

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under clause 14(1) of the First Schedule

BETWEEN

DIRECTOR GENERAL OF CONSERVATION
(ENV-2018-CHC-36)

SOUTHLAND FISH AND GAME COUNCIL
(ENV-2018-CHC-37)

MERIDIAN ENERGY LIMITED
(ENV-2018-CHC-38)

**HERITAGE NEW ZEALAND POUHERE
TAONGA** (ENV-2018-CHC-41)

**TE RUNANGA O NGAI TAHU, HOKONUI
RUNAKA, WAIHOPAI RUNAKA, TE RUNAKA
O AWARUA & TE RUNANGA O ORAKA
APARIMA**
(ENV-2018-CHC-47)

**ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND**
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL
Respondent

**STATEMENT OF EVIDENCE OF DARRYL SYCAMORE
ON BEHALF OF FEDERATED FARMERS OF NEW ZEALAND INC IN OPPOSITION OF LISTED APPELLANTS
15 MARCH 2019**

Judicial Officer: Judge Borthwick and Judge Hassan

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Introduction

1. My full name is Darryl Allan Sycamore.
2. I am a Senior Policy Advisor for Federated Farmers of New Zealand (Federated Farmers).
3. I hold the qualification of Bachelor of Science from the University of Otago. I am a Member of the New Zealand Planning Institute, and the current chairman of the Otago Branch. I have 15 years experience as a resource management practitioner, covering roles with the Dunedin City Council, Otago Regional Council and the West Coast Regional Council. I am also an accredited RMA hearings commissioner.
4. Prior to my employment with Federated Farmers, I was employed as a Planner for over nine years at the Dunedin City Council (DCC). At the Otago Regional Council, I was employed for three years as a Resource Consents Officer, initially considering all forms of consent applications before specialising as the principal officer processing consents for the management and remediation of activities associated with the mining industry, municipal landfills and contaminated sites. At the West Coast Regional Council I was employed for two years as a Compliance Monitoring Officer, dealing primarily with dairy farm management and all aspects of the coal and gold mining industry.
5. I am also Chairman of the Guardians of Lakes Manapouri, Monowai and Te Anau (the Guardians). The Guardians make recommendations to the Minister of Conservation on matters arising from the environmental, ecological and social effects associated with hydro-electric power generation in Lakes Te Anau-Manapouri and Monowai. The Guardians oversee the implementation of management plans that guide the operation of

those schemes by Meridian Energy Limited and Pioneer Generation Limited.

6. For the purpose of clarity, I was not associated with, or employed by Federated Farmers of New Zealand at the time the submission or further submissions were lodged on behalf of Federated Farmers.

Code of Conduct

7. I confirm I have read the Code of Conduct for expert witnesses as set out in Environment Court Practice Note 2014. I have complied with the Code of Conduct when preparing my written statement of evidence and will do so when I give oral evidence.
8. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence. The reasons and justifications for those opinions are also set out in my evidence.
9. Other than where I state I am relying on the evidence of another person; my evidence is within my area of expertise. While evidence presented during the hearings on behalf of the Federated Farmers Southland members comprised a degree of advocacy, my written statement is informed by the expectations of the Code of Conduct. I have not omitted to consider any material facts known to me that might alter or detract from the opinions that I express.
10. With respect to analysis of any provisions in the decisions version of the Plan that relate solely to Meridian Energy Limited (MEL) interests, specifically Rule 52A (Topic B), I will not be presenting any planning evidence in support of the Federated Farmers appeal due to a potential conflict of interest given my role on the Guardians. In this case, any evidence specific to MEL interests only, being Rule 52A, will be provided for Federated Farmers by an alternate and independent planning expert.

Scope of Evidence

11. I have been asked to provide evidence for Federated Farmers Southland in opposition to those s274 interests relevant to the appeal contained in Topic A. Specifically these are:
 - Objective 2 by Fish & Game and Nga Runanga
 - Objective 6 by Department of Conservation (DoC), Royal Forest and Bird Protection Society (Forest & Bird), Fish & Game and Nga Runanga
 - Objective 9 by Forest & Bird, Fish and Game and Heritage New Zealand Pouhere Taonga (Heritage NZ)
 - Objective 9A by Forest & Bird
 - Objective 9B by Forest & Bird
 - Objective 10 by Meridian Energy Limited (Meridian)
 - Objective 13 by Heritage NZ, Forest and Bird, Fish and Game
 - Objectives 13A& 13B by Forest and Bird, Fish and Game
 - Objectives 14&17 by Forest and Bird
 - New Objective X by Meridian
 - Policy 1 by Nga Runanga
 - Policies 4-12 by Nga Runanga, DoC, Fish and Game and Forest & Bird
 - Policy 46 by Forest & Bird

