

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

ENV-2018-CHC-26 to 50

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of appeals under clause
14 of Schedule 1 to the
Act relating to the
proposed Southland
Water and Land Plan

BETWEEN **WAIHOPAI RŪNAKA,
HOKONUI RŪNAKA,
TE RŪNANGA O
AWARUA, TE
RŪNANGA O ORAKA
APARIMA, and TE
RŪNANGA O NGĀI
TAHU (collectively
NGĀ RŪNANGA)**

**Appellants in ENV-
2018-CHC-47**

AND **SOUTHLAND
REGIONAL COUNCIL**

Respondent

**TOPIC B PROVISIONS - TRACKED CHANGE RELIEF ON BEHALF OF NGĀ
RŪNANGA**

29 OCTOBER 2021

 **Simpson Grierson**
Barristers & Solicitors

Simpson Grierson
J G A Winchester
Telephone: +64-4-924 3503
Facsimile: +64-4-472 6986
Email: james.winchester@simpsongrierson.com
DX SX11174 PO Box 2402
SOLICITORS
WELLINGTON 6140

All tracked changes and assessments are against the Objectives and Policies in the Southland Water and Land Plan, Part A Decisions Version, operative in Part as of 22 February 2021.

Amendments to the text:

- New text shown as underlined and text to be deleted shown as struck-through.
- Changes that have been agreed between the parties are in blue tracking, and all changes suggested by a party in relation to unresolved issues are in red tracking.

Topic B2 – Water quality and discharges

Policy 15A

Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality by:

1. ~~avoiding, where reasonably practicable, or otherwise remedying or mitigating any the adverse effects of new discharges, so that beyond the zone of reasonable mixing, those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges); and~~
2. ~~Requiring any application for replacement of an expiring discharge permit to demonstrate how the adverse effects of the discharge are avoided, remedied or mitigated, so that beyond the zone of reasonable mixing those standards or sediment guidelines will continue to be met.~~

Policy 15B

Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:

1. ~~avoiding where practicable and otherwise remedying or mitigating any adverse effects of new point source discharges to surface water on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and~~
- 1a. ~~avoiding where reasonably practicable and otherwise remedying or mitigating any adverse effects of other new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines; and~~
2. requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where reasonably practicable and otherwise remedied or mitigated, so that beyond the zone of reasonable mixing water quality will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).

Policy 15C

~~Following the establishment of freshwater objectives and limits under Freshwater Management Unit processes, and including through implementation of non-regulatory methods, improve water quality where it is degraded to the point where freshwater objectives are not being met and otherwise maintain water quality where freshwater objectives are being met.~~

Topic B3 – Wetlands and indigenous biodiversity

Rule 74

- (a) The use of land within a wetland for the purposes of:
- (i) maintaining or enhancing the wetland, or
 - (ii) maintaining existing authorised structures within the wetland; or
 - (iii) removing plant matter for the purpose of mahinga kai undertaken in accordance with Tikanga Maori;

is a permitted activity provided the following conditions are met:

- (1) there is no destruction or removal of any indigenous vegetation from any natural wetland, unless the activity is for the purpose of mahinga kai undertaken in accordance with Tikanga Maori;
 - (2) there is no reduction in the size of the wetland;
 - (3) there is no flooding or ponding caused on any land owned or occupied by another person; and
 - (4) there is no establishment of pest plant species that:
 - (A) are listed in the Regional Pest Management Strategy for Southland 2013 or any replacement plan prepared under the Biosecurity Act, or Biosecurity NZ Register of Unwanted Organisms, in circumstances where the planting of those pest plant species is restricted under the Biosecurity Act; or
 - (B) may damage existing biodiversity values of the wetland; or
 - (C) will form the dominant vegetation type in the wetland.
- ~~(ab) The use of land within a wetland for commercial peat harvesting is a discretionary activity provided the following conditions are met:~~
- ~~(i) the applicant can show, by way of aerial photographs or other documentary evidence, that a commercial peat harvesting operation occurred within the wetland at some time during the period between 30 June 2006 and 30 June 2016; and~~
 - ~~(ii) there is no establishment of pest plant species that:~~
 - ~~(1) are listed in the regional Pest Management Strategy for Southland 2013 or any replacement plan prepared under the Biosecurity Act, or Biosecurity NZ Register of Unwanted Organisms, in circumstances where the planting of those pest plant species is restricted under the Biosecurity Act; or~~
 - ~~(2) may damage the existing biodiversity values of the wetland; or~~
 - ~~(3) will form the dominant vegetation type in the wetland.~~
- (b) The use of land within a wetland (excluding a natural wetland) that is for one or more of the purposes listed in Rule 74(a) but which does not comply with the conditions of Rule 74(a), or the use of land within a wetland that is not a natural wetland that is not for one or more of the purposes listed in Rule 74(a), is a discretionary activity.
- (c) The use of land within a natural wetland that is not for one or more of the purposes listed in Rule 74(a) or 74(ab) is a non-complying activity.
- (d) The draining of any natural wetland is a prohibited activity.**

