

BEFORE THE ENVIRONMENT COURT

I MUA I TE KOOTI TAIAO O AOTEAROA

AT CHRISTCHURCH

ENV – 2018 – CHC – 000040

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an appeal under clause 14(1) of the First Schedule of
the Act in relation to the Proposed Southland Water and
Land Plan

BETWEEN

**Federated Farmers of New Zealand (Southland
Province)**

Appellant

AND

Southland Regional Council

Respondent

NOTICE OF WISH OF DIRECTOR-GENERAL OF CONSERVATION

TO BECOME A PARTY TO PROCEEDINGS

Section 274 Resource Management Act 1991

Department of Conservation

Planning, Permissions and Land

Department of Conservation

Private Bag 4715

Christchurch 8140

Phone: 03 371 3700

Solicitor: Pene Williams

To: The Registrar
 Environment Court
 Christchurch

1. I, Lou Sanson, Director-General of Conservation (the Director-General) wish to be a party to an appeal against part of the decision of the Southland Regional Council on the Proposed Southland Water and Land Plan (the proposed Plan) by Federated Farmers of New Zealand (Southland Province) (the appellant), ENV – 2018 – CHC – 000039 (the notice).
2. I made a submission on the proposed Plan¹, in particular on Objective 10², Policy 4³, Policy 5⁴, Policy 9⁵, Policy 10⁶, Policy 11⁷, Policy 12⁸, Policy 18⁹, Policy 39¹⁰, Rule 20¹¹, Rule 25¹², Rule 73¹³, and Appendix A¹⁴. I made further submissions on Objective 9B¹⁵, Policy 16A¹⁶, Policy 17A¹⁷, Rule 13¹⁸, Rule 35¹⁹, Rule 49²⁰, and New Rule 52A²¹.
3. I am not a trade competitor for the purposes of section 308C or section 308CA of the Resource Management Act 1991 (RMA).
4. I am interested in part of the appeal.

¹ Submitter Number 210

² Submission Point 210.31, Further submission on point Meridian Energy Limited 562.1

³ Submission Point 210.44

⁴ Submission Point 210.45

⁵ Submission Point 210.48

⁶ Submission Point 210.49

⁷ Submission Point 210.50

⁸ Submission Point 210.51

⁹ Submission Point 210.57, Further submission point on Forest and Bird NZ 279.26

¹⁰ Submission Point 210.69

¹¹ Submission Point 210.82, Further submission points on Environment Southland 247.9, and Southland Fish and Game Council 752.112

¹² Submission Point 210.86, Further submission point on Southland Fish and Game Council 752.118

¹³ Submission Point 210.92, Further submission point on Southland Fish and Game Council 752.166

¹⁴ Submission point 210.97

¹⁵ Further submission on Gore District Council, Southland District Council, and Invercargill City Council 330.2.

¹⁶ Further submission on Fonterra Co-operative Group Ltd 277.40

¹⁷ Further submission point on Gore District Council, Southland District Council, and Invercargill City Council 330.10

¹⁸ Further submission points on Federated Farmers 265.79, Civil Tech Ltd 133.2, Environment Southland 247.8, Ernslaw One Ltd 249.20, P F Olsen Ltd 622.18, Southland District Council 750.12, and Southland Fish and Game Council 752.105

¹⁹ Further submission Points on Forest and Bird NZ 279.81, Southland Fish and Game Council 752.128, Nga Rūnanga and TRoNT 797.46

²⁰ Further submission points on: Environment Southland 247.14, Irrigation NZ 414.9 and Southland Fish and Game 752.142

²¹ Further submission point on: Meridian Energy Ltd 562.15

5. My interests are as follows (note appeal points taken from the Schedule to the notice):

Objective 9B

- 5.1. In appeal point 1 of its notice, the appellant appeals that part of the decision dealing with Objective 9B and seeks to amend Objective 9B as the appellant considers it is not necessary or appropriate to ‘enable’ Southland’s regionally and nationally significant or critical infrastructure.

Objective 10

- 5.2. In appeal point 2 of its notice, the appellant appeals that part of the decision dealing with Objective 10 and seeks to delete and replace the Objective as the appellant considers that Manapōuri Power Scheme is already recognised in the Southland Regional Policy Statement 2017 (SRPS) and the objective should recognise other water users.

Policy 4, Policy 5, Policy 9, Policy 10, Policy 11 and Policy 12
(Physiographic Zone Policies)

- 5.3. In appeal points 4 – 9 of its notice, the appellant appeals that part of the decision dealing with the Physiographic Zone Policies – Policy 4, Policy 5, Policy 9, Policy 10, Policy 11 and Policy 12. The appellant in each case seeks as relief that the third paragraph of each Policy is deleted as the appellant considers it is inappropriate to “fetter the discretion of the consent authority” and the wording is highly directive.

