

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
I MUA I TE KOOTI TAIAO O AOTEAROA**

**AT CHRISTCHURCH
KI ŌTAUTAHĪ**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under cl 14 of Sch 1 of the RMA relating
to the proposed Southland Water and Land Plan
(pSWLP)

BETWEEN **SOUTHLAND FISH & GAME COUNCIL**

(ENV-2018-CHC-037)

**ROYAL FOREST & BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED**

(ENV-2018-CHC-050)

Appellants

AND **SOUTHLAND REGIONAL COUNCIL**

Respondent

**LEGAL SUBMISSIONS ON BEHALF OF THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND INC**

1 July 2026

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MAY IT PLEASE THE COURT

Introduction

1. These submissions are filed on behalf of the Royal Forest & Bird Protection Society of New Zealand Inc (**Forest and Bird**). These submissions address recent legislative changes pertaining to the timeframes for submitting freshwater farm plans for certification, and respond to Council's submissions dated 24 June 2026.
2. Under the Resource Management (Freshwater Farm Plans) Amendment Regulations 2026 (**Amendment Regulations**) a Farm Environmental Management Plan (**FEMP**) for a farm in the Southland region must be submitted to a certifier by the later of **27 November 2027** or 18 months after the date on which the farm meets the land use threshold under section 217D RMA.
3. Council submits that the previous deadline was 27 May 2026 and that as such the deadline for submitting the farm plan has effectively been delayed by approximately 18 months. Forest & Bird does not accept that the previous deadline was 27 May 2026. It submitted (and maintains) that FEMPs are already required where a relevant operative rule requires a FEMP as a permitted activity condition,¹ and that the Council's position is based on an incorrect interpretation of clauses (1)(a) and (b) of Appendix N of the SWLP.
4. If Council's interpretation is correct, this serves to illustrate the point made by Forest and Bird in its closing submissions in November 2025:²

...The date by which a farm plan (either a Freshwater Farm Plan or FEMP) is required is therefore determined by changeable Government policy and the regulations and Orders in Council prepared pursuant to that policy, rather than by the pSWLP itself. In those circumstances, the Council (and this Court on appeal) cannot be satisfied that Rule 24 together with "other provisions in the plan" will contribute to a reduction in significant adverse effects on aquatic life within 10 years. If the Resource Management (Application of Part 9A – Freshwater Farm Plans: Southland) Order 2024 is amended tomorrow to extend the date that Part 9A RMA applies to the Southland Region by 5 years, a Freshwater Farm Plan or FEMP will only be required 18 months from that date, instead of by May 2026. That entire process is outside the Council's control. The Council's submissions do not address this issue, and simply say that the Court can be satisfied that the contribution that Farm Environment Plans will make to reducing effects will commence when Rule 24 becomes operative. That is clearly not the case.
5. The position remains that the Council (and this Court on appeal) cannot be satisfied that Rule 24 together with other provisions of the plan will contribute to a reduction in significant effects on aquatic life within 10 years. The recent changes increase the uncertainty around this, and it is possible that the deadline may again be pushed out in the future.

¹ As set out in Forest & Bird's closing submissions dated 30 November 2025 at 24 – 25.

² Closing submissions on behalf of Forest and Bird, paragraph 25.

6. The Council's submissions refer to "two pillars" in support of its position that Rule 24 satisfies section 70(3) of the RMA, with the first being the mitigation set out in the conditions of the permitted activity rules cross-referenced in Rule 24, and the second being the property-specific mitigation to be implemented through FEMPs.
7. The Council's position is that the first pillar alone is such that the Court can be satisfied that the requirements of s 70(3) are met. Forest & Bird does not agree. First, it refers to Mr Norton's evidence that:³

.. what has happened up until now may actually work against us because the easy wins may have already been in place.

8. Second, Forest & Bird relies on the evidence and previous Court findings making clear that the "heavy lifting" of contaminant reductions in the SWLP is done by the FEMPs. FEMPs were described as the "key method for giving effect to the proposed plan's policies and objectives" by the Environment Court.⁴ The evidence of Mr McCallum-Clark was:⁵

Attachment 1 also provides a summary of the role and content of Farm Environmental Management Plans (FEMPs). FEMPs, as set out in Appendix N of the pSWLP, are a key component of the pSWLP and will be required for almost all farms. As identified in earlier decisions of the Court on the pSWLP, FEMPs are expected to do much of the heavy lifting in terms of identifying and requiring the implementation of good management practices for existing farming activities in Southland. To provide some assurance that FEMPs are effective, a certification and audit process provides quality control and assurance.

9. Relevant findings from the Court's Fifth Interim decision referred to by Mr McCallum-Clark included the following:

Findings on Rule 20 and Farm Environmental Management Plans:

[9] All parties are agreed on the use of Farm Environmental Management Plans as the key method for giving effect to the proposed plan's policies and objectives. The Management Plan adopts a risk management process which is appropriate ahead of a plan change giving effect to the National Policy Statement for Freshwater Management 2020, and given the current state of knowledge concerning some farming activities.

