

IN THE ENVIRONMENT COURT AT CHRISTCHURCH

I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of an appeal under Clause 14 of Schedule 1 of the Resource Management Act 1991
AND IN THE MATTER	of the proposed Southland Regional Water and Land Plan
BETWEEN	Royal Forest and Bird Protection Society of New Zealand Inc
	Appellant
AND	Southland Regional Council
	Respondent

Notice of Appeal by the Royal Forest and Bird Protection Society of New Zealand Inc

Dated 22 May 2018

Royal Forest and Bird Protection Society
of New Zealand Inc
PO Box 266
Nelson 7010
Email: s.gepp@forestandbird.org.nz
Tel: 021 558 241
Solicitor acting: Sally Gepp

To: The Registrar
Environment Court
Christchurch

MAY IT PLEASE THE COURT:

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird'; 'the Society') appeals against Southland Regional Council's decision on the Proposed Southland Water and Land Plan (the proposed plan).
2. Forest and Bird made a submission on the proposed plan.
3. Forest and Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Forest and Bird received notice of the decision on 4 April 2018. On 15 May 2018, the Environment Court granted Forest & Bird a waiver of the time limit to file this notice of appeal, such that the notice is due to be filed and served on Southland Regional Council by 22 May 2018.
5. The decision was made by Hearing Commissioners on behalf of Southland Regional Council.
6. The parts of the decision that Forest and Bird is appealing are provisions relating to protection of indigenous biodiversity, water bodies, maintenance and enhancement of freshwater quality and quantity and effects on the coastal marine area.

Parts of decision appealed, reasons for appeal, and relief sought

7. In addition to the reasons set out in Figure 1 below, the general reasons for Forest & Bird's appeal are that the provisions appealed against:
 - a. do not give effect to relevant provisions of the Southland Regional Policy Statement (RPS), National Policy Statement for Freshwater Management and the New Zealand Coastal Policy Statement;
 - b. are not consistent with Part 2 of the Resource Management Act ('the Act');
 - c. do not implement the Council's functions under s 30 of the Act; and/or

d. do not represent best resource management practice.

8. The parts of the decision appealed, reasons for the appeal and relief sought are set out in Table 1 below. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal. Forest & Bird also seeks any consequential changes made necessary by the relief sought below.

TABLE 1: PART OF DECISION APPEALED, REASONS FOR APPEAL AND RELIEF

Part of decision appealed	Reasons for appeal	Relief
Objective 6	The reference to “overall” water quality does not implement the NPSFM or s30.	Delete reference to “overall” water quality.
Objective 9 Objective 9A Objective 9B	<p>Deletion of reference to recreational values from Objective 9 is inconsistent with providing for people’s wellbeing and NPSFM objectives for swimmable rivers.</p> <p>Deletion of reference to waterbody margins will not safeguard life supporting capacity of ecosystems.</p> <p>The NPSFM prioritises safeguarding environmental values and people and communities’ health. Objectives 9A and 9B have the potential to conflict with the achievement of freshwater objectives. The objective should be to sustainably manage these activities within environmental limits.</p>	<p>Reinstate reference to recreational values and waterbody margins in Objective 9.</p> <p>Recast Objectives 9, 9A and 9B to ensure that environmental bottom lines in 9 are achieved before the use of land and water contemplated in 9A and 9B are provided for.</p> <p>Amend Objective 9A to:</p> <p><u>Provided objective 9 is achieved, water is available to support the reasonable needs of people and communities to provide for their, social, economic and cultural wellbeing</u></p> <p>Amend Objective 9B to:</p> <p>The effective development, operation, maintenance and upgrading of Southland’s regionally significant, nationally <u>significant</u> and critical infrastructure is enabled <u>sustainably managed</u>.</p>
Objective 13 Objective 13A Objective 13B	Notified Objective 13 has been reframed into Objectives 13, 13A and 13B. Objective 13(c) relating to ecosystems, amenity values, cultural values and historic heritage values has been deleted on the basis it is	Reinstate/amend objective providing that “adverse effects on ecosystems (including <u>indigenous biological</u> diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or

