

IN THE ENVIRONMENT COURT

ENV-2018-CHC-37

IN THE MATTER of an appeal under clause 14(1) of
the First Schedule of the Resource
Management Act 1991

AND IN THE MATTER OF the Proposed Southland Water
and Land Plan

BETWEEN **SOUTHLAND FISH AND GAME
COUNCIL**

Appellant

AND **SOUTHLAND REGIONAL
COUNCIL**

Respondent

**NOTICE PURSUANT TO SECTION 274
OF THE RESOURCE MANAGEMENT ACT 1991**

To: The Registrar
Environment Court
Christchurch

TAKE NOTICE that Federated Farmers of New Zealand (Southland) gives notice pursuant to s274 of the Resource Management Act 1991 that it wishes to appear as a party to the above proceedings.

This Notice is made upon the following grounds:

- 1 Federated Farmers of New Zealand (Southland) lodged a submission, Further submission and Appeal on the Proposed Southland Water and Land Plan to which this appeal relates and/or has an interest in these proceedings that is greater than the public generally.
- 2 Federated Farmers of New Zealand (Southland) is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
- 3 Federated Farmers of New Zealand (Southland) has an interest in all of the appeal, in particular in relation to:

Objective 2 -

- Federated Farmers lodged a Submission and Further Submission on this objective.
- This region-wide objective seeks to recognise the value of primary production in the region. The appellant seeks to delete reference to the contribution and value of primary production in Southland. The primary sector in Southland directly contribute more to the regional GDP than in any other region on a percentage basis, so this is an important factor to consider.
- We oppose the relief sought by the appellant.

Objective 6 -

- Federated Farmers lodged a Submission and Further Submission on this objective.
- It is our view the reference to “overall” water quality should be retained. The objective requires a broad qualifier otherwise the more specific trends of up, down or indeterminate would fail to meet the objective and difficult to quantify.
- The relief sought is inconsistent with the NPS-FM Objective 2 seeking “the overall quality of fresh water within a FMU is maintained or improved...”
- We oppose the appellant’s relief.

Objectives 9 & 9B

- Federated Farmers lodged a Submission and Further Submission on Objective 9, and has lodged our own appeal on these objectives.
- Objective 9 was expanded through the decisions version of the plan to three separate, but interrelated objectives, being 9, 9A, and 9B.

- Federated Farmers opposes the relief sought by the appellants with respect to reinstating the reference to recreational values and waterbody margins in the objective.
- Reintroducing recreational values to Objective 9 would result in recreational values (e.g. walking or kayaking) being prioritised above social and economic needs such as potable supply of water, or stock-water drinking.
- Objective 9 as sought by the appellant sets up a hierarchy between instream and out-of-stream values that is not consistent with Part 2 of the RMA. Federated Farmers opposes the relief sought for objective 9.
- With respect to Objective 9B, Federated Farmers supports the proposed relief sought by the appellant. We agree that regionally and nationally significant (and critical) infrastructure should be recognised and provided for, rather than enabled. The objective is simply too directive and extends beyond the broad intention of the RMA.

Objective 13, 13A & 13B

- Federated Farmers lodged a Submission and Further Submission on Objective 13.
- Notified Objective 13 has been reframed as Objective13, 13A and 13B through the decisions version of the plan. 13C has been deleted.
- The appellants seek to delete Objective 13A and 13B and incorporate these items into Objective 13. We agree, on this point, the Objectives can be re-drafted to read more logically, so this relief is supported.
- With respect to Objective 13, we consider the appellant's relief lacks certainty. It would be challenging to quantify when cumulative adverse effects cross that threshold where an activity is acceptable and when it should be avoided when contemplating cumulative effects.
- Federated Farmers opposes the suggested deletion of the word 'significant'. The threshold sought is simply too low when the objective seeks to avoid all and any adverse effects and fails to take into account minor transient events and subsequent effects that may have negligible but detectible short term adverse effects. Retaining the term 'significant' provides a suitable limit for discharges to avoid that is both practical and achievable.
- For Objective13B, Federated Farmers opposes the suggested addition of the word "recreation" in terms of effects to be avoided from discharges. The term is simply too open and subjective for applying an objective relating for an activity to avoid. Only criteria that can be quantitatively measured should be applied to this objective.
- Overall, (unless otherwise specified) Federated Farmers opposes the suggested relief.

