fish & Game	
Should sediment loss to water from the drainage activities be referenced in the policy?	Policy 30	Fish & Game	
How can network utility structures be recognised when culverts are being installed so as to not compromise the network utilities?	Rule 59	Transpower	
Should the matters of discretion in rule 73(a) and (b) be consistent and should rule 73(b) include reference to natural character, navigation hazard, public access and recreational values?	Rule 73	Fish & Game	
Should a certain level of gravel extraction be provided for as a permitted activity?	Rule 73	Fed Farmers	

How are threatened native fish protected from disturbance associated with drainage maintenance activities?	Rule 78	Forest & Bird	
Should this rule protect taonga species and their habitat that are established in modified watercourses?	Rule 78	Ngā Rūnanga	
Should this rule include a condition requiring that the watercourse is not a habitat of non-migratory galaxiids?	Rule 78	DGC	
Should the rule require the activity to be kept to a minimum and only permit the removal of mud rather than sediment which includes gravel?	Rule 78	DGC	
Should drainage management include a limit of the volume of gravel being extracted as a permitted activity?	Rule 78	Fish & Game DGC	
Should gravel be defined by a particular size of the grain?	Gravel definition	Fish & Game	
Should the pSWLP include a new definition for sediment?	New definition - sediment	Fish & Game	

B5 Farming - Issues	Provisions	Appellant	Comment
B5-wide issue – responding to NPSFM 2020, s360 Regs and NES provisions	Most	N/A	
Sub-topic - Policy 16			
Should Policy 16 be amended to remove reference to the terms “degraded” and “overallocated” given they are not defined in the Plan, and freshwater objectives have not yet been defined?	Policy 16	Fonterra	
Should Policy 16 include the term “strongly” in front of “discouraging” for new intensive farming activities in proximity to regionally significant wetlands and sensitive waterbodies?	Policy 16	Director-General of Conservation, Ngā Rūnanga	
Should Policy 16 strongly discourage the establishment of other intensive farming activities in proximity to regionally significant wetlands and sensitive waterbodies?	Policy 16	Director-General of Conservation	
Should Policy 16 be amended to remove direction for applications submitted following the development of freshwater objectives and limits under the FMU process?	Policy 16	Ngā Rūnanga, Fish & Game	
Should Policy 16 be amended to delete direction on consideration matters for aggregate consents and consent durations?	Policy 16	Ngā Rūnanga	

Should the Policy have a hierarchy of avoid, remedy and mitigate?	Policy 16	Fish & Game	
Should Policy 16 avoid the establishment of any new, or further intensification of existing, dairy farming of cows or intensive winter grazing activities where contaminant losses will increase as a consequence?	Policy 16	Fish & Game	
Should Policy 16 direct that decision makers will strongly discourage granting of any resource consents to establish new activities specified in clause (b) of the policy?	Policy 16	Fish & Game	
If direction for applications submitted following the development of freshwater objectives and limits under the FMU process is not deleted, should amendments be made to direct decision makers to avoid granting consents where freshwater objectives are not being met, and strongly discouraging those where they are being met?	Policy 16	Fish & Game	
Should Farm Environmental Management Plans set out the best practicable option to manage adverse effects and include additional requirements for practices to be implemented and maintained?	Policy 16	Fish & Game	
Should granting a consent duration of at least 5 years only be allowed if it is consistent with Policy 40 to do so?	Policy 16	Fish & Game	
Should Policy 16 ensure that adverse effects on water quality are avoided, and other adverse environmental effects are avoided, remedied or mitigated?	Policy 16	Forest & Bird	
Should “discouraging” be replaced with “avoiding” in Policy 16?	Policy 16	Forest & Bird	
Should the terms “generally” and “or mitigated” be deleted in Policy 16?	Policy 16	Forest & Bird	
Sub-topic – Stock Exclusion			
Should guidance be provided on which waterbodies are considered relevant for contact recreation purposes?	Policy 18	Beef + Lamb 1	
Should the measure or standard that will be used to specify levels of <i>E.coli</i> be stated?	Policy 18	Beef + Lamb 1	
Should the requirement to manage sheep in critical source areas and in catchments where <i>E.coli</i> levels could preclude contact recreation be deleted?	Policy 18	Federated Farmers	
Should Rule 70(e) be expanded to include artificial drains?	Rule 70	Fish & Game	
Should the original 2025 timeframe be retained?	Policy 18	Forest & Bird	
Should “significant” be deleted in relation to adverse effects of stock access?	Policy 18	Forest & Bird, Fish & Game	