	<p>addressed elsewhere but Objective 14 is restricted to ecosystem <u>types</u> and habitats, and to rivers estuaries wetlands and lakes.</p> <p>The relationship between Objectives 13, 13A, 13B and 13C does not ensure that sustainable management and freshwater objectives are achieved.</p>	<p>mitigated to ensure these values are maintained safe guarded or enhanced.” and enable the use and development of lands and soils only where those objectives are met:</p> <p>(a) The quantity, quality and structure of soil resources are <u>managed to avoid irreversible degradation</u> not irreversibly degraded through land use activities and discharges to land;</p> <p>((b) the discharge of contaminants to land or water that have significant <u>adverse</u> or cumulative effects on human health <u>and recreation</u> are avoided; and</p> <p>(c) adverse effects on ecosystems (including <u>indigenous biological</u> diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained <u>safe guarded</u> or enhanced.</p> <p><u>(d) Provided a, b and c are met, enable the use of development of land and soils.</u></p> <p>Delete objectives 13A and 13B</p>
Objective 14	<p>The deletion of dryland environments and failure to refer to species will not maintain indigenous biodiversity. Reference to dryland environments is needed in order to set an objective to guide decision makers in the implementation of Rule 79 High Country burning, which can have adverse impacts on dryland environments and which also impact upon soil and water values and indigenous biodiversity.</p>	<p>Reinstate reference to drylands environments and include reference to species in addition to indigenous ecosystem types.</p>
Objective 17	<p>Does not reflect s6(a).</p>	<p>Amend to: ... natural habitats, are <u>preserved, and</u> protected from inappropriate use and development.</p>
All Physiographic Zone Policies	<p>The policies do not require that activities are consistent with maintaining, or improving where degraded, water quality.</p>	<p>Amend policies 4-12 to ensure they only provide for activities where water quality will be maintained, or enhanced where degraded.</p> <p>Delete references to “generally” not granting resource consents, which is meaningless.</p>

		<p>Amend policies 4, 9, 10 and 11 to make dairy farming, intensive winter grazing and cultivation prohibited where these policies apply.</p> <p>Reinstate policies 7 and 8.</p> <p>Amend policies 9-12 by adding the words: <u>...where continuation of the activity will not achieve maintenance (or enhancement where required) of water quality, and</u> where contaminant losses will increase as a result of the proposed activity.</p>
Policy 13	<p>Forest and Bird supported the general intent of this policy but requested that it be amended to provide clearer direction to decision makers as to how to achieve the outcomes specified in the objectives. The proposed amendments and addition of 13 (1) fail to achieve this and sets up further conflict between enabling primary production and maintaining and improving water quality including for human health.</p>	<p>Amend:</p> <p>1. Recognise that the <u>sustainable</u> use and development of Southland’s land and water resources, including for primary production, enables people and communities to provide for their social, economic and cultural wellbeing.</p> <p>Amend cross-references in 13(2) to align with the changes sought below.</p>
Policy 15 (deleted)	<p>Policy 15 used to provide a policy of avoiding new discharges to surface waterbodies that would reduce water quality beyond the zone of reasonable mixing. That policy is appropriate to implement the NSPFM.</p>	<p>Reinstate Policy 15 as notified with the amendments below:</p> <ul style="list-style-type: none"> • Amend 15 (2): 2. avoiding point source and non-point source discharges to land that will reduce surface or groundwater quality, unless the adverse effects of the discharge can be avoided, remedied or mitigated; • Amend 15 (3) to: “avoiding land use activities that will reduce surface or groundwater quality, unless the adverse effects can be avoided, remedied or mitigated; and”
Policy 15A	<p>This policy does not ensure maintenance of waterbodies, as a waterbody is only required to continue to meet guidelines (which could involve a level of degradation)</p>	<p>Amend Policy 15A to ensure that it is consistent with maintenance of water quality.</p> <p>Delete references to “remedy or mitigate.”</p>
Policy 15B	<p>Policy 15B(1) does not require improvement, it only holds the line.</p>	<p>Amend Policy 15B(1) to require new discharges to contribute to an enhancement of water quality.</p>