New Policy 16A – Industrial and trade processes that may affect water quality

- 5.4. In appeal point 10 of its notice, the appellant appeals that part of the decision dealing with Policy 16A and seeks to amend Policy 16A as the appellant considers that it be aligned with Policy 17.

New Policy 17A – Industrial and trade processes that may affect water quality

- 5.5. In appeal point 11 of its notice, the appellant appeals that part of the decision dealing with Policy 17A and seeks to amend the Policy as the appellant considers that it should be aligned with Policy 17.

Policy 18 – Stock exclusion from waterbodies

- 5.6. In appeal point 12 of its notice, the appellant appeals that part of the decision dealing with Policy 18 and seeks to remove paragraph 2A as the appellant

considers the decision incorrectly assumes that all stock access affects bank erosion and water quality, and the decision disregards the cost and practicality of excluding livestock from hill and high-country streams.

Policy 39 – Application of the permitted baseline

- 5.7. In appeal point 14 of its notice, the appellant appeals that part of the decision dealing with Policy 39 and seeks deletion of the Policy as the appellant considers the policy is inequitable and prejudicial against farming.

Rule 13 – Discharge from subsurface drainage systems

- 5.8. In appeal point 16 of its notice, the appellant appeals that part of the decision dealing with Rule 13, and seeks deletion of Rule 13(a)(viii) which is the requirement to map and provide information of sub-surface drains and to amend the rule to permit periodic cleaning of the subsurface drainage network.

Rule 20 – Farming

- 5.9. In appeal point 17 of its notice, the appellant appeals that part of the decision dealing with Rule 20 and seeks amendments to the Rule for the intensive winter grazing threshold and seeks to delete a number of the standards in Rule 20(a)(iii)(3). I am not interested in that part of the appeal dealing with Rule 20(a)(iii)(3)(E).

Rule 25 – Cultivation on sloping ground

- 5.10. In appeal point 18 of its notice, the appellant appeals that part of the decision dealing with Rule 25 and opposes 5m setbacks and slope requirements and seeks amendments reducing setbacks and increasing slope requirements. The appellant also seeks a new definition of ‘minimum tillage’.

Rule 35 – Discharge of agricultural effluent to land

- 5.11. In appeal point 20 of its notice, the appellant appeals that part of the decision dealing with Rule 35 and seeks the deletion of Rule 35(a)(xii) which is the requirement to map and provide information on the location of sub-surface drains.

Rule 49 – Taking and using water

- 5.12. In appeal point 22 of its notice, the appellant appeals that part of the decision dealing with Rule 49 and seeks to remove the requirement to supply the Council

with details of the take and use of water when requested and amend the requirement to verify the accuracy of the water meter to no more frequently than 5-yearly.

New Rule 52A – Manapōuri Hydro-electric Generation Scheme

5.13. In appeal point 23 of its notice, the appellant appeals that part of the decision dealing with Rule 52A and seeks to amend the status of applications made under Rule 52A to a discretionary activity.

Rule 73 – Gravel extraction

5.14. In appeal point 24 of its notice, the appellant appeals that part of the decision dealing with Rule 73 and seeks to amend the Rule to include a permitted activity for gravel extraction subject to standards where the gravel extraction is required because the build-up of gravel is causing erosion, and for uses ancillary to farming activity.

Appendix A – Regionally Significant Wetlands and Sensitive Water Bodies

5.15. In paragraph 26 of its notice, the appellant appeals that part of the decision dealing with Appendix A and seeks that Appendix A remain as notified as the appellant considers that it is inappropriate to revise Appendix A without thorough research, investigation, ground-truthing, and extensive public and landowner consultation.

6. I oppose the relief sought in the appeal with respect to the Physiographic Zone Policies (Policy 4, Policy 5, Policy 9, Policy 10, Policy 11 and Policy 12), Policy 18, Policy 39, Rule 13, Rule 20, Rule 25, Rule 49, Rule 73 and Appendix A. My reasons for opposing the relief sought are as follows:

Policy 4, Policy 5, Policy 9, Policy 10, Policy 11 and Policy 12

(Physiographic Zone Policies)

6.1. My submission²² supported physiographic zones and managing land use activities to the physiographic zones appropriate for that land use. I oppose the relief sought as it removes the policy guidance to manage land use activities in physiographic zones.

6.2. The relief sought by the appellant:

²² Submission Point 210.43, Submission Point 210.44, Submission Point 210.45, Submission Point 210.47, Submission Point 210.48, Submission Point 210.49, Submission Point 210.50, Submission Point 210.51, Submission Point 210.52.

- 6.2.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and recognises and provides for matters of national importance including: section 6(a) natural character; and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 6.2.2. fails to give effect to the National Policy Statement for Freshwater Management (NPSFM) as required by section 67(3) of the RMA in particular: Objectives A1, A2 and A3.
- 6.2.3. in the coastal environment, fails to give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS) as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.
- 6.2.4. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, WQUAL.2, WQUAL.3 and RURAL.2, and Policies WQUAL.1, WQUAL.2, WQUAL.5 and RURAL.3.
- 6.2.5. is inconsistent with the relief I have sought in my appeal (ENV-2018-CHC-00036) in relation to Policy 4 – Alpine.

Policy 18 – Stock exclusion from waterbodies

- 6.3. I oppose the relief sought as sheep faeces are a significant contributor to concentrations of *E. coli* and other micro-organisms found in water bodies in the Southland region.
- 6.4. The relief sought by the appellant:
 - 6.4.1. fails to give effect to the NPSFM as required by section 67(3) in particular: Objective A1, A2 and A4, and Policy A5.
 - 6.4.2. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 2, 5, 11, 13 and 23.
 - 6.4.3. fails to give effect to SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, WQUAL.2, and RURAL.2 and Policies WQUAL.1, WQUAL.2, WQUAL.6, and RURAL.3.

Policy 39 – Application of the permitted baseline

- 6.5. I oppose the deletion of Policy 39 as it provides guidance to decision makers to ensure all adverse effects on water quality are appropriately considered to ensure water quality is not over-allocated.
- 6.6. The relief sought by the appellant:
- 6.6.1. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives A1, A2, and Policies A1.
- 6.6.2. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.
- 6.6.3. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, WQUAL.2 and Policy WQUAL.1.

Rule 13 – Discharge from subsurface drainage systems

- 6.7. I opposed Federated Farmers submission²³ on the Rule. I oppose the relief sought as sub-surface drains are critical sources of contaminants and requiring the mapping of them is essential to manage adverse effects of activities on water quality.
- 6.8. The relief sought by the appellant:
- 6.8.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognise and provides for matters of national importance including: section 6(a) natural character of wetlands, lakes, rivers, coastal environment and their margins; and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 6.8.2. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives A1 and A2, and Policy A1.
- 6.8.3. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.

²³ Further submission point on 265.79

- 6.8.4. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1 WQUAL.2 and WQUAL.3 and Policies WQUAL.1, WQUAL.2 and WQUAL.5.

Rule 20 – Farming

- 6.9. I oppose in part the relief sought as it does not ensure water quality is maintained or improved.
- 6.10. The relief sought by the appellant:
- 6.10.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognise and provides for matters of national importance including: section 6(a) natural character; and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 6.10.2. fails to give effect to the NPSFM as required by section 67(3) of the RMA in particular: Objectives A1 and A2, and Policy A1.
- 6.10.3. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.
- 6.10.4. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, WQUAL.2, and WQUAL.3 and Policy WQUAL.1, WQUAL.2, WQUAL.3, WQUAL.4 and WQUAL.6.

Rule 25 – Cultivation on sloping ground

- 6.11. I oppose the relief sought as it fails to appropriately manage the adverse effects of cultivation on sloping ground. I am concerned with the erosion of soils and sedimentation effects on waterbodies.
- 6.12. The relief sought by the appellant:
- 6.12.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognise and provides for matters of national importance including: section 6(a) natural character of wetlands, lakes, rivers, coastal environment and their margins; and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

- 6.12.2. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives A1 and A2, and Policy A1.
- 6.12.3. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.
- 6.12.4. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, WQUAL.2, WQUAL.3 and RURAL.2, and Policies WQUAL.1, WQUAL.2, WQUAL.4, WQUAL.5 and RURAL.3.

Rule 35 – Discharge of agricultural effluent to land

- 6.13. I opposed Federated Farmers submission²⁴ on the Rule. I oppose the relief sought as sub-surface drains are critical sources of contaminants and requiring the mapping of them is essential to manage adverse effects on water quality.
- 6.14. The relief sought by the appellant is:
 - 6.14.1. contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognise and provides for matters of national importance including: section 6(a) natural character of wetlands, lakes, rivers, coastal environment and their margins; and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
 - 6.14.2. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives A1 and A2, and Policy A1.
 - 6.14.3. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.
 - 6.14.4. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, WQUAN.2 and WQUAL.3,6 and Policies WQUAL.1, WQUAL.2, WQUAL.4 and WQUAL.5.

Rule 49 – Taking and using water

²⁴ Further submission point on 265.79

- 6.15. I oppose the relief sought as requiring the information and monitoring information allows Southland Regional Council to manage the cumulative effects of small water takes.
- 6.16. The relief sought by the appellant:
- 6.16.1. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives B1 and B2, and Policy B2.
- 6.16.2. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, and 21.
- 6.16.3. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAN.1 and WQUAN.2 and Policy WQUAN.5.