12. In preparing this evidence, I have read and considered the following documents:
 - (a) The pSLWP notification and decisions versions
 - (b) The s32 report
 - (c) The s42A hearing report and reply report
 - (d) The decision report of the hearing commissioners
 - (e) The appeals and s274 notices
 - (f) The National Policy Statement for Freshwater Management 2014 (NPS-FM as amended in 2017) and the National Policy Statement for Renewable Electricity Generation 2011
 - (g) The Southland Regional Policy Statement 2017 (SRPS)
 - (h) The Council's Initial Planning Statement,

- (i) The Councils Evidence¹ of 14 December 2018, and the evidence on behalf of DoC, Nga Runanga, Fish & Game, Heritage New Zealand, Meridian and Forest & Bird.

Objective 2

13. As notified Objective 2 reads:

Water and land is recognised as an enabler of the economic, social and cultural wellbeing of the region.

14. Federated Farmers and another submitter² considered the objective should also recognise and enable primary production given the significance of primary production to Southlanders. The Hearing Panel accepted the value in recognising primary production, and the decisions version now reads:

Water and land is recognised as an enabler of primary production, and the economic, social and cultural wellbeing of the region.

15. Both Fish and Game and Nga Runanga have appealed the amendment that was adopted by the hearing panel.

16. Mr Farrell for Fish & Game supports their appeal position in part. He considers the term 'primary production' should be deleted or alternatively remain with a caveat that addresses any preference towards primary production.

17. Mr Farrell offers the alternative wording to read:

Water and land is recognised as an enabler of the economic, social and cultural wellbeing of the region. (including productive economic opportunities) within limits.

¹ Being the evidence of Roger Hodson, Nicholas Ward, Rebecca Robertson, Dr Kelvin Lloyd, Ewen Rodway, Dr Antonius Snelder; and Matthew McCallum-Clark.

² Submission 640.31 Purakino Valley Catchment Group

18. Ms Davidson for Nga Runanga supports the appeal by Fish & Game seeking to delete the reference to primary production in Objective 2 on the basis that it is already captured by the reference to economic, cultural and social wellbeings.
19. Ms Davidson also offers an acceptable alternative wording for the Objective that softens the emphasis on primary production while retaining the reference to it. She suggests Objective 2 could read as:

Water and land is recognised as an enabler of the economic, social and cultural wellbeing of the region, including primary production.
20. I disagree with the position of deleting the term 'primary production' from the Objective outright. However I note that retaining the term 'primary production' has some sympathy by the planners for the appellants.
21. I do agree that there is logic in the suggestion by Ms Davidson in terms of the phrasing of Objective 2. This provides recognition of the value primary production delivers to the region and regional economy while softening any perception of weighting.
22. With respect to the suggestion by Mr Farrell, I do not see any need for the addition of his suggested term 'within limits' as there are a number of objectives and policies that apply limits to land use.
23. Objective 2 is an enabling objective for regional wellbeing. It is not an objective seeking to manage activities or outcomes. Further, the Objective is not intended to be read in isolation, but as one objective in a suite of objectives with a focus on maintaining or improving water quality.
24. In my opinion, the Objective as promoted by Ms Davidson provides recognition of the value primary production delivers to Southland

whilst providing sufficient impetus in either maintaining or improving water quality.

25. Primary production, and its recognition can be, and is consistent with the intent of Te Mana o te Wai and a desire to maintain/improve water quality. Primary production relates to the use of land, where land use and adverse effects on the receiving environment are separate issues, each appropriately addressed within the Plan. This objective seeks to recognise and enable the significant contribution to Southland from primary production, subject to the controls set out within the Plan.
26. The Southland region has a higher reliance on primary production than other regions of New Zealand, and a significant proportion of the community is either rural or rural-reliant. Mr McCallum-Clark in his evidence rightly notes³ that “Southland, agriculture’s share of regional GDP was 21.9%, which was double that of most other regions, including Canterbury (7.5%) and Waikato (10.9%).” Consequently, the economic and social implications of any regulation that affects primary production are relatively greater than in any other region. Primary production also contributes to Southland’s social and cultural wellbeing.
27. Specifically recognising primary production is an approach consistent with, and included within the NPSFM.

Policy A7

By every regional council considering, when giving effect to this national policy statement, how to enable communities to provide for their economic well-being, including productive economic opportunities, while managing within limits.