Objective 15

- Federated Farmers lodged a Submission and Further Submission on this objective.
- We consider the relief sought by the appellant to 'protect' taonga species identified in Appendix M is not well considered. How would the relief sought by the appellant apply to a residential landowner who seeks to remove flax or kowhai (both in Appendix M) and displace tui habitat (another Appendix M taonga)?
- Almost all waterbodies that are not impeded by physical obstacles contain trout. In these waterbodies, the (Appendix M taonga species) galaxiids are consumed to local extinction. Federated Farmers questions how the Appendix M taonga species galaxiids and their related habitats will be protected from trout predation should the relief sought be adopted.
- We oppose the relief sought by the appellant.

Policy 3 – Ngai Tahu ki Murihiku taonga species

- Federated Farmers lodged a Submission and Further Submission on this Policy.
- While stock or land use activities may affect the Appendix M species, it remains unclear how sports fish and game birds that adversely affect these taonga species and their related habitats will be managed.
- Federated Farmers opposes the relief sought by the appellant as the policy cannot be applied equally across all landusers.

Policies 4-12 Physiographics

- Federated Farmers lodged a Submission and Further Submission on these policies. We also appealed Policies 4,5,9,10,11 and 12.
- We oppose the relief sought by the appellant for policies 4,5, 6, 9,10, 11 & 12.
- The science that underpins the physiographic zones is broad brush and not suitable at a farm-level.
- Physiographics are not appropriate to apply at a 'farm level' as the model as applied by the Respondent is simply too coarse to justify the economic implications to each farm.
- These policies direct and control activities rather than manage effects which is inconsistent with the intent of the RMA.
- Section 104 of the RMA sets out matters for the Consent Authority to consider when deciding on a resource consent application, of which the provisions of the plan are one matter to have regard to. The proposed
- The physiographic science does not itself confirm a causal link between water quality with respect to each physiographic zone. The science highlights key risk pathways rather than whether water quality will or will not be degraded irrespective of land use.
- Federated Farmers opposes the relief sought by the appellant and prefers the relief sought in their own appeal.

Policy 13

- Federated Farmers lodged a Submission and Further Submission on this policy.
- The appellant seeks to remove any recognition of the contribution the primary sector brings to the social, cultural and economic wellbeing of the Southland community. Southlanders as a collective do recognise the importance of the primary sector and the flow on effects throughout the entire communities.
- Federated Farmers opposes the relief sought.

Policy 16 – Farming Activities That Affect Water Quality

- Federated Farmers lodged a Submission and Further Submission on Policy 16.
- The relief sought seeks to avoid any new or further intensification that may lead to contaminant losses in the catchment of regionally significant wetlands and sensitive waterbodies identified in Appendix A, rather than “in close proximity to” these areas. It is our understanding that every catchment contains a wetland or waterbody identified in Appendix A, and therefore this policy will effectively avoid any new or increased dairy or intensive winter grazing throughout the region.
- The relief sought by the appellant is not consistent with section 5 or section 6 of the RMA.
- We oppose the relief sought by the appellant.

Policy 17 – Agricultural Effluent Management

- Federated Farmers lodged a Submission and Further Submission on Policy 17.
- The appellant seeks to remove references to “significant” adverse effects arising from effluent management. The resultant policy will effectively prohibit any adverse effect, however minor or transient, which creates uncertainty due to challenges to being able to quantify any adverse effect. The suggested approach by the appellant would make economically viable farming in Southland unachievable.
- We oppose the relief sought.