Rule 78

- (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 drainage resulting from carrying out the activity is a discretionary activity where it takes place within the habitat of non-diadromous galaxiids as mapped on xxx.
- (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 carrying out the activity in the areas of threatened species as mapped on xxx, is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. the location, extent and frequency of the works; and
 2. any effects on river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character and amenity values, navigation hazard, public access, recreation values and the spiritual and cultural values and beliefs of the tangata whenua.
- (c) The removal of aquatic weeds and plants and sediment **that are not subject to Rules 78A or 78B** 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:
- (ai) general conditions (e), (f), (g), (h) and (l) set out in Rule 55A;
 - (aii) the area cleared annually is no more than 200 metres within any 1km or 20% of the branch of the watercourse – whichever is the lesser.
 - (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;
 - (ii) the activity is restricted to the removal of aquatic weeds and plants or sediment **deposits**;
 - (iia) the removal of river bed material other than aquatic weeds, plants **and/or** mud or silt is avoided as far as practicable; [Alternatively – a provision along the lines of **“the removal of bed material is, as far as practicable confined to the removal of unconsolidated fine sediment that has been deposited at the site since the bed was last cleared”**]
 - (iib) the removal of riparian vegetation is avoided, where reasonably practicable;
 - (iii) any incidental bed **or bank** 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 bed is not excessively levelled to maintain variability in the profile of the bed**;
 - (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 **identify if there are any fish captured and stranded by the activity including in the spoil and any fish discovered are immediately returned to the water above the site of the works occurring. ~~return any fish captured or stranded by the activity to water immediately~~**;

- ~~(x) Suspended sediment released by the activity is trapped and retained within the reach being cleared as far as practicable;~~
- (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, the 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.~~

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*

Topic B5 – Farming

Policy 16

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:
 - (a) **strongly** 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
 - (b) ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where:
 - (i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided or mitigated; or
 - (ii) existing water quality is already degraded to the point of being overallocated; or
 - (iii) water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines; and
 - ~~(c) ensuring that, after the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities:~~
 - ~~(i) will generally not be granted where freshwater objectives are not being met; and~~
 - ~~(ii) where freshwater objectives are being met, will generally not be granted unless the proposed activity (allowing for any offsetting effects) will maintain the overall quality of groundwater and water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes.~~
2. Requiring all farming activities, including existing activities, to:
 - (a) implement a Farm Environmental Management Plan, as set out in Appendix N;
 - (b) actively manage sediment run-off risk from farming and hill country development by identifying critical source areas and implementing practices including setbacks from water bodies, sediment traps, riparian planting, limits on areas or duration of exposed soils and the prevention of stock entering the beds of surface water bodies; and
 - (c) manage collected and diffuse run-off and leaching of nutrients, microbial contaminants and sediment through the identification and management of critical source areas within individual properties.
- ~~3. When considering a resource consent application for farming activities, consideration should be given to the following matters:~~
 - ~~(a) whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be addressed in a single resource consent; and~~
 - ~~(b) granting a consent duration of at least 5 years.~~

Rule 20

- ~~(aa) — Unless stated otherwise by Rules 20, 25, 70 or any other rule in this Plan:~~
- ~~(i) — intensive winter grazing; or~~
 - ~~(ii) — cultivation; or~~
 - ~~(iii) — the disturbance by livestock including cattle, deer, pigs or sheep; in, on or over the bed of an ephemeral river is a permitted activity.~~
- (a) The use of land for a farming activity is a permitted activity provided the following conditions are met:
- (i) the landholding is less than 20 hectares in area; or
 - (ii) where the farming activity includes a dairy platform on the landholding, the following conditions are met:
- [...]

Glossary

Critical source area

- (a) a landscape feature like an ephemeral river, a gully, swale or a depression that accumulates runoff (sediment and nutrients) from adjacent flats and slopes, and delivers it to surface water bodies (including lakes, rivers, artificial watercourses and modified watercourses) or subsurface drainage systems; and
- (b) areas which arise through land use activities and management approaches (including cultivation and winter grazing) which result in contaminants being discharged from the activity and being delivered to surface water bodies.

