

In the Environment Court of New Zealand

**ENV-2018-CHC-37**  
**ENV-2018-CHC-50**

Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa  
Ōtautahi Rohe

Under the Resource Management Act 1991

In the matter of Of appeals under clause 14 of Schedule 1 of the Act

Between **Southland Fish & Game**

Appellant (ENV-2018-CHC-37)

And **Royal Forest and Bird Protection Society of New Zealand  
Incorporated**

Appellant (ENV-2018-CHC-50)

And **Southland Regional Council**

Respondent

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**Will Say Statement of Ben Farrell (Planning Expert) for Forest & Bird and Fish & Game**

5<sup>th</sup> November 2021

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- 1 My name is Ben Farrell. I am an independent planning consultant engaged in this matter by Royal Forest and Bird Protection Society of New Zealand Incorporated (“**F&B**”) and Southland Fish and Game (“**F&G**”). These appellants are respectively seeking amendments to the Proposed Southland Water and Land Plan (“**WLP**”) in respect of:

Water Quality Polices and Methods

- (a) New Policy and schedule – identifying degraded waterbodies and managing land use to improve water quality where degraded
- (b) Policy 16 – Farming activities that affect water quality
- (c) Policy 18 – Stock exclusion from waterbodies
- (d) Rule 20 – Farming
- (e) Rule 24 - Incidental discharges from farming
- (f) Rule 25 – Cultivation
- (g) Appendix N – Farm Environment Management Plans

Wetland Protection Rules

- (h) Rule 5 – Discharges to surface waterbodies
- (i) Rule 51 – Minor diversions of water
- (j) Rule 74 – Wetlands

Waterbody Habitat Protection Rules

- (k) Rule 78 – Weed and sediment removal for drainage maintenance

Manapouri Hydro Scheme

- (l) Rule 52A – Manapōuri Hydro-electric Generation Scheme

Glossary

- (m) Definitions for: “gravel”, “sediment”, “drain”, “Intensive Winter Grazing”

Maps

- (n) Physiographic Zone Maps

- 2 In preparing this statement I have referred to the relief sought by F&B and F&G filed with the Court on 29 October respectively. The table on following pages 2-9 summarises the relief I support and identifies the parent objectives and policies relevant to supporting my recommendation.

Provision	Parent objectives & relevant policies	Comment	Recommended Amendment
<p><b>New provisions - freshwater indicators of health policy and schedule</b></p>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p>	<p>1 It is appropriate for the ecological indicators of health to be included in the WLP provisions, like the Ngāi Tahu cultural indicators of health (referred to in Policy 2). In addition, it is appropriate to include the status of waterbodies in relation to those ecological indicators of health (whether they are degraded or at risk). The best mechanism for this is a new policy and a schedule as sought by Fish and Game and Forest and Bird respectively. Without these provisions the parent freshwater quality objectives (1, 2, 4, 5, 6) and highly relevant freshwater quality policies (1, 3, 5-12, 13, 15A, 15B, 15C, 17, 17A, 18) of the WLP will not be implemented effectively and the pSWLP will remain at best a “hold the line” plan rather than a plan that provides for critical water quality improvement to get underway</p>	<p>Adopt relief sought by F&amp;G and F&amp;B</p>
<p><b>Policy 16 – Farming activities that affect water quality</b></p>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Socioeconomic benefits</u> Objective 3</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 13, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 18, 20, 24, 28, 32, 33, 39A</p>	<p>2 Policy 16 should be amended:</p> <p>(a) A direction to <i>minimise</i> adverse environmental effects will not safeguard the life-supporting capacity of ecosystems (relevant to implementing objectives 1, 2, 4, 6, 14, 15, 17, 18) or implement the plans freshwater primary freshwater quality directive set out in Objective 6 (maintain water quality where it is not degraded or improve water quality where it is degraded). Rather than “minimise”, it is appropriate to first prioritise / require avoidance of an adverse effect and then avoid significant adverse effects as a bottom line.</p> <p>(b) The environmental effects of farming on lakes and wetlands should be referred to.</p> <p>(c) New farming activities affecting degraded waterbodies should be managed to achieve improvement in water quality. This can be achieved through direct reference to the abovementioned freshwater ecological</p>	<p>Adopt relief sought by F&amp;G</p>

