

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

ENV - 2018 - CHC - 000037

UNDER the Resource Management Act 1991

A N D

IN THE MATTER of an appeal under cl 14(1) of Schedule 1 to the Act

BETWEEN **SOUTHLAND FISH & GAME COUNCIL**

Appellant

A N D **SOUTHLAND REGIONAL COUNCIL**

Respondent

**NOTICE OF INTEREST UNDER SECTION 274
ON BEHALF OF FONTERRA CO-OPERATIVE GROUP LTD**

Solicitor acting:
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**TO: THE REGISTRAR
ENVIRONMENT COURT
CHRISTCHURCH**

FONTERRA CO-OPERATIVE GROUP LTD (Fonterra) wishes to be a party to the appeal by the Southland Fish & Game Council (Appeal).

1. Fonterra made a submission and further submission about the subject matter of the Appeal.
2. Fonterra is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991.
3. Those parts of the Appeal in which Fonterra is interested, whether it supports or oppose those parts of the Appeal, and associated reasons, is described in Schedule 1.
4. Fonterra agrees to participate in mediation or other alternative dispute resolution of the Appeal.

FONTERRA CO-OPERATIVE GROUP LTD by its counsel:



Signature: BJ Matheson
Date: 20 June 2018

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TO: Registrar, Environment Court,
Christchurch

AND TO: Appellant

AND TO: All Parties

Advice to recipients of copy of notice of interest

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

SCHEDULE 1 - EXTENT OF INTEREST, SUPPORT/OPPOSE, AND ASSOCIATED REASONS

Extent of Interest		Support/Oppose Change	Reasons
Section of Plan	Provision to be changed		
Region-wide objectives	<ul style="list-style-type: none"> Objective 2 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> Primary production is the principal user of land and water in Southland and it is appropriate that be specifically recognised.
	<ul style="list-style-type: none"> Objective 6 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> Reference to “overall” water quality is consistent with Objective A2 of the NPSFM.
	<ul style="list-style-type: none"> Objective 7 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> It is inappropriate to suggest that over-allocation should be phased out before FMU processes when considering relevant consent applications. The true extent of over-allocation will not be known until the FMU processes are complete.
	<ul style="list-style-type: none"> Objective 9 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> It is important that critical social and economic, and human and animal health needs (including drinking water) are not subservient to a desire to safeguard all recreational values.
	<ul style="list-style-type: none"> Objective 13 Objective 13A Objective 13B 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> The suggestion that adverse effects (or, in the alternative, significant or cumulative adverse effects) on water and associated values are to be avoided is impracticable and will not promote sustainable management.
	<ul style="list-style-type: none"> Objective 18 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> Best practicable option is not a concept that is used in diffuse discharge management and its use in that context is uncertain and unclear. The proposed criteria-based objective is also inappropriate in the context of applying the best practicable option to industrial and trade processes.
Physiographic zone policies	<ul style="list-style-type: none"> Policy 4 Policy 5 Policy 6 Policy 9 Policy 10 Policy 11 Policy 12 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> The term good management practices (GMP) has an accepted meaning in diffuse discharge management. References to <u>any</u> adverse effects applies an overly strict test and creates an unrealistic policy framework. The term “strongly discourage” is uncertain and has no established meaning in water management.
Water Quality Policies	<ul style="list-style-type: none"> Policy 13 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> Primary production is the principal user of land and water in Southland and it is appropriate that it be specifically recognised.
	<ul style="list-style-type: none"> Policy 15A Policy 15B Policy 15C 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> The term “<i>avoiding where practicable, or otherwise...</i>” is not consistent with the Act or the NPSFM. The added words only serve to increase uncertainty as to how the policy will be applied. References to <u>any</u> adverse effects applies an overly strict test and creates an unrealistic policy framework. The rationale of retaining clause 2 in Policy 15B but deleting it from Policy 15A is unclear.

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	<ul style="list-style-type: none"> • Policy 16 • Policy 16A • Policy17 	<ul style="list-style-type: none"> • Oppose 	<ul style="list-style-type: none"> • The deletion of Policy 15C removes any direction on the need to <u>improve</u> water quality where FMU process limits determine that over-allocation has occurred. • References to decision-makers <i>avoiding</i> or <i>strongly discouraging the granting of consents</i> are unhelpful. It is not the role of decisions makers to encourage or discourage the granting of consents (or to “avoid” granting consents). Their role is to grant or decline consent applications in accordance with policy and the facts of the application before them. • The term “<i>avoiding where practicable, or otherwise...</i>” is not consistent with the Act or the NPSFM. The added words only serve to increase uncertainty as to how the policies will be applied. • References to <u>any</u> adverse effects applies and overly strict test and implies that effects within a basket of acceptable effects (as may occur within an existing environment or in the context of permitted activities) are not acceptable. This creates an unrealistic and impracticable policy framework. • Reference to “overall” water quality is consistent with Objective A2 of the NPSFM. • Best practicable option is not a concept that is used in diffuse discharge management and its use in that context is uncertain and unclear. • It is important that the policy/plan provides for the situation that will arise following the development of freshwater objective.
Stock exclusion provisions	<ul style="list-style-type: none"> • Policy 18 • Rule 70 	<ul style="list-style-type: none"> • Oppose 	<ul style="list-style-type: none"> • The term “<i>avoiding where practicable, or otherwise...</i>” is not consistent with the Act or the NPSFM. The added words only serve to increase uncertainty as to how the policy will be applied. Stock access is not the only source of the contaminants targeted by Policy 18 and hence seeking to avoid <i>any</i> adverse effects of those contaminants by controlling stock access is not a feasible proposition. • Excluding stock from ephemeral rivers may not be realistic given the definition of that term would include any area of flowing or standing water that exists (only) after significant rainfall events or extended periods of above average rainfall. Such areas will not be “rivers” and most people would understand that term. Fencing such areas would be impracticable in most instances. • While stock exclusion from farm drains that include water most of the time is supported, the term “artificial drain” is not defined and it would not be appropriate to apply that term in such a way as to require stock exclusion from shallow channels that only convey stormwater during heavy rainfall events.