	<p>Policy 15B(2) refers to an improvement but only requires applicants to <u>demonstrate how and by when</u> an improvement will occur, and so will not ensure improvement occurs within a defined timeframe.</p>	<p>Amend Policy 15B(2) to provide guidance to consent authorities to distinguish between minor and major improvements and timeframes.</p> <p>Delete references to “remedy or mitigate.”</p>
Policy 15C	<p>Reference to non-regulatory methods is unnecessary as both regulatory and non-regulatory methods are possible.</p> <p>Policy 15C refers only to improving water quality where a freshwater objective is not met, but “over-allocation” includes the situation where water has been allocated beyond a limit.</p> <p>Improvement may be an appropriate response even for water quality that is not degraded and the policy should provide for that.</p>	<p>Amend:</p> <p>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 <u>it has been allocated beyond a limit or</u> freshwater objectives are not being met and otherwise maintain <u>or improve</u> water quality where freshwater objectives are being met.”</p>
Policy 16	<p>“Minimising adverse effects” does not provide clear direction on which effects must be avoided, remedied or mitigated and may be inconsistent with maintaining or improving water quality.</p> <p>In 16(1)(a), “discouraging” an activity provides uncertain policy direction.</p> <p>In 16(1)(b), reference to “generally” not granting consent is uncertain and inadequate policy direction.</p> <p>“Mitigating” effects is unlikely to achieve adequate freshwater outcomes.</p>	<p>Amend Policy 16 so that adverse effects on water quality are avoided and other adverse environmental effects are avoided, remedied or mitigated.</p> <p>Amend “discouraging” to “avoiding” in 16(1)(a).</p> <p>Amend by deleting “generally” and “or mitigated” in 16(1)(b) and 16(1)(c).</p>
Policy 16A	<p>“Minimising adverse effects” does not provide clear direction on which effects must be avoided, remedied or mitigated and may be inconsistent with maintaining or improving water quality.</p> <p>Adopting the best practicable option may be insufficient to meet environmental bottom lines.</p>	<p>Amend to require avoidance of adverse effects on water quality.</p>
Policy 17	<p>Avoiding only “significant” adverse</p>	<p>Amend by deleting “significant”.</p>

	effects on water quality is inconsistent with s30 and the NPSFM.	
Policy 17A	Minimising adverse effects will not meet a bottom line of maintaining water quality and improving it where degraded. This still provides for potentially significant adverse effects.	Amend to require that adverse effects on water quality are avoided.
Policy 18	<p>Exclusion of ephemeral rivers is not consistent with the NPSFM and ss6 and 30.</p> <p>A further 5 year extension of time to exclude stock is not appropriate because stock access will continue to degrade water quality</p> <p>Stock access should not adversely affect water quality, bed and bank integrity and stability, mahinga kai, and river and riparian ecosystems and habitats.</p>	<p>Delete exclusion for ephemeral rivers, as these have high ecological values.</p> <p>Delete reference to 2030, retain 2025 date.</p> <p>Delete “significant” in relation to adverse effects of stock access.</p>
Policy 20	<p>Singling out primary production for recognition in 1A is not consistent with enabling people and communities to provide for their wellbeing.</p> <p>An “avoid, remedy or mitigate” approach to effects on aquatic habitat, life supporting capacity, ecosystem processes and the other values in 20(1) will not safeguard these values and is inconsistent with the NPSFM.</p> <p>An “avoid, remedy or mitigate significant adverse effects” approach to aquifer storage volumes; surface water flows and levels; and water quality is inconsistent with the NPSFM, s 6 and s 30</p>	<p>Delete reference to primary production in 1A.</p> <p>Amend 20(1) by deleting “remedy or mitigate” in relation to items (a), (b), (c), (d), (e), (f), (h) and (j).</p> <p>Amend 20(2) by deleting “remedy or mitigate significant” in relation to effects on aquifer storage volumes; surface water flows and levels; and water quality.</p>
Policy 26A	Policy 26 adequately recognises infrastructure and provides for its positive effects and constraints to be considered. Effects management for infrastructure should be dealt with under effects management policies. Remediation and mitigation of effects conflicts with the	Delete Policy 26A

