

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
(Timetabling and hearing arrangements)

Dated: 26 September 2018

COUNSEL for SOUTHLAND:
FISH AND GAME COUNCIL

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MAY IT PLEASE THE COURT

1. This Memorandum responds to the Court's 'Record of Pre-Hearing Conference' dated 12 September 2018 and the Respondent's Memorandum of 19 September 2018.
2. The Southland Fish and Game Council and the Royal Forest and Bird Protection Society of New Zealand Incorporated (the Appellants) support the topics identified by the Court and by the Regional Council, except that it considers the following should be included in 'Topic A':
 - a. Policies 15A-C/deletion of Policy 15 and Appendix E;
 - b. Policy 16 – at least subpart (1) of Policy 16; and
 - c. the approach to ephemeral water bodies.
3. The reasons the Appellants consider these provisions should be included in Topic A are as follows:
 - a. Policies 15A-C relate to maintaining water quality where standards are met, and improving water quality where standards are not met. These policies, together with the standards themselves, are overarching provisions. These provisions set the 'maintain or improve' framework under which many of the rules in Topic B are to be considered.
 - b. Policies 15A-C and Appendix E relate to the PSWLP's intent to 'hold the line' pending the further Freshwater Management Unit (FMU) processes. Appendix E sets out where that 'line' should be set.
 - c. If Appendix E is not included in Topic A, Fish and Game will be restricted in the arguments it can make on Policies 45 and 47 (FMU's). Fish and Game's appeal on Policies 45 and 47 is that future water quality objectives to be developed through the FMU processes may be more stringent, but should not be less stringent, than Region-wide objectives in Appendix E. That is, Appendix E standards should set 'bottom lines'. This matter cannot be addressed without evidence on how Appendix E standards relate to the Act, and the NPSFM.

- d. For the above reasons, the Appellants wish to call water quality evidence at the Topic A hearings on Appendix E relating to:
- i. where the 'line' should be set if water quality is to be maintained;
 - ii. relationship between the water quality standards in Appendix E, the compulsory national value of ecosystem health, and the National Policy Statement for Freshwater Management (NPSFM); and
 - iii. whether it is possible and appropriate for freshwater objectives to be set on a Region-wide basis, to guide future FMU processes.
- e. Policy 16 (at the very least subpart (1) of that policy) is so closely related to Policies 15A-C that it should also be included in Topic A. Policy 16 seeks to specifically deal with the effects of land use intensification on water quality, particularly where it does not currently meet Appendix E standards. Policy 16(1)(b) and (c) also relate to Policies 45 and 47 – by referring to what should occur before and after FMU processes. These policies should be considered in conjunction.
- f. For ephemeral water bodies, the PSWLP excludes these water bodies from the application of its protective policies and rules (e.g. setbacks) and permits farming activities in ephemeral waterbodies. The PSWLP approach to ephemeral water bodies is an overarching issue, particularly given the focus on critical source areas in other provisions of the plan (managing impacts on/from critical source areas but excluding consideration of ephemeral rivers is contradictory).

Respondent's Table (Horizontal Consideration of pSWLP)

4. Further to the Respondent's invitation for parties to clarify whether they are interested in Topic A1 as well as Topic A4¹, the Appellants advise that they are interested in Topic A1 (Physiographic zones generally).²
5. The Table filed by the Respondent incorrectly omits Fish and Game as a section 274 party to the following items:
 - a. Objective 11.
 - b. Objective 14.

Proposed evidence exchange timetable

6. Evidence preparation in late December and January is inevitably complicated by witnesses and counsel taking annual leave at different times. There does not appear to be any reason why the Respondent cannot file its evidence earlier than 14 December 2018 (such as on 1 December 2018). This would allow witnesses for other parties to have more time over the Christmas break to consider the Respondent's evidence.
7. If it is not possible for the Respondent to file its evidence earlier, Counsel suggest that the timetable be collapsed closer to the hearing date as follows:

¹ At [8] of Counsel for the Respondent's Memorandum.


² Forest and Bird appeal: "*All Physiographic Zone Policies. The policies do not require that activities are consistent with maintaining, or improving where degraded, water quality. Amend policies 4-12 to ensure they only provide for activities where water quality will be maintained, or enhanced where degraded*" and consequential relief. Fish and Game appeal at [7(a)(vii)]: [The Proposed Plan]: "*...Does not include any method to apply or implement the physiographic zone approach to managing land use activities which affect water quality.*"

Timetable proposed by Fish and Game and Forest and Bird

Respondent Evidence in Chief (EIC)	14/12/18
Appellants EIC	15/2/19
S274 parties supporting Appellants EIC	1/3/19
S274 parties opposing Appellants EIC	15/3/19
Expert witness conferencing	15 – 29/3/19
Joint witness statements due	29/3/19
All parties (except Respondent) rebuttal due	12/4/19
Respondent rebuttal ³ evidence due	3/5/19
Respondent to file six tabbed, indexed and paginated hard copies of all evidence (including exhibits)	10/5/19

8. The above timetable proposes that rebuttal evidence for all parties except the Respondent be filed contemporaneously. This timetable would enable the Appellants to file their evidence in February rather than January. It is submitted that a two-step process for appellants and section 274 parties, or parties in support and parties in opposition, to file rebuttal evidence is unnecessary. It is also potentially unwieldy given the overlapping nature of appeal and section 274 interests. Under this proposed timetable, the Respondent would have 3 weeks (taking in Easter and ANZAC day) to file its rebuttal evidence after all other rebuttal evidence is exchanged.

Dated 26 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

³ Allows 3 weeks for the Respondent's rebuttal following other parties' rebuttal to account for Easter and ANZAC day.