Should the chapeau of Policy 18 be amended to avoid where practicable, or otherwise remedy or mitigate, any adverse effects?	Policy 18	Fish & Game	
Should Policy 18(1) state that stock exclusion as set out within the clause be required by 2030 at the latest?	Policy 18	Fish & Game	
Should Policy 18(3) also encourage maintenance?	Policy 18	Fish & Game	
Should Policy 18(4) be amended to include additional adverse effects?	Policy 18	Fish & Game	
Should Policy 18 also require the implementation of a Farm Environmental Management Plan?	Policy 18	Fish & Game	
Should the plan define stock units?	Rule 70	Beef + Lamb 1	Note: wider issue
Should Rule 70 explicitly exempt sheep from stock exclusion rules, so they are not otherwise captured by Rule 4?	Rule 70	Beef + Lamb 1	
Should Rule 70(e) include a condition that there is no significant de-vegetation, pugging or alteration to the profile of the bed and banks?	Rule 70	Fish & Game	
Should Rule 70(e) include a condition that there is no break feeding or supplementary feeding in, over or on the bed?	Rule 70	Fish & Game	
Should Rule 70 include a clause that other than provided for by clauses (c) or (d), the disturbance of the bed [after] the dates in Table 1 is a non-complying activity?	Rule 70	Fish & Game	
Should Table 1 be amended to include all natural wetlands and waterbodies including artificial drains?	Rule 70	Fish & Game, Forest & Bird	
Should the Table 1 dates for dairy support be brought forward from 1 July 2022 to 1 July 2020?	Rule 70	Fish & Game, Forest & Bird	
Should the Table 1 references to break feeding also include supplementary feeding?	Rule 70	Fish & Game, Forest & Bird	
Should Table 1, beef cattle and deer on plains be amended to read the same as the guidance for undulating/rolling and steeper land?	Rule 70	Peter Chartres	
Should the activity status for clause (e) be changed from discretionary to non-complying?	Rule 70	Forest & Bird	
Sub-topic – Winter grazing			
Should the restriction for intensive winter grazing to no more than 15% of the area of the landholding or 100 hectares, whichever is the lesser, be deleted?	Rule 20	Robert Grant	

Should the winter grazing mob size limit of no more than 120 cattle be increased to 200?	Rule 20	Robert Grant	
Should the winter grazing mob size limit of no more than 120 cattle or 250 deer be deleted?	Rule 20	Aratiatia, Wilkins Farming	
Should cattle be removed from the winter grazing mob size limits? Or if not deleted, should the rule include “or equivalent number of young stock at any one time”?	Rule 20	DairyNZ	
Should Rule 20 be expanded to specify that supplementary feed is fed in such a way as to prevent it being trampled into the ground, such as placing the feed in portable feeders or behind an electrified wire?	Rule 20	Aratiatia	
Should Rule 20(a)(iii)(3)(B) refer to areas being break-fed or block-fed behind temporary electric fencing?	Rule 20	Fish & Game	
Should Rule 20(a)(iii)(3)(C) refer to the beds of identified waterbodies?	Rule 20	Fish & Game	
Should Rule 20(a)(iii)(3)(E) be amended to increase the mob (herd) size of cattle from 120 to 200?	Rule 20	Campbells Block; The Terraces; Stoney Creek Station	
Should the dates in Rule 20(a)(iii) be replaced with 31 December 2021?	Rule 20	The Terraces; Stoney Creek Station	
Should Rule 20(a)(iii)(4) be amended to require a 3 metre setback?	Rule 20	The Terraces; Stoney Creek Station	
Does Rule 20(a)(iii)(1) discourage best management practice and nutrient management?	Rule 20	Federated Farmers	
Should “whichever is lesser” in Rule 20(a)(iii)(1) be deleted?	Rule 20	Federated Farmers	
Are the practices listed in Rules 20(a)(iii)(3)(B)-(E) “too blunt” and should they be deleted?	Rule 20	Federated Farmers	
Should “or 100 hectares, whichever is lesser” in Rule 20(a)(iii)(1) be deleted?	Rule 20	Peter Chartres, Campbells Block, Stoney Creek Station	
Should the definition of ‘intensive winter grazing’ refer to ‘fodder crops or pasture to the extent that grazing results in significant de-vegetation’?	Intensive winter grazing	Fish & Game	
Should the months in the definition of ‘intensive winter grazing’ refer to ‘June and August’?	Intensive winter grazing	Stoney Creek Station, The Terraces	