	requirement to maintain water quality.	
Policy 28	Provides for remedying or mitigating adverse effects, which will not safeguard life supporting capacity.	Delete “remedy or mitigate”.
Policy 29	This policy does not protect significant indigenous vegetation and significant habitat of indigenous fauna from adverse effects.	Amend to include requirement to avoid adverse effects on significant indigenous vegetation and significant habitat of indigenous fauna
Policy 32	There is no specific policy dealing with maintenance of indigenous biodiversity to implement Objective 14. In addition to the protection of significant vegetation and habitats, Policy 32 should address maintenance of indigenous biodiversity in accordance with Objective 14 and s 30.	Amend: Protect significant indigenous vegetation and significant habitats of indigenous fauna <u>and maintain indigenous biodiversity</u> associated with natural wetlands, lakes and rivers and their margins.
Policy 39	When considering applications for resource consent the Council should consider all effects on water quantity as well as water quality.	Amend: ... Southland Regional Council should <u>shall</u> consider all adverse effects of the proposed activity on water quality <u>and quantity</u> , whether or not this Plan permits an activity with that effect.
Policy 39A	The Council’s functions include controlling the use of land to achieve maintenance and enhancement water quality in and coastal water; maintenance of water quantity in coastal water; and maintenance and enhancement of ecosystems in coastal water. Integrated management should therefore include consideration of effects of land use on the CMA.	Amend: ... including the interactions between freshwater, land and associated ecosystems (including estuaries <u>and the coastal marine area</u>).
Policy 46	Waituna has special values and is already over allocated, and so needs to be carefully managed as a FMU rather than as part of a larger FMU.	Add Waituna as a FMU and amend map series 7 accordingly.
Rule 13	This Rule will not maintain or improve water quality.	Add: <u>“(vii) The discharge does not reduce the water quality standard below any standards set for the relevant waterbody in Appendix E “Water Quality Standards” at the downstream edge of the reasonable mixing zone.”</u>
Rule 14	3 m is not a sufficient buffer to protect significant indigenous biodiversity from adverse effects of fertiliser application. Riparian planting with no minimum required width specified is not a	Amend to provide for a 10 m minimum setback in all circumstances. Delete exclusion for ephemeral rivers.

	<p>sufficient buffer to protect waterways from fertiliser effects.</p> <p>Ephemeral rivers should not be excluded as they have high ecological values</p>	
Rule 15	At a minimum, discharges should meet the water standards in Appendix K.	Amend 15(a) and 15(ab) to add: <u>vii) The discharge does not reduce the water quality standard below any standards set for the relevant waterbody in Appendix E “Water Quality Standards” at the downstream edge of the reasonable mixing zone.”</u>
Rule 20	<p>Farming activities in ephemeral rivers are permitted. This is inappropriate due to the high environmental values of ephemeral rivers and their potential to be critical source areas.</p> <p>Horticulture on small lots can also contribute nutrients to water bodies and should also be managed.</p> <p>Setback distances are inadequate.</p> <p>Farming that does not meet a standard should be a non-complying activity.</p>	<p>Delete Rule 20(aa)</p> <p>Add intensive horticulture to Rule 20(a).</p> <p>Amend to include ephemeral streams and provide for increased setbacks.</p> <p>Amend (d) to provide that farming that does not meet these standards is a non-complying activity.</p>
Rule 24	This rule does not include suitable receiving water quality standards to maintain or improve water quality.	<p>Amend Rule 24 to add the following standards into 24(a)(ii)(4):</p> <p><u>(iii) any discharge of a contaminant resulting from any activity permitted by Rules 20, 25 or 70 is managed to ensure that after reasonable mixing it does not give rise to any of the following effects on receiving waters:</u></p> <p><u>(1) where the water quality upstream of the discharge meets the standards set for the relevant waterbody in Appendix E “Water Quality Standards”, the discharge does not reduce the water quality below those standards at the downstream edge of the reasonable mixing zone; or</u></p> <p><u>(2) where the water quality downstream of the discharge does not meet the standards set for the relevant water body in Appendix E “Water Quality Standards”, the discharge must not further reduce the water quality below those standards at the downstream edge of the reasonable mixing zone.</u></p>
Rule 25	A 5 m setback is inadequate to protect ecosystems and maintain water	Include ephemeral rivers.