		<p>indicators of health.</p> <p>3 Note the relief sought by F&amp;G and F&amp;B is similar but not exactly the same. F&amp;Gs relief is more specific and I prefer that relief.</p>	
<p><b>Policy 18 – Stock exclusion from waterbodies</b></p>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 33, 39A</p>	<p>4 Ephemeral waterbodies should not be excluded from the stock exclusion provisions or any other provisions where waterbodies are being managed. Ephemeral waterbodies are waterbodies in their own right (Objective 2) and, when dry, are critical source areas (so provide a critical source pathway for contaminants to enter water). In effect ephemeral and intermittent streams provide the same ecological and hydrological functions as perennial streams by mobilising water, nutrients, and sediment through the catchment. Connectivity between ephemeral or intermittent waterbodies and surface waterbodies needs to be factored into freshwater management (Objectives 1&amp;2). As currently drafted, the rules giving effect to this policy (e.g. Rules 14, 20, 70) will continue to allow contaminants to enter water, in an unmanaged or unregulated way. This will fail the plan Objectives in respect of maintaining and improving water quality. Consideration of the cumulative impacts from land use activities (including discharge of fertiliser) on all rivers (particularly lowland and those which are degraded) is critical in catchment-based assessments and land management decisions to maintain the health and quality of freshwater.</p> <p>5 The SWLP does not adequately provide for the exclusion of stock from waterbodies and does not establish appropriate riparian setback distances in relation to stock exclusion. Relying on the NES-FM is unsatisfactory for Southland, as so much of the lowlands are used for pastoral farming and waterbodies (including the estuaries and lagoon sinks) are so degraded.</p>	<p>Adopt the relief sought by F&amp;G.</p>
<p><b>Rule 20 – Farming</b></p>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p>	<p>6 It is appropriate for Farm Environmental Management Plans “<b>FEPs</b>” to be used as a means for farmers to improve land management to reduce discharges of</p>	<p>Amend Rule 20 as sought by F&amp;G, except:</p> <ul style="list-style-type: none"> <li>• change the activity</li> </ul>

	<p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 33, 39A</p>	<p>contaminants to land in circumstances where they can enter water.</p> <p>7 The management of dairying and intensive winter grazing is needed given these two activities are significant contributors of contaminants to sensitive waterbodies. However, intensive horticulture activities (cultivation and commercial growth of root vegetable crops and bulbs) can also have significant adverse effects on water quality.</p> <p>8 Rule 20 should expressly provide that intensive horticulture activities require a management plan to be prepared and implemented in accordance with Appendix N of the SWLP, which includes mitigations relevant to the activity and relevant physiographic zone. The Topic A proceedings confirmed the degraded state of water throughout the majority of low-lying Southland and confirmed the appropriateness of implementing a physiographic zone approach. It is important that the management of land uses accord to their specific physiographic characteristics – this is a fundamental intent of the WLP’s approach to managing diffuse discharges. The physiographic zone approach embodies the concept of ki uta ki tai and therefore accords with the overarching Plan Objectives 1-2, and Policy 2.</p> <p>9 Farming of natural wetlands should not be permitted.</p> <p>10 Ephemeral waterbodies should not be excluded (as discussed in relation to Policy 18 above).</p> <p>11 F&amp;G has refined its relief regarding intensive winter grazing to better respond to (align with) matters arising from engagement with central government and regional stakeholders involved in the regulation of intensive winter grazing imposed under the NES-FM.</p> <p>12 F&amp;B seek a non-complying status for farming activities that do not meet permitted activity conditions. Conversely, F&amp;G seek retention of the RDA, subject to enlargement of the matters of discretion. I support the NCA status in light of the incumbent degraded water quality and the known adverse effects of farming</p>	<p>status for non-conformance to non-complying as sought by F&amp;B; and</p> <ul style="list-style-type: none"> <li>in clause 5 of the F&amp;G preferred relief, insert “(excluding sub-surface drains)” or a footnote, after the term “drain” to clarify that the setback standard does not apply to “sub-surface drains”.</li> </ul>
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		activities. It doesn't seem unreasonable to require applicants to demonstrate that the effects of their farming activities are either minor or are not contrary to the objectives and policies of the plan – to do otherwise risks making provision for increasing contaminant loss to occur, notwithstanding clear evidence of a need for a net reduction in most catchments dominated by agriculture.	
<b>Rule 24 - Incidental discharges from farming</b>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 33, 39A</p>	<p>13 Rule 24, as written, is not appropriate because the suite of other rules in the plan do not include permitted activity standards that comprehensively control the actual and potential adverse effects of on water (surface water and groundwater) that could arise from the activities permitted to ensure the discharge is not contrary to s 107(1)(c) - (g); or implement Objective 6 and Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18.</p> <p>14 Rule 24 also requires amendment to integrate the ecological indicators of health and schedule of degraded/at risk waterbodies into the rule framework.</p>	Adopt the relief sought by F&G and F&B.
<b>Rule 25 - Cultivation</b>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 33, 39A</p>	<p>15 Cultivation in the alpine physiographic zone or steep slopes is generally inappropriate because of the strong possibility of overland flow eroding the soil from the land with downstream effects. The additional restrictions (consent triggers) will assist in reducing sediment in overland flow entering waterbodies. These restrictions are consistent with Policy 4 and implement the stated parent freshwater quality and soil use and protection objectives.</p> <p>16 Ephemeral waterbodies should not be excluded (as discussed in relation to Policy 18 above).</p> <p>17 F&amp;G has refined its relief in respect of the permitted activity conditions to better respond to (align with) matters arising from engagement with central government and regional stakeholders involved in the intensive winter grazing imposed under the NES-FM.</p>	<p>Adopt the relief sought by F&amp;G in respect of Rule 25(a)(ii) – Permitted activity conditions</p> <p>Adopt the relief sought by F&amp;B in respect of Rule 25(c) – matters of discretion</p>