Sub-topic – Rule 20 (other)			
Should a specific exemption from preparing and implementing a Farm Environmental Management Plan be provided for manufacturing operations that discharge to land and which have a specific discharge consent for that purpose? Or as an alternative, should a new definition of farming activity be included that excludes these activities?	Rule 20	Fonterra	
Should a quantitative assessment only be required for modelled nitrogen, and expected changes in other contaminants demonstrated by way of a separate assessment?	Rule 20	Fonterra	
Should the matters for discretion in Rule 20 be amended to ensure water quality will not be adversely affected and ensure that water quality standards, limits, and targets are met?	Rule 20	Beef + Lamb 2	
Should the matters for discretion in Rule 20 discourage land use intensification and conversion which would affect the catchment's ability to meet water quality standards and targets?	Rule 20	Beef + Lamb 2	
Should the matters for discretion in Rule 20 be amended to prevent the allocation of nutrients in the catchment by resource consent?	Rule 20	Beef + Lamb 2	
Should the matters for discretion in Rule 20 be amended to ensure that existing land users and communities are recognised and provided for?	Rule 20	Beef + Lamb 2	
Should Rule 20(aa) be deleted?	Rule 20	Fish & Game	
Should sloping ground be replaced with land with a slope greater than 4 degrees?	Rule 20	Fish & Game	
Should Rule 20 include references to headwater seeps/springs, and tarns?	Rule 20	Fish & Game, Forest & Bird	Note: wider rivers issue
Should stock be excluded from critical source areas?	Rule 20	Fish & Game	
Should there be more requirements for vegetated strips based on slope angle?	Rule 20	Fish & Game	
Should intensive winter grazing setbacks be 100 metres from the outer edge of the bed of any lake, regionally significant wetland or sensitive waterbodies, estuary or the CMA?	Rule 20	Fish & Game	
Should the adoption of the best practicable option to manage effects be required?	Rule 20	Fish & Game	
Should contaminant loss pathways be taken into account in the matters for discretion?	Rule 20	Fish & Game	

Should any adverse effects of the activity to the applicant, community and the environment be included in the matters for discretion?	Rule 20	Fish & Game	
Should additional matters relating to potential adverse effects of the activity on surface and groundwater quality be included in the matters for discretion?	Rule 20	Fish & Game	
Should Rule 20(e) be a non-complying activity?	Rule 20	Fish & Game	
Should a footnote be added to define slope as it is used within Rule 20?	Rule 20	Fish & Game	
Should intensive horticulture be managed by Rule 20(a)?	Rule 20	Forest & Bird	
Should setback distances in Rule 20 be increased?	Rule 20	Forest & Bird	
Should Rule 20(d) be amended to provide a non-complying activity status?	Rule 20	Forest & Bird	
Should reference to physiographic zones be reinstated in Rule 20 as per the Section 42A Report recommendations (with some exceptions) as a mechanism to maintain or improve water quality?	Rule 20	Ngā Rūnanga	
Does Rule 24 accord with s.70 of the RMA and does the Rule meet the legal test for a valid PA rule? Should a requirement be added to maintain or improve water quality in accordance with Appendix E?	Rule 24	Fish & Game, Forest and Bird	
Should there be a definition of 'significant de-vegetation'?	New Definition – Significant de-vegetation	Fish & Game	
Should there be a definition of 'sloping ground'?	New Definition – Sloping Ground	Fish & Game	
Sub-topic - cultivation			
Should the rule allow for cultivation to be undertaken in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production (Hort NZ, 2014)?	Rule 25	HortNZ	
Should Rule 25 be expanded to include headwater seeps/springs and tarns?	Rule 25	Fish & Game	Note: Wider rivers issue
Should Rule 25 have specific set back distances based on slope?	Rule 25	Fish & Game, Forest & Bird	
Should the 5 m setback to waterbodies be reduced to three meters?	Rule 25	Federated Farmers, The Terraces	
Should Rule 25 require that cultivation is not undertaken in critical source areas?	Rule 25	Fish & Game	

Should Rule 25 require that temporary sediment retention system are used when cultivating for the purpose of renewing or establishing pasture?	Rule 25	Fish & Game	
Should subclause (b) of Rule 25 be removed? (Alternate pathway if setback distances are not met)	Rule 25	Fish & Game	
Should matter of discretion 1 for Rule 25 be expanded to included adverse effects on surface and groundwater quality and 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?	Rule 25	Fish & Game	
Should mitigation measures for addressing adverse effects be replaced by the best practicable option?	Rule 25	Fish & Game	
Should the maximum land slope be increased from 20 degrees to 30 degrees (or a percentage to be over 20 degrees)?	Rule 25	Federated Farmers; Campbells Block, Robert Grant	
Should a definition of minimum tillage be introduced? (Minimum tillage would be a method that does not turn the soil over.)	Rule 25	Federated Farmers	
Should the matters of discretion for Rule 25 include risks to areas of significant indigenous vegetation and habitats and measures to avoid those risks and risks to the preservation of the natural character of wetlands, lakes, rivers and their margins?	Rule 25	Forest & Bird	
Should the definition of 'cultivation' include harvesting and sediment control measures?	Definition – Cultivation	HortNZ	
Should 'spray and pray' be deleted from the definition of cultivation?	Definition – Cultivation	Stoney Creek Station	
Should 'stick-raking' be excluded from the definition of cultivation?	Definition – Cultivation	Southwood	
Should herbicide spraying be removed from the definition of cultivation?	Definition – Cultivation	Southwood, Rayonier NZ	
Sub-topic – Feed pads and Feed lots			
Should the references to cattle be removed from Rule 35A? If yes, seek consequential amendment to Rule 35.	Rule 35A	Dairy NZ	
Should the refences to maximum mob size be deleted?	Rule 35A	Federated Farmers	

Should the maximum period of continuous use be increased from 3 to 6 months?	Rule 35A	Federated Farmers	
Should the setback distance to another feed pad/lot on the same landholding be removed?	Rule 35A	Federated Farmers	
Should sacrifice paddocks be defined?	Rule 35A	Federated Farmers	
Should other materials be available as base materials?	Rule 35A	Federated Farmers	
Should a setback of 50 m to the coastal marine area be included?	Rule 35A	Ngā Rūnanga	
Should 'sacrifice paddock' be removed from the definition of feed pad/lot?	Definition – Feed pad/lot	Federated Farmers	
Sub-topic – Appendix N (FEMPs)			
Should Appendix N include the requirement to show the location of 'any known and recorded heritage site' in Farm Management Plans?	Appendix N	Heritage NZ	
Should a FEMP contain landholding details with respect to the type of farming enterprise(s) undertaken on the property?	Appendix N	Fish & Game	
Should Appendix N require the identification of ephemeral or intermittent rivers and streams?	Appendix N	Fish & Game	
With respect to Part B(3)(h)(iii), should the maximum gradient for slope identification be reduced to 4 degrees?	Appendix N	Fish & Game	
Should Part B include assessments of environmental effects, risks and mitigation measures?	Appendix N	Fish & Game	
Should Part B include objectives and require detail in FEMPs in relation to how each objective will be met?	Appendix N	Fish & Game	
Should Appendix N require timeframes for full implementation of proposed Good Management Practices be recorded in FEMPs?	Appendix N	Fish & Game	
Should Good Management Practices be implemented to avoid, where practicable, or otherwise mitigate effects as oppose to reduce or minimise?	Appendix N	Fish & Game	
Should Appendix N require records be kept with respect to measuring implementation, performance and achievement of Good Management Practices?	Appendix N	Fish & Game	
Has Appendix N become too broad, such that it no longer provides certainty as to what activities will be implemented to achieve Good Management Practice?	Appendix N	Ngā Rūnanga	

Should Part B(5) include Good Management Practices that minimises the effects on taonga species listed in Appendix M and any significant indigenous biodiversity	Appendix N	Ngā Rūnanga	
Sub-topic – ecological and cultural indicators of health			
How should the ecosystem health indicators and cultural indicators of health be incorporated into the pSWLP policies and rules?		Fish & Game, Forest & Bird	
Does contamination by high risk land use activities (such as dairying, intensification, intensive winter grazing, cultivation, activities that affect critical source areas) in areas where receiving environments contain a degraded or at risk waterbody require a consenting regime and/or changes to FEMPs, and if so how should the pSWLP provide for this?		Fish & Game, Forest & Bird	
Are there any jurisdictional constraints in relation to the issues in this sub-topic?		N/A	

B6 Infrastructure - Issues	Provisions	Appellants	Comments
Sub-topic – water takes			
Should Policy 26 be amended to address the issue of reverse sensitivity in relation to renewable electricity activities?	Policy 26	Meridian Energy	
Does Policy 26 give preference to new generation activities in addition to existing renewable sources?	Policy 26	Ngā Rūnanga	
Should Policy 26A be amended to enable adverse effects on the environment to, where practicable, be avoided, remedied or mitigated?	Policy 26A	Transpower	
Should the management of effects from infrastructure be considered under “effects management” policies of the pSWLP?	Policy 26A	Forest & Bird	
Does the ability under Policy 26A to remedy or mitigate effects conflict with requirements to maintain water quality?	Policy 26A	Forest & Bird	
Should Policy 26A be amended to “enable” rather than “provide for” the effective development, operation, maintenance and upgrading of infrastructure?	Policy 26A	Fish & Game	
Is there sufficient clarity as to what constitutes effective development, operation, maintenance and upgrading of regionally significant infrastructure and what is not already covered by the definition of “critical infrastructure”?	Policy 26A	Ngā Rūnanga	
Should Rule 49(ab) be extended to address the damming and diversion of surface water?	Rule 49ab	Meridian	