Policy 18 – Stock Exclusion from Waterbodies

- Federated Farmers lodged a Submission and Further Submission on Policy 18. We also appealed the policy.
- An ephemeral waterbody relates to rainfall or snowmelt and differentiates from a river or intermittent waterbody. Most ephemeral waterbodies are depressions in the topography where water collects and runs-off that have

a bed that comprises (often exotic) vegetation and no gravels, no natural meander nor aquatic species.

- We oppose the addition of stock exclusion implementation in Farm Environmental Plans.
- We oppose proposed Policy 18(4) that stock is managed in a manner that avoids a broad range of effects. Applying the term avoid, is effectively a prohibition.
- Federated Farmers prefers the relief sought in our appeal, and we oppose the relief sought by the appellant.

Policy 20 – Management of Water Resources

- Federated Farmers lodged a Submission and Further Submission on Policy 20.
- The appellant seeks to delete reference to the contribution and value of primary production in Southland. We disagree that reference to primary production should not be attributed recognition. The primary sector in Southland directly contribute more to the regional GDP than in any other region on a percentage basis, so this is an important factor to consider.
- . Federated Farmers opposes the appeal point.

Policy 30 – Drainage Maintenance

- Federated Farmers lodged a Further Submission on Policy 30.
- We consider the specific details on how the activity will be implemented should be in the rules and not within the policy.
- Maintenance of flood capacity and land drainage is critical for individuals, the community and the economy.
- We disagree the term 'significant' should be removed from policy 30(1) as suggested by the appellant. The resultant policy will mean any land use activity cannot be consistent with the policy, however minor or transient.
- We oppose the inclusion of fish passage in the context of trout to this policy. Once trout have access to a portion of waterbody, they decimate indigenous fauna communities.
- Federated Farmers opposes the relief sought.

Policy 39 – Application of the Permitted Baseline

- Federated Farmers lodged a Submission and Further Submission on Policy 39. We also appealed this policy.
- The appellant seeks to remove the ability for consent authorities to apply the permitted baseline when assessing resource consent. This approach is directly at odds with the RMA, specifically:
 - (1) Section 104(2) states: "When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect."

- (2) Section 95D(b) provides that a consent authority when deciding if adverse effects will be minor "may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect."
- (3) Section 95E(2) provides that the consent authority may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect.
- Federated Farmers is strongly opposed to the relief sought by the appellant and considers it to be inconsistent with the RMA and case law. We prefer the relief sought in our own appeal where the permitted baseline is applied equitably to all activities and land uses.

Rule 13 – Discharge from Installed Subsurface Systems

- Federated Farmers lodged a Submission and Further Submission on this rule. We also appealed this provision.
- The appellant seeks to adopt a zone of reasonable mixing as opposed to 20 metres downstream of the discharge point. In contrast to the zone of reasonable mixing, we consider a 20m setback is less subjective and provides surety for landowners.
- The rule as promoted does not contemplate the rare flushing necessary to ensure the network is performing properly.
- Federated Farmers opposes the relief sought by the appellant, and prefers the relief sought in our appeal.

Rule 14 – Discharge of Fertiliser

- Federated Farmers lodged a Submission and Further Submission on this rule.
- We disagree that fertiliser should not be applied to ephemeral rivers, as many are swale-like depressions that comprise part of a typical farming operation. We do not accept ephemeral rivers necessarily, or always, have high ecological values, and note they are quite distinct to intermittent waterbodies as set out in the Act.
- Federated Farmers opposes the relief sought by the appellant.

Rule 20 – Farming

- Federated Farmers lodged a Submission and Further Submission on this rule. We also appealed the provision.
- We disagree that farming should not occur within ephemeral areas, as many are swale-like depressions that comprise part of a typical farming operation. These depressions where snow-melt or precipitation does collect are not typically known for their high values, and often comprise only exotic pasture species.
- We oppose the setbacks and angles promoted by the appellant.

- There is little rationale, with the exception of taking a punitive approach to farming, to amend (d) to be a non-complying activity for an activity that does not meet the performance standards.
- Federated Farmers opposes the relief sought.