Rule 73 – Gravel extraction

- 6.17. I oppose including a permitted activity for gravel extraction in the proposed Plan. The effects of gravel extraction on river bed and bank stability, fish and bird habitat and water quality need to be appropriately managed.
- 6.18. The relief sought by the appellant:
- 6.18.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognise and provides for matters of national importance including: section 6(a) natural character of wetlands, lakes, rivers, coastal environment and their margins; and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 6.18.2. fails to give effect to the NPSFM as required by section 67(3) of the RMA in particular: Objectives A1 and A2.
- 6.18.3. in the coastal environment, fails to give effect to the NZCP as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.
- 6.18.4. fails to give effect to the SRPS as required by section 67(3) of the RMA in particular: Objectives WQUAL.1 and BRL.1, and Policies BRL.1 and BRL.3.

Appendix A - Regionally Significant Wetlands and Sensitive Water Bodies

- 6.19. In my submission²⁵ I sought that several wetlands be included in the plan because of their significance and the values associated with them. The
- 6.20. The relief sought by the appellant:
- 6.20.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognise and provides for matters of national importance including: section 6(a) natural character of wetlands, lakes, rivers, coastal environment and their margins; and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 6.20.2. fails to give effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives A2, B4 and C1 and Policies B1 and C1.
- 6.20.3. in the coastal environment, fails to give effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.
- 6.20.4. fails to give effect to the SRPS as required by section 67(3) of the RMA, in particular: Policies BIO.1, BIO.2 and BIO.4.

7. I support the relief sought in the appeal with respect to Objective 9B, Objective 10, Policy 16A, Policy 17A and Rule 52A. The reasons for supporting the relief sought are as follows:

New Objective 9B

- 7.1. I agree that the relief sought by the appellant is consistent with the SRPS.
- 7.2. The relief sought by the appellant gives effect to the SRPS as required by section 67(3) in particular: Policy INF.1.

Objective 10

- 7.3. I support in part the relief sought as it appropriately recognises the Manapōuri Power Scheme.
- 7.4. The relief sought by the appellant:

²⁵ Submission Point 210.97

7.4.1. gives effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objective B2.

7.4.2. gives effect to the SRPS as required by section 67(3) of the RMA, in particular Objective WQUAN.2, and Policy WQUAN.3.

New Policy 16A – Industrial and trade processes that may affect water quality

7.5. I support the strengthening of Policy 16A as sought by the appellant to avoid adverse effects. This is consistent with my further submission²⁶ on the new policy.

7.6. The relief sought by the appellant:

7.6.1. gives effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objective A1 and A2, and Policy A1.

7.6.2. in the coastal environment, gives effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.

7.6.3. gives effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, WQUAL.2 and WQUAL.3 and Policies WQUAL.1, WQUAL.2 and WQUAL.10.

New Policy 17A – Community sewerage schemes and on-site wastewater systems

7.7. I support the relief sought by the appellant to strengthen Policy 17A to avoid adverse effects. This is consistent with my further submission²⁷ on the new policy.

7.8. The relief sought by the appellant:

7.8.1. gives effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objective A1 and A2, and Policy A1.

7.8.2. in the coastal environment, gives effect to the NZCPS as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3, 5, 11, 13, 21 and 23.

²⁶ Further submission point on Fonterra Co-operative Group Ltd 277.40.

²⁷ Further submission point on Gore District Council, Southland District Council, and Invercargill City Council 330.10

- 7.8.3. gives effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAL.1, WQUAL.2 and WQUAL.3 and Policies WQUAL.1, WQUAL.2 and WQUAL.10.

New Rule 52A – Manapōuri Hydro-electric Generation Scheme

7.9. I support the relief sought by the appellant to change the activity status as this appropriately recognises the national importance of the Manapōuri Power Scheme while also recognising the significant adverse effects of the Scheme on the Waiau Catchment.

7.10. The relief sought by the appellant is:

7.10.1. consistent with Part 2 of the RMA by achieving the sustainable management purpose in section 5; and recognises and provides for matters of national importance including: section 6(a) natural character of wetlands, lakes, rivers, coastal environment and their margins; and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

7.10.2. gives effect to the NPSFM as required by section 67(3) of the RMA, in particular: Objectives B1 and B4, and Policy B5.

7.10.3. gives effect to the SRPS as required by section 67(3) of the RMA, in particular: Objectives WQUAN.2 and Policies WQUAN.1 and WQUAN.2.

8. I agree to participate in mediation or other alternative dispute resolution of the proceedings.

Dated the 22nd of June 2018



Aaron Fleming, Director Operations, Southern South Island Region

Pursuant to delegated authority from the Director-General of Conservation²⁸

²⁸ A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18-32 Manners Street, Wellington 6011

Address for service of interested party:

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