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			<ul style="list-style-type: none"> The fact that a farmer may own or lease land on which dairy support occurs does not justify earlier stock exclusion than is required of those dairy support properties owned by third parties.
Water Quantity Policies	<ul style="list-style-type: none"> Policy 20 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> Primary production is the principal user of land and water in Southland and it is appropriate that it be specifically recognised.
FMU Process Policies	<ul style="list-style-type: none"> Policy 45 Policy 47 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> It is contrary to the purpose of Part CA of the NPSFM to constrain the setting of objectives as proposed by the Appeal. The FMU process should yield better information and hence objective setting should not be constrained by the proposed plan. The purpose of the FMU process is not to support the implementation of region-wide objectives but rather to develop freshwater objectives and limits consistent with Part CA of the NPSFM.
Discharge rules	<ul style="list-style-type: none"> Rule 13 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> The requirement for water quality not to decrease below the point of discharge implies a level of monitoring that is impractical for a permitted activity. Furthermore, the suggested conditions are unclear as they do not specify whether the requirement applies at all flows or whether an average/median approach is taken and, if so, over what time period. It is unclear whether the reference to discharges not being into a Regionally Significant Wetland or Sensitive Water body refers only to direct discharges into those areas or discharges into the wider catchments of those wetlands and water bodies.
	<ul style="list-style-type: none"> Rule 14 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> Applying the rule to ephemeral rivers which will have no active bed and will not contain water except after significant rain events is impracticable.
	<ul style="list-style-type: none"> Rule 15 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> The requirement for water quality not to decrease below the point of discharge implies a level of monitoring that is impractical for a permitted activity. Furthermore, the suggested conditions are unclear as that do not specify whether the requirement applies at all flows or whether an average/median approach is taken and, if so, over what time period.
Land use rules	<ul style="list-style-type: none"> Rule 20 	<ul style="list-style-type: none"> Oppose 	<ul style="list-style-type: none"> Deletion of Rule 20(aa) would result in land use activities not otherwise provided for in Rule 20 (including activities with very minor and <i>de minimis</i> effects) requiring consent as non-complying activities. That would be unnecessary and inefficient. Conditions relating to increased setbacks from the beds of various waterbodies and critical source areas may be both impracticable and unnecessary.

Extent of Interest		Support/Oppose Change	Reasons
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			<ul style="list-style-type: none"> • Best practicable option is not a concept that is used in diffuse discharge management and its use in that context is uncertain and unclear. • The term “minimise” is an appropriate one being used in Policy A3 of the NPSFM. • In addition, Fonterra has appealed the decisions version of Rule 20 on the basis that an exemption for ancillary farming activities occurring on its wastewater irrigation farms has not been provided. As such, Fonterra has an interest in any amendments to Rule 20 that may relate to Fonterra’s appeal on this matter.
	<ul style="list-style-type: none"> • Rule 24 	<ul style="list-style-type: none"> • Oppose 	<ul style="list-style-type: none"> • The requirement for water quality not to decrease below the point of discharge implies a level of monitoring that is impracticable for a permitted activity. Furthermore, the suggested conditions are unclear as that do not specify whether the requirement applies at all flows or whether an average/median approach is taken and, if so, over what time period.
	<ul style="list-style-type: none"> • Rule 25 	<ul style="list-style-type: none"> • Oppose 	<ul style="list-style-type: none"> • Restricting cultivation from ephemeral rivers as suggested is likely to be impracticable in most instances. Determining the extent of a “bed” of such a river is not practicable and hence limits relating to that concept will likely be unworkable.
Definitions	<ul style="list-style-type: none"> • “Winter grazing” and suggested additional definition of “significant de-vegetation” 	<ul style="list-style-type: none"> • Oppose 	<ul style="list-style-type: none"> • The suggested definitions potentially capture all grazing of animals on pasture over the winter months and would impose impracticable obligations on landholders. • A high degree of uncertainty would be introduced to permitted activity rules.
	<ul style="list-style-type: none"> • “Sloping Ground” 	<ul style="list-style-type: none"> • Oppose 	<ul style="list-style-type: none"> • Definition appears linked to amendments sought to Rules 20 and 25 (opposed). • There is potential for confusion and complexity given the different slope thresholds used in Rule 70.
Appendix N	<ul style="list-style-type: none"> • Farm Environmental Management Plan Requirements 	<ul style="list-style-type: none"> • Oppose 	<ul style="list-style-type: none"> • On the basis that the decisions’ version of Rule 20 requires Fonterra’s ancillary farming activities undertaken on its wastewater irrigation farms to prepare a FEMP, the additional requirements sought relating to the provision of an AEE and a description, targets and monitoring of compliance with a series of ‘objectives’ is unduly onerous where such matters are otherwise covered by a discharge consent for the wastewater irrigation activity.