Rule 24 – Incidental Discharges from Farming

- Federated Farmers lodged a Submission and Further Submission on this rule.
- We consider the proposed amendments by the appellant to be overly prescriptive and impractical as almost all nutrient pathways have been captured by other rules.
- Federated Farmers opposes the relief sought by the appellant.

Rule 25 – Cultivation on Sloping Ground

- Federated Farmers lodged a Submission and Further Submission on this rule. We also appealed this provision.
- It is not appropriate to apply the rule to ephemeral waterbodies as they frequently occur within depressions on paddocks that comprise exotic pasture grasses. We do not accept ephemeral waterbodies necessarily, or always have high ecological values.
- We oppose the suggested setbacks and angles for the rules.
- Federated Farmers opposes the relief sought, and prefers the relief sought in our appeal.

Rule 70 – Stock Exclusion from Waterways

- Federated Farmers lodged a Submission and Further Submission on this rule.
- It is not appropriate to apply the rule to ephemeral waterbodies as they frequently occur within depressions on paddocks that comprise exotic pasture grasses. We do not accept ephemeral waterbodies necessarily or always have high ecological values. An ephemeral waterbody is not a waterway.
- We oppose the suggestion there is no break-feeding over ephemeral waterways.
- We oppose the increased setbacks proposed by the appellant. They are arbitrary and lack scientific rationale.
- We oppose the suggested amendments to Table 1.
- It is not appropriate to apply a non-complying status to excluding stock from waterbodies. It is our view, that a discretionary status will allow Councils to assess the full suite of effects.
- Federated Farmers opposes the relief.

Rule 78 – Weed and Sediment Removal for Drainage Purposes

- Federated Farmers lodged a Submission and Further Submission on this rule.
- We oppose the suggested amendment that gravel (with a diameter of greater than 10mm) shall not comprise more than 5% of the total sediment removed. This amendment lacks certainty and will be impossible to quantify. Does the appellant anticipate landowners will feed the material through a screen to determine the diameter of the material and will the landowner need to cease cleaning the drains and obtain a consent if they, after cleaning and screening, determine 6% of the material comprises gravels?
- Federated Farmers opposes the relief sought.

Appendix A- Regionally Significant Wetlands

- Federated Farmers lodged a Further Submission on this Rule.
- We oppose the additional sites added to Appendix A.
- It is inappropriate to revise Appendix A without thorough research, investigation and ground-truthing.
- Extensive public consultation and landowner consultation is required before making such significant additions to Appendix A.
- Federated Farmers considers many of the additional wetlands listed are not regionally significant.
- To revise the scope from 'regionally significant wetlands' to 'regionally significant wetlands and sensitive waterbodies' takes the Appendix beyond the scope of what was originally notified.
- There is no s32 analysis on the additional 'sensitive' waterbodies being incorporated into the Appendix.
- We oppose the appellant's relief sought for Appendix A.
- We seek all additional entries to Appendix A be deleted from the Plan.

Appendix N – Farm Environmental Management Plan Requirements

- Federated Farmers lodged a Submission and Further Submission on this Rule. We also appealed this provision.
- We oppose the inclusion of ephemeral waterbodies in the Plan.
- It is not appropriate to apply the rule to ephemeral waterbodies as they frequently occur within depressions on paddocks that comprise exotic pasture grasses. We do not accept ephemeral waterbodies necessarily or always have high ecological values. An ephemeral waterbody is not a waterway.
- We oppose the use of OVERSEER for mixed farms. The margin of error outweighs any benefit that may be derived from the data.
- Our members consider the FEMP should contain the bare basic information rather than a tome of information that requires significant investment by landholders.

4. Federated Farmers of New Zealand (Southland) agrees to attend mediation and/or dispute resolution in regard to these proceedings.

Dated the 22nd day of June 2018



Darryl Sycamore
Senior Policy Advisor

Address for Service:
Federated Farmers of New Zealand (Inc)
PO Box 5242
Dunedin

Mobile: 027 242 0177
Email: