

**BEFORE THE ENVIRONMENT COURT**

**I MUA I TE KOOTI TAIAO O AOTEAROA**

**AT CHRISTCHURCH**

**ENV – 2018 – CHC – 000028**

**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**

**Horticulture New Zealand**

Appellant

**AND**

**Southland Regional Council**

Respondent

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**NOTICE OF WISH OF DIRECTOR-GENERAL OF CONSERVATION**

**TO BECOME A PARTY TO PROCEEDINGS**

Section 274 Resource Management Act 1991

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**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 Horticulture NZ (the appellant), ENV – 2018 – CHC – 000028 (the notice).
2. I made a further submission, in particular on Rule 14<sup>1</sup> and on the definition of ‘natural wetland’<sup>2</sup>.
3. The functions of the Department of Conservation (the Department) are set out at section 6 of the Conservation Act 1987, and relevantly include:
  - (ab) *to preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats:*
  - (b) *to advocate the conservation of natural and historic resources generally:*
4. As Director-General I am the administrative head of the Department, and under section 53(1) of the Conservation Act 1987 I have “... *all powers that are reasonably necessary or expedient to enable the Department to perform its functions.*” In addition, under section 53(3)(d) of that Act, I “*shall advocate the conservation of aquatic life and freshwater fisheries generally*”.
5. Based on the Department’s functions, and my powers to enable the Department to perform its functions, I consider I am a person who has an interest greater than the public in the parts of the appeal where I have an interest. These parts of the appeal relate to the preservation of indigenous freshwater fisheries, the protection of recreational freshwater fisheries and freshwater fish habitats, and the conservation of aquatic life and freshwater fisheries generally.
6. I am not a trade competitor for the purposes of section 308C or section 308CA of the Resource Management Act 1991 (RMA).
7. I am interested in part of the appeal.
8. My interests are as follows:

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<sup>1</sup> Further submission PF Olsen Ltd Submission Point 622.19, Southland Fish and Game Council 752.106

<sup>2</sup> Further submission on Southland Fish and Game Council 752.266

Appeal Point 1: Policy 39A – Integrated Management

- 8.1. In paragraph 6 and the table of its notice, the appellant appeals the decision on Policy 39A. As relief the appellant seeks to move Policy 39 from its location under the heading ‘Consideration of Resource Consent Applications’ to instead be located under the ‘Freshwater Management Unit Process Policies’ heading.

Appeal Point 2: Rule 14 – Discharge of fertiliser

- 8.2. In paragraph 6 and the table of its notice, the appellant appeals the decision dealing with Rule 14 and seeks to amend Rule 14(a)(iv) to amend the decision version references in the Rule to ‘wetland’ to instead refer to ‘natural wetland’.
- 8.3. The appellant further seeks to amend Rule 14(b) to make a failure to comply with Rule 14(a) a restricted discretionary activity instead of a non-complying activity.

Appeal Point 5: Definition of ‘natural wetland’

- 8.4. In a paragraph 6 and the table of its notice, the appellant appeals that part of the decision dealing with the definition of ‘natural wetland’ and seeks relief as the appellant is concerned that sediment control measures and artificial wetlands are not excluded from the definition.
- 8.5. The appellant seeks to amend the definition of ‘natural wetland’ to exclude sediment traps and artificial wetlands.

Appeal Point 6: Definition of ‘wetland’

- 8.6. In a paragraph 6 and the table of its notice, the appellant appeals that part of the decision dealing with the definition of ‘natural wetland’ and seeks relief as the appellant is concerned that sediment control measures and artificial wetlands are not excluded from the definition.
- 8.7. The appellant seeks to amend the definition of ‘wetland’ to either:
- 8.7.1. include the list of exclusions from the definition of natural wetland in the definition of ‘wetland’, or
- 8.7.2. in the alternative, amend references from ‘wetland’ where this appears in the Rules to ‘natural wetlands’ so that the list of exclusions included in the definition of ‘natural wetlands’ applies for all wetlands.