Should Rule 49(ab)(vii) be amended to exclude activities undertaken for the purpose of infrastructure construction, maintenance or repair in connection with the Manapōuri Hydro-electric scheme?	Rule 49ab	Meridian	
Should Rule 49(ab) be listed in the exclusions under Rule 52(a) and 52(b)?	Rule 52	Meridian	
Should there be a new Rule 52(a)(iii) which provides a discretionary activity status where the permitted activity criteria under Rule 49(ab) is unable to be met?	Rule 52	Meridian	
Sub-topic – Waiau/Manapōuri			
Should Policy 26 be amended to require increases to the minimum flow requirements in the Waiau River?	Policy 26	Aratiatia, Federated Farmers	
Should all abstraction, diversion, damming and use of water from the Waiau catchment, except as provided by Rules 49, 50 or 51 or RMA s 14(3), be a non-complying activity?	Rule 52	Forest & Bird	
What is the appropriate activity status for water takes for the Manapōuri Hydro-electric Generation Scheme?	Rule 52A	Aratiatia, Forest & Bird, Federated Farmers, Ngā Rūnanga	Grouped - variations of this in each appeal
Should Rule 52A be extended to apply to the Monowai Hydro-electric Generation Scheme?	Rule 52A	Meridian	
In the event a flow and level regime for the Waiau catchment has been established in accordance with the First Schedule of the RMA and the appellant makes an application that conforms to the established regime, should the Southland Regional Council reserve control to impose a different regime than that determined via the First Schedule process?	Rule 52A	Meridian	
Should the effects of the activity on mahinga kai, taonga species, and the spiritual and cultural values and beliefs of tangata whenua be considerations when processing resource consent applications in relation to the Manapōuri Hydro-electric Generation Scheme?	Rule 52A	Ngā Rūnanga	
Should a new Rule 52B provide a discretionary activity status instead of non-complying in the event the conditions of Rule 52A are not met?	New Rule 52B	Meridian	
Should the exclusion for Waiau/Manapōuri be deleted?	Appendix E	Ngā Rūnanga, Aratiatia	

B7 Others - Issues	Provisions	Appellants	Comments
Sub group – Overarching			
Should ephemeral rivers be excluded from the provisions of the plan? Specific examples from appeals include the land use rules and Objective 16.	Ephemeral and Intermittent rivers	Ngā Rūnanga DGC Forest & Bird Fish & Game	
In light of the Court’s provisional approval for the inclusion of the physiographic zone maps in the plan, what is the appropriate method of inclusion and what changes, if any, are required to the detail of the maps?	Whole of plan	Ngāi Tahu	
Sub group – Discrete issues			
Should Policy 39 be retained, amended to include reference to water quantity, or deleted?	Policy 39	Fish & Game Forest & Bird Federated Farmers	
Should the policy include reference to the CMA as it is a function of the regional council set out in s 30?	Policy 39A	Forest & Bird	
Should the policy refer to ‘improving’ rather than ‘considering’ when assessing against the subclauses of the policy?	Policy 39A	Ngā Rūnanga	
Should the policy be moved to the FMU section of the Plan to better align the policy with the FMU process?	Policy 39A	HorticultureNZ	
Is it appropriate for the Ngā Rūnanga indicators of health to be considered when assessing the term of a resource consent?	Policy 40(2)	Federated Farmers	
Should the rule be deleted as burning is controlled by the fire service?	Rule 79	Federated Farmers	
Should the title of the bed disturbance section of the Plan be renamed to include wetlands?	Bed disturbance section	Forest & Bird	
Sub group – Historic heritage			
Should historic heritage values be included in the policies?	Policies 20, 24 and 28	Heritage Nga Runanga	
Should an advice note for historic heritage values be included in the rules?	Rule 32B, 43, 53, 55, 59A and 63A.	Heritage	

Should the advice note addressing historic heritage values be located at the end of the rule cascade?	Rule 57, 58, 59, 60, 61, 62, 64, 66, 67, 68, 72, 73, 75, 77 and 78	Heritage	
Should the appendix be amended to refer to instances when an archaeological authority has not been obtained?	Appendix S	Heritage	