		18	F&B and F&G are seeking similar but slightly different matters of discretion. I prefer the matters of discretion sought by F&B on the basis it is more specific.	
<b>Appendix N – Farm Environment Management Plans</b>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 33, 39A</p>	19	This appendix should be amended to reflect all of the key transport pathways as described in relation to physiographic zones, and to require that actions demonstrate an improvement in water quality will be achieved where the farm is discharging into the catchment of an at risk or degraded waterbody; and the sections applying to cultivation and intensive winter grazing require amendment to clarify how riparian buffer zones are to be measured on the ground.	Adopt the relief sought by F&G.
<b>Rule 5 – Discharges to surface waterbodies</b> <b>And Rule 51 – Minor diversions of water</b>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 39A</p>	20	Rules 5 and 51, as written, conflict with the NES-FM. The rules should be amended to align with the importance of protecting wetlands, by referring to the sensitive / significant waterbodies listed in Appendix A, including regionally significant wetlands. I support the version of Rule 5 as notified (which is what F&G are seeking). It is unclear from the IHP Report why the notified version was not retained.	Amend rule 5 as sought by F&G.  Amend rule 51 as sought by F&B.
<b>Manapouri hydro-electric generation scheme (scheme) – Rule 52A</b>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p>	21	The non-complying activity status is not appropriate given the specific recognition of the benefits and importance of the scheme.	Delete Rule 52A so that the activities which would have been classified as controlled activities under Rule 52A become discretionary activities, and activities which would have been non-
		22	The controlled activity status is not appropriate because the Waiiau river (and associated waterbodies) are degraded as a consequence of the scheme. When reconstituting the scheme, some improvement (e.g.	

	<p><u>Water quantity and hydro-electric generation</u> Objective 3, 10, Policy 26</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 39A</p>	<p>some restoration or compensation of effects relating to ecological health, recreation access/values, natural character, Ngāi Tahu values) may be appropriate or necessary to implement Objective 9,9A, 9B and the other relevant plan objectives and policies. Such improvements are not likely under a controlled activity framework, unless the plan is further amended (via a future plan change) to impose a new / different flow regime that take into account the actual or potential benefits of changing the flow and level regime in the Plan (and then a controlled activity status would be appropriate as intended by Rule 52A(3)).</p> <p>23 A restricted discretionary or discretionary activity status would implement the parent objectives and is more appropriate compared to a controlled or non-complying activity status, at least in this interim period.</p>	<p>complying activities under Rule 52A remain non-complying.</p>
<p><b>Rule 70 – Stock exclusion from water bodies, and all ephemeral waterbodies</b></p>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 39A</p>	<p>24 The amendments sought by F&amp;B accord with (and are consequential to) their requested amendments to Policy 18, which I support.</p> <p>25 F&amp;B and F&amp;G are seeking similar but slightly different permitted activity conditions. I prefer the matters sought by F&amp;B on the basis it is more specific.</p> <p>26 Comparing the relief sought by F&amp;G and F&amp;B, there are also some inconsistencies regarding proposed dates, but these appear immaterial. Both versions of relief seek inclusion of natural wetlands and drains for the purpose of stock exclusion.</p>	<p>Adopt the relief sought by F&amp;B, except insert “(excluding sub-surface drains)” or a footnote, after the term “artificial drain” to clarify that the stock exclusion standard does not apply to “sub-surface drains”.</p>
<p><b>Rule 74 – Wetlands</b></p>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18</p>	<p>27 There has been around 90% loss of wetlands in Southland since European colonisation and wetlands in Southland are still undergoing irreversible decline in lowland areas of Southland, mainly due to development for agriculture. This in despite of wetland protection on private land being a national priority for over a decade. Rules around wetlands in Southland and their enforcement by the Council have been too permissive. All remaining natural wetlands in</p>	<p>Adopt the relief sought by F&amp;G.</p>



	Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 39A	Southland, particularly those with indigenous vegetation cover, are significant under the RMA.	
<b>Rule 78 – Weed and sediment removal for drainage maintenance</b>	<p><u>Overarching / integrated management</u> Objectives 1 &amp; 2, 13, 18, Policies 2, 5-12</p> <p><u>Ngai Tahu</u> Objectives 4 &amp; 5, Policies 1 &amp; 3</p> <p><u>Drainage Maintenance</u> Policy 30</p> <p><u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18</p> <p><u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 39A</p>	<p>28 Policy 30 was amended in mediation in response to appeals by F&amp;G and F&amp;B. However, consequential amendments have not been made to Rule 78. Drainage maintenance in the beds of modified watercourses has resulted in, and may continue to, result in significant adverse effects. Habitats of significant species (or significant habitats) adverse effects could be more than minor or inappropriate, and in need of management through a resource consent process. Rule 78 should be amended to:</p> <p>(a) Prevent significant gravel removal as a permitted activity because of the likelihood of more than minor or inappropriate adverse effects; and</p> <p>(b) Address the need to avoid over-deepening which results in increased bank slumping, further sedimentation of the bed and further degradation of habitat.</p>	Adopt the relief sought by F&G.
<b>GLOSSARY <i>Drain</i></b>	Rules 51, 70	29 I support the inclusion of new definitions for “ <i>Drain</i> ”, as sought by F&G.	Define “drain” as sought by F&G or (as above) specify in specific provisions that provide for setbacks from drains for cultivation and intensive winter grazing that these setbacks do not apply to sub-surface drains
<b>GLOSSARY <i>Sediment</i></b>	Policy 16, Rules 20, 24, 25, 78	30 I support the inclusion of new definitions for “ <i>Sediment</i> ”, as sought by F&G.	Define “sediment” as sought by F&G.
<b>GLOSSARY <i>Gravel</i></b>	Rule 78	31 I support amending the definitions of: “ <i>Gravel</i> ”, as sought by F&G	Define “gravel” as sought by F&G.
<b>GLOSSARY <i>Intensive Winter Grazing</i></b>	Policy 16, Rules 20, 25	32 I support amending the definitions of: “ <i>Intensive Winter Grazing</i> ”, as sought by F&G	Define “intensive winter grazing” as sought by F&G.

<b>PHYSIOGRAPHIC ZONE MAPS</b>	<u>Overarching / integrated management</u> Objectives 1 & 2, 13, 18, Policies 2, 5-12  <u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18	33 As stated in my evidence throughout Topic A I support reinstating the Physiographic Zone Maps into the WLP.	Insert physiographic zone maps in Part B (Maps), at the same scale as the Water Quality Maps.
<b>Other exclusions to ephemeral waterbodies</b>	<u>Overarching / integrated management</u> Objectives 1 & 2, 13, 18, Policies 2, 5-12  <u>Ngai Tahu</u> Objectives 4 & 5, Policies 1 & 3  <u>Drainage Maintenance</u> Policy 30  <u>Freshwater Quality</u> Objective 6, Policies 5-12, 13, 15A, 15B, 15C, 17, 17A, 18  <u>Safeguarding ecosystems</u> Objectives 1, 2, 4, 6, 14, 15, 17, 18 Complementary Policies: 1, 3, A4, B7, 11, 16A, 16, 20, 24, 28, 32, 39A	34 As discussed in relation to Policy 18 above ephemeral waterbodies are waterbodies in their own right and should not be excluded from the freshwater management regime.	Delete reference to “(excluding ephemeral rivers)” in Policy 18, Rules Rule 14; Rule 20; Rule 25, Rule 35A, including Rule 20(aa) and consequentially Rule 70(c) and 70 (e), Appendix N part B3(i)(ii).