9. I oppose the relief sought in the appeal with respect to Policy 39A, Rule 14, the definitions of ‘natural wetland’ and the definition of ‘wetland’. My reasons for opposing the relief are as follows:

Appeal Point 1: Policy 39 – Integrated Management

- 9.1. The relief sought does not change the content of the Policy. However, I am concerned that by changing its location within the proposed Plan this could have the effect of changing the Policy’s intent.
- 9.2. The relief sought by the appellant:
- 9.2.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognise and provide 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.
- 9.2.2. fails to give effect to the National Policy Statement for Freshwater Management 2014 (as amended 2017) (NPSFM) as required by section 67(3) of the RMA, in particular: Objective C1.
- 9.2.3. in the coastal environment, fails to give effect to the New Zealand Coastal Policy Statement 2010 as required by section 67(3) of the RMA, in particular: Objectives 1 and 7, and Policies 3 and 4.
- 9.2.4. fails to give effect to the Southland Regional Policy Statement 2017 (SRPS) as required by section 67(3) of the RMA, in particular: Objective WQUAL.1, and Policy WQUAL.12

Appeal Point 2: Rule 14 – Discharge of fertiliser

- 9.3. I am concerned that the relief sought inappropriately restricts the rule to ‘natural wetlands’ rather than applying to all wetlands.
- 9.4. I oppose the relief sought to Rule 14(b) to amend the activity status of activities that fail to comply with Rule 14(a) to be a restricted discretionary activity, as this is inappropriate to manage the adverse effects of discharges of fertiliser (that do not comply with the permitted activity in Rule 14(a)).
- 9.5. The relief sought by the appellant:

- 9.5.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognize and provide for matters of national importance including: section 6(a) natural character of wetlands, lakes, rivers and coastal environment and their margins and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 9.5.2. fails to give effect to the NPSFM as required by section 67(3) in particular: Objective A1 and Objective A2.
- 9.5.3. fails to give effect to the SRPS as required by section 67(3) in particular: Objective WQUAL.2, Policy WQUAL.1 and Policy WQUAL.3.

Appeal Points 5 and 6: Glossary – Definitions of ‘natural wetland’ and ‘wetland’

- 9.6. I am concerned that the relief sought by the appellant will have adverse effects on the management of wetlands and natural wetlands in the region.
- 9.7. The relief sought by the appellant:
  - 9.7.1. is contrary to Part 2 of the RMA by not achieving the sustainable management purpose in section 5; and failing to recognize and provide for matters of national importance including: section 6(a) natural character of wetlands, lakes, rivers and coastal environment and their margins and section 6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
  - 9.7.2. fails to give effect to the NPSFM as required by section 67(3) in particular: Objective A2.
  - 9.7.3. fails to give effect to the SRPS as required by section 67(3) in particular: Objective WQUAL.2, Policy WQUAL.1 and Policy WQUAL.3.
- 10. I agree to participate in mediation or other alternative dispute resolution of the proceedings.

Dated the 22<sup>nd</sup> of June 2018



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Aaron Fleming, Director Operations, Southern South Island Region

Pursuant to delegated authority from the Director-General of Conservation<sup>3</sup>

*Address for service of interested party:*

Director-General of Conservation

Planning, Permissions and Land

Department of Conservation

Private Bag 4715

Christchurch 8011

*Contact persons*

Amelia Ching, RMA Planner – Planning Shared Services

Ph: 027 627 7705

Email: [aching@doc.govt.nz](mailto:aching@doc.govt.nz)

Pene Williams, Senior Solicitor – Legal Services

Ph: 03 474 6902

Email: [pwilliams@doc.govt.nz](mailto:pwilliams@doc.govt.nz)

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<sup>3</sup> 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  
SAR-04-83-117 Horticulture New Zealand - proposed Southland Water and Land Plan - s274 joining  
notice - DOC-55066415506641