Suggestions to provisions in the plan relating to ephemeral rivers, if the definition of critical source area is amended

| Provision | In addition to amending the definition of critical source area I suggest the following: |
|---|---|
| Policy 16 | Would now manage ephemeral as it did not before |
| Policy 18 | Retain as worded. |
| Rule 14 | Suggest this needs to be looked at in terms of the runoff as a critical source area, |
| Rule 20(aa) | Delete |
| Rule 25 | Suggest strengthening to include critical source are protection |
| Rule | Retain as worded. |
| Rule 40 | Retain as worded. |
| Rule 42 | Retain as worded. |
| Rule 59A | Retain as worded. |
| Rule 70 | Retain as worded. |
| Appendix L.2 Stream depletion effects | Not sure there is scope to change this provision |
| Appendix N – maps must show critical source areas and good management practices must show how they will reduce sediment and nutrient losses from critical source areas. | Retain as worded. |

Rule 35A

- (a) The use of land for a feed pad/lot is a permitted activity provided the following conditions are met:
- (i) if accommodating cattle or deer, each feed pad/lot services no more than 120 adult cattle, or 250 adult deer, or equivalent numbers of young stock at any one time;
 - (ii) animals do not remain on the feed pad/lot for longer than three continuous months;
 - (iii) the feed pad/lot is not located:
 - (1) within 50 metres from the nearest sub-surface drain, lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse, natural wetland, [coastal marine area](#) or another feed pad/lot on the same landholding; or
 - (2) within a microbial health protection zone of a drinking water supply site identified in Appendix J, or where no such zone is identified, then within 250 metres of the abstraction point of a drinking water supply site identified in Appendix J; or
 - (3) within 200 metres of a place of general assembly or dwelling not located on the same landholding, or
 - (4) within 20 metres of the boundary of any other landholding; or
 - (5) within a critical source area;
 - (iv) the feed pad/lot is constructed with:
 - (1) a sealed and impermeable base and any liquid animal effluent or stormwater containing animal effluent discharging from the feed pad/lot is collected in a sealed animal effluent storage system authorised under Rule 32B or Rule 32D; or
 - (2) a minimum depth of 500 millimetres of wood-based material (bark, sawdust or chip) across the base of the feed pad/lot; and
 - (v) any material scraped from the feed pad/lot, including solid animal effluent, is collected and if applied to land is applied in accordance with Rule 38; and
 - (vi) the overland flow of stormwater or surface runoff from surrounding land is prevented from entering the feed pad/lot.
- (b) The use of land for a feed pad/lot that does not meet one or more of the conditions of Rule 35A(a) is a discretionary activity

Appendix N – Farm Environmental Management Plan Requirements

...

Part B – Farm Environmental Management Plan Content

...

3. The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:

...

- (j) [any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rārangī Kōrero or on the New Zealand Archaeological Association website.](#)

Topic B6 – Infrastructure

Policy 26

Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, ~~the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading,~~ when:

1. allocating surface water for abstraction, damming, diversion and use; and
2. considering all resource consent applications for surface water abstractions, damming, diversion and use.

Rule 52A

- (a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme, for which consent is held and which is the subject of an application for a new consent for the same activity and is:
- (i) the taking or use of water; or
 - (ii) the discharge of water into water or onto or into land; or
 - (iii) the discharge of contaminants into water or onto or into land; or
 - (iv) the damming or diversion of water;

is a ~~controlled~~ restricted discretionary activity provided the following conditions are met:

- (1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act;
- (2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and
- (3) where the replacement consent is for the taking or use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.

The Southland Regional Council will ~~reserve its control~~ restrict its discretion to the following matters:

[Technical experts identify the matters that discretion should be restricted to – though this should include:

- *The amount of water that can be taken*
- *The effect on the Waiau river of the take*
- *The consent duration*
- *The adverse effects on mahinga kai, taonga species, and the spiritual and cultural values and beliefs of tangata whenua.]*

An application for resource consent under Rule 52A(a) will be publicly notified.

- (b) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-electric generation scheme for which consent is held and which is the subject of an application for a new consent for the same activity and is:
- (i) the taking or use of water; or

- (ii) the discharge of water into water or onto or into land; or
- (iii) the discharge of contaminants into water or onto or into land; or
- (iv) the damming or diversion of water; that does not meet one or more of the conditions of Rule 52A(a) is a non-complying activity.