	<p>quality.</p> <p>The exclusion of ephemeral rivers is not justified as they have high ecological value.</p> <p>Matters of discretion to not enable all relevant effects to be considered.</p>	<p>Increase setback to:</p> <ul style="list-style-type: none"> • 20m for slopes at 16 degrees or more, • 10m for slopes 4-16 degrees. • 5m for slopes of less than 4 degrees <p>Amend to specify that cultivation in the Alpine Zone is prohibited.</p> <p>Matters of discretion should include:</p> <p><u>3. Risks to areas of significant indigenous vegetation and habitats and measures to avoid those risks</u></p> <p><u>4. Risks to the preservation of the natural character of wetlands, lakes, rivers and their margins.</u></p>
Rule 51	<p>Diversions adversely affect wetlands, and diversions from Regionally Significant Wetlands should only occur in exceptional circumstances. Discretionary activity status is inappropriate.</p>	<p>Amend to ensure that minor diversions of water from all wetlands including listed Regionally Significant Wetlands are a non-complying activity.</p>
Rule 52/ Rule 52A	<p>The Waiau catchment is over-allocated. Controlled activity status for Manapōuri hydro-electric generation scheme-related activities is inappropriate in an over-allocated catchment, where the objective must be to phase out over-allocation.</p>	<p>Ensure all abstraction, damming, diversion and use of water from the Waiau catchment is non-complying, except as provided in Rules 49, 50 or 51 and the takes authorised by Section 14(3) of the Act.</p> <p>Delete Rule 52A.</p>
Title	<p>Does not refer to wetlands</p>	<p>Amend title to refer to wetlands</p>
Rule 70	<p>Ephemeral rivers should not be excluded as they have high ecological values.</p> <p>Dairy support, beef, cattle and deer should be excluded from waterbodies by 2020. After that date, stock access should be a non-complying activity to indicate that stock access to water bodies is no longer acceptable.</p>	<p>Amend 70(c) and (e) to include ephemeral rivers and wetlands.</p> <p>Amend 70 (e) to make noncomplying after the dates set out in table 1</p> <p>Add the following performance standards for permitted activity status;</p> <p><u>there is no discharge that gives rise to any conspicuous change in the colour or visual clarity of the receiving water;</u> <u>there is no significant devegetation of the bed and banks, pugging or alteration to the profile of the bed and banks, other than at fords or stock crossings;</u> <u>there is no access by stock to the area of tidally influenced river and adjacent riparian habitat and</u> <u>There is no feeding out or supplementary</u></p>

		<p><u>feeding of stock in, over or on the bed of a lake, river, (including ephemeral rivers and streams, natural wetland, or artificial water course or modified water course and their margins.</u></p> <p>Amend Table 1 to include all natural wetlands and water bodies and artificial drains</p> <p>Amend Table 1 to require all dairy support not on third party land to exclude stock from all natural wetlands and water bodies including artificial drains and those where break feeding or supplementary feeding occurs by 1 July 2020.</p> <p>Amend Table 1 by adding exclusion of supplementary feeding of dairy support on third party land and beef cattle and deer.</p>
Rule 78	This rule does not adequately protect threatened native fish from disturbance associated with drainage maintenance activities	<p>Amend:</p> <p>(iii) any incidental bed disturbance and removal of gravel shall be only to the extent that it is necessary to undertake the activity and shall be kept to the absolute minimum <u>and the gravel removed shall comprise not more than 5% of the total sediment removed ;</u></p> <p><u>(xiv) the modified watercourse is not a habitat of threatened native fish</u></p> <p>Add schedule to identify habitats of threatened native fish.</p>

Attachments

9. The following documents are attached to this notice of appeal:

- a. A copy of the Commissioners' decision (Appendix 'A');
- b. A list of names and addresses of persons to be served with a copy of this notice (Appendix 'B'); and
- c. A copy of Forest and Bird's submission to the Southland Regional Council ("Appendix 'C').

10. Parties served with a copy of this notice of appeal will not be served with the attachments, and may obtain a copy from the Appellant on request.



Sally Gepp / Peter Anderson
Counsel for Royal Forest And Bird Protection Society of New Zealand Incorporated

22 May 2018

Address for Service

Sally Gepp
PO Box 266, Nelson 7040

Sue Maturin
PO Box 6230, Dunedin 9059

Telephone: 021 558 241
email: s.gepp@forestandbird.org.nz

021 222 5092
s.maturin@forestandbird.org.nz

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

***How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

- Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).