[95] Together with sacrifice paddocks, intensive winter grazing and pasture based wintering activities have occupied much of the hearing. That is because these activities, relative to their areal extent, have potential to disproportionately affect soil and water quality.

[96] The proposed restructuring of Rule 20 greatly simplifies the rule and puts into focus FEMPs, which become the key method giving effect to the policies and objectives.

10. The Council's "second pillar" is the contaminant reductions produced by implementation of FEMPs. In that regard, it is necessary to recognise that

³ Notes of evidence, pg 125, line 4.

⁴ Fifth Interim decision at [9]

⁵ Evidence of Matthew McCallum Clark dated 17 September 2025, paragraph 12.

the deadline of 27 November 2027 is the date for submitting the FEMP to the certifier. It is not the date of certification, nor the date by which the FEMP methods are to be implemented. Certification may take several months, and implementation of actions may take months or years after certification. A period of time must also then be allowed for these actions to be experienced as a reduction in contaminants in receiving waterbodies, and for ecological responses to be produced.

11. The Council's submissions refer to the question of timing, which was explored with Mr Norton during the hearing.⁶ During that questioning, Commissioner Hardy asked whether it could be two years before the FEMPs are certified and in place, with Mr Norton agreeing that that was reasonable.⁷ Reference was then made to the time taken for implementation measures to be put in place and become effective. Commissioner Hardy then stated: "I've assumed optimistically that that will be a year for the whole region which again is potentially a little bit optimistic"⁸, and Mr Norton agreed it will be something of that order.⁹
12. Commissioner Hardy went on to ask whether, given some farms are right by the receiving environment and some farms are right at the extreme end of the receiving environment, a reasonable starting point was an average travel time from the average farm of four years. Mr Norton accepted this as a very coarse starting point (for nitrogen).¹⁰ As noted by Commissioner Hardy¹¹ this gives seven years before there is a reduction in nitrogen in the receiving environment, and then there will be a time for biota to adapt to the changed conditions. Mr Norton agreed, also later stated that he would be cautious about concluding the travel time is ten years or using the average of 4 years across the region, and noting that he was agreeing with the Commissioner on the conceptualisation of it for discussion purposes.¹²
13. While noting those caveats, and that all durations discussed in evidence are very approximate, Forest & Bird observes that:
 - a. An 18 month delay means the estimated 7 year period before there is a reduction in nitrogen in the receiving environment becomes 8.5 years.
 - b. This is based on a very optimistic timeframe for implementation.¹³

⁶ Council legal submissions, at paragraph 9.

⁷ Notes of Evidence, p 123, line 29.

⁸ Notes of evidence, pg 124, line 5.

⁹ Notes of evidence, pg 125, line 4.

¹⁰ Notes of evidence, pg 125

¹¹ Notes of evidence, pg 125, line 27.

¹² Notes of evidence, pg 127, line 21.

¹³ As stated in the opening submissions on behalf of Forest & Bird at paragraph 85 the mitigation actions must be implemented by the dates specified in the FEMP only, not the date by which the plan must be submitted for certification. For example, if a FEMP states that riparian margins will be planted within 5 years, that mitigation action must be completed within 5 years. Those submissions go on to state that it is Ms McArthur's

- c. Even if the average travel time is 4 years, for some farms the contaminant travel time will be significantly longer. The Court must be satisfied that the s 70 requirements will be met within ten years across all of Southland, not just in places where contaminant travel times are shorter.
14. Therefore even on the Council's interpretation of s 70, the evidence does not support a confident conclusion that the legislative requirements of s 70(3) are met. The delay of a further 18 months makes Council's evidentiary position even more uncertain.
 15. For completeness we record that Forest & Bird's interpretation of s 70 is that the Council (or Court) can only be satisfied that a reduction in significant adverse effects on aquatic life is likely to occur where an improvement in the state of aquatic life is predicted, not merely a reduction of contaminant inputs (particularly not a small reduction of contaminant inputs to a significantly degraded system). This requirement is not met whether the date for submitting FEMPs for certification is 27 May 2026 or 27 November 2027.¹⁴

Conclusion

16. Forest and Bird's closing submissions in November 2025 said:

If Forest & Bird could be confident that farm plans would actually be required under the pSWLP (and not deferred again), that those farm plans would require prompt and effective mitigation actions, and that implementation of farm plans (alongside other permitted activity standards in farming rules) would achieve the significant reductions in contaminant discharges necessary to reduce significant adverse effects on aquatic life, it would not be here.
17. The recent legislative change demonstrates that Forest & Bird was right to be concerned. The delay further exacerbates the issues raised in the legal submissions and evidence presented previously.
18. The Council submits that the Court is able to proceed on the basis of the evidence already before it. Forest & Bird maintains that the Court should adopt the decision-making process set out in paragraphs 35 – 36 of its closing submissions.



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evidence that there is considerable uncertainty that full implementation of mitigation measures for N and P will occur within 10 years.

¹⁴ As set out in Forest & Bird's closing submissions at 12.