

**BEFORE THE ENVIRONMENT COURT**

**I MUA I TE KOOTI TAIAO O AOTEAROA**

**IN THE MATTER** of the Resource Management Act 1991  
**AND** of appeals under Clause 14 of the First Schedule  
of the Act  
**BETWEEN** SOUTHLAND FISH AND GAME COUNCIL  
(ENV-2018-CHC-37)

ROYAL FOREST AND BIRD PROTECTION  
SOCIETY OF NZ INC

(ENV-2018-CHC-50)

**Appellants**

**AND** SOUTHLAND REGIONAL COUNCIL  
**Respondent**

---

**Joint Memorandum of Counsel**

**Dated: 7 September 2018**

---

---

**COUNSEL for SOUTHLAND:  
FISH AND GAME COUNCIL**

SARAH ONGLEY  
Barrister  
PO Box 8213  
New Plymouth Central  
Phone: (06) 769 9400  
Email: sarah@ongley.co.nz  
www.bankchambers.co.nz

## MAY IT PLEASE THE COURT

1. This Memorandum is filed on behalf of the Southland Fish and Game Council (Fish & Game) and Royal Forest and Bird Protection Society of New Zealand Incorporated (the Appellants).
2. The Appellants have broadly similar interests in relation to water quality. The Appellants consider that the Proposed Southland Water and Land Plan (pSWLP):
  - a. Fails to manage the discharge of sediments, microbes and nutrients in a way that will 'hold the line' pending the further FMU processes to be undertaken by the Respondent.
  - b. Fails to safeguard the life-supporting capacity of water and ecosystems and to recognise and provide for the matters in sections 6(a), (c), (d) and (e) of the Act.
  - c. Fails to give effect to the National Policy Statement for Freshwater Management (NPSFM), including Objectives AA1, A1 and A2 and C1.
  - d. Fails to give effect to the New Zealand Coastal Policy Statement (NZCPS) including Objective 1 and Policies 2, 13, 21, 22 and 23.
  - e. Fails to give effect to the Southland Regional Policy Statement.
3. Further, the Appellants consider that the provisions of pSWLP are insufficient to fulfil the Respondent's functions under subsections 30(1)(c)(ii), (iii) and (f).
4. Although the Appellants generally support the intention to refine the framework governing FMUs at a later date<sup>1</sup>, the Appellants consider an interim regime is required. An interim regime must include appropriate regulation of agricultural activities, together with Region-wide freshwater objectives and limits/targets. In this respect, the Appellants consider there is an urgent need to manage the adverse cumulative effects from such activities now.

---

<sup>1</sup> FMUs are stated in Policy 46 as being "Fiordland and the Islands", "Aparima", "Mataura", "Ōreti" and "Waiau". Forest and Bird's appeal requests that Waituna be added as an FMU. There are no other appeals on Policy 46.

### **Minute of the Court**

5. The Appellants have considered the Court's Minute of 25 July 2018.
6. The Appellants support paragraphs [7] – [8] of the Minute, regarding the Initial Planning Statement. If the Respondent decides to undertake an *economic* analysis for the purpose of this Initial Planning Statement, the Appellants consider that any such analysis must consider:
  - a. Human and ecosystem benefits that arise from maintaining and improving water quality.
  - b. Dynamic effects, including possible reallocation of resources in the regional and national economy. That is, how labour, land and other resources displaced from current agricultural and related activities may be redeployed.
  - c. The costs and benefits to the agricultural industry of regulatory intervention sooner rather than later. This should include on the basis that freshwater objectives and targets/limits for FMU's may be more stringent, but not less stringent, than Region-wide regulatory control sought in the appeals.

### **Mediation**

7. The Appellants support the delineation of mediation topics set out in [17] of the Minute.
8. The Appellants share the Court's concern<sup>2</sup> about whether mediation is an effective first step in the context of Topic A ('horizontal') matters. Although the Appellants consider that there may be merit in attempting one mediation on the Topic A matters, further mediation time is unlikely to be fruitful in the absence of direction from the Court.
9. By way of example, Fish & Game's appeal on Policy 47 is that any FMU sections of the pSWLP must "*support the implementation of the region wide objectives*", and that Region-wide objectives must be put in place in the context of these appeals.<sup>3</sup> Fish & Game has a concern that these matters will be fully canvassed on a Region-wide basis, in the hearing of these

---

<sup>2</sup> [13].

<sup>3</sup> Fish & Game's appeal also seeks that the Appendix E receiving water quality standards include standards for deposited sediment, maximum change in clarity and more stringent standards for water clarity, MCI and QMCI.

appeals, only to have the same argument again as each FMU process runs its course. The section 274 Notices of Fonterra and Dairy NZ state that objective-setting for the FMU processes should not be “constrained” by the pSWLP. It would be desirable to have this question resolved before extensive mediation time, so that parties involved in mediation are aware whether the water quality objectives in the pSWLP will feed into the FMU processes. This in turn raises issues regarding the interpretation of the NPS Freshwater Management, its provisions around ‘managing within limits’, and the setting of those limits.<sup>4</sup>

**Memorandum of Counsel filed on behalf of Rayonier New Zealand Ltd**

10. The Appellants are parties to some of the rules referred to by Counsel for Rayonier New Zealand Ltd that relate to the NPS on Plantation Forestry.<sup>5</sup> While there may be a different view between Rayonier New Zealand Ltd and the Respondent on the extent to which an evaluation under section 32 is required for rules that are more stringent to those in the NPS Plantation Forestry, the Appellants agree with Rayonier New Zealand limited that:<sup>6</sup> *“the evaluation would assist constructive mediation and resolution of the proceedings”*.

Dated 7 September 2018



**S Ongley**

Counsel for the Southland Fish and Game Council



**S Gepp**

Counsel for Royal Forest and Bird Protection Society of New Zealand  
Incorporate

<sup>4</sup> Objective A4, Policy A7 and Policy CA2(f).

<sup>5</sup> Counsel for Rayonier at [26] of the Memorandum.

<sup>6</sup> At [30] of the Memorandum.