28. The Southland RPS correctly recognises and supports primary production as a key contributor to the economy. The policy

³ Para 40, note 12, referring to Moran, E., Pearson, L., Couldrey, M., and Eyre, K. (2017). The Southland Economic Project: Agriculture and Forestry. Technical Report. Publication no. 2017-02. Environment Southland, Invercargill, New Zealand, at page 20.

framework of the RPS recognises the critical importance to the regional economy.

Issue RURAL.1

Maintaining the productive capacity of rural land resources to sustain the agricultural and primary sector activities dependent on them is of critical importance to the future economic wellbeing of the Southland region

29. The RPW Issue RURAL.1 is also carried into the RPS Objective Rural.1, where the explanation includes:

Objective RURAL.1 – Sustainable use of rural land resource. Achieve sustainable use of Southland’s rural land resource, in respect of: (a) agriculture and primary sector activities;...

...to enable Southland’s rural land resource to continue to provide for the social, economic and cultural needs of current and subsequent generations...

30. Anticipated environmental outcomes of the RPS are intended to carry into Regional Plans. The objective as adopted in the decisions version of the Plan seeks to recognise the value of primary production and does not sit in isolation. Other objectives and policies⁴ direct how land use is to be managed to ensure water quality is maintained or improved.

31. It is anticipated in both the NPSFM and RPS to recognise the value of primary production. This recognition is appropriate to carry through into the Regional Plan.

It is therefore appropriate to contemplate primary production in Objective 2. In my opinion, the decisions version of Objective 2 should be retained. Alternatively, I do support the suggested phrasing by Ms Davidson for Nga Runanga.

Objective 6

32. The decisions version of the Plan reads as:

⁴ For example, Objectives 6 and 9, Policy 13, 15A, 15B & 15C

There is no reduction in the overall quality of freshwater, and water in estuaries and coastal lagoons, by:
(a) maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and
(b) improving the quality of water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.

33. Federated Farmers supports the decisions version of Objective 6. The reference to “overall” water quality provides a necessarily broad qualifier otherwise the more specific trends of up, down or indeterminate would fail to meet the objective.
34. Federated Farmers. opposed the relief sought by a number of appellants⁵
35. The relief sought by the appellants to remove the term “overall” is both impractical and inconsistent with the NPS-FM Objective 2 seeking “the overall quality of fresh water within an FMU is maintained or improved...”
36. While Nga Runanga appealed Objective 6, I note they did not address the relief sought in the appeal within their planning evidence seeking to remove the term ‘overall’ from the objective.
37. In my opinion, it is both appropriate and logical to retain the term “overall” in this policy. To remove the term would be counterintuitive to the intent of the higher order documents and would result in an unachievable outcome.
38. Irrespective of water quality state or trends, should the term ‘overall’ be removed as sought by the appellants from the objective, it would be impractical for any consent authority to determine whether an activity is consistent, inconsistent, contrary or repugnant with the objective as part of any consenting process.

⁵ Forest & Bird, Fish & Game, DoC and Nga Runanga

39. Any modest rain event within the urban environment, for example, could result in a reduction of water quality arising from copper/zinc roofing treatments or faecal bacteria from both domestic and pet animals entering the storm-water network.
40. In my view it would be contrary to good planning principles to adopt an objective that is unachievable when measured over an annualised basis, or even over a day-to-day interval.
41. I note Mr McCallum-Clark highlights a risk where the policy framework is seen as a softening of the message to halt any further decline in water quality. He does however recognise that in some circumstances consent may be granted that results in a water quality decline.
42. I note Objective WQUAL.2 of the RPS specifically seeks to halt the decline, and improve water quality of lowland waterbodies in accordance with the NPSFM.
43. The NPSFM provides a differing perspective, Objective A2 of the NPSFM⁶ adopts the term 'overall' yet provides scope to grant consent where water quality is reduced in some circumstances. This recognition does not diminish the broad intent that water quality would improve at a tributary, sub-catchment or catchment basis.
44. In this case, the RPS adopts a narrower view on managing water quality; that is one that does not provide for those exceptions where water quality may diminish. This is neither practical nor achievable in every circumstance. As the NPSFM is the higher order document, if there is any inconsistency between the NPSFM and RPS, the wording and intent of the NPSFM should be adopted.

⁶ NPSFM Objective A2

The overall quality of fresh water within a Freshwater Management Unit is maintained or improved while"

- (a) protecting the significant values of outstanding freshwater bodies,
- (b) protecting the significant values of wetlands, and
- (c) Improving the quality of freshwater bodies that have been degraded by human activities at the point of being overallocated.

45. It is therefore my opinion that the term 'overall' in the objective should remain as set out in the decisions version.
46. Turning to the evidence of Mr Farrell for Fish & Game, he seeks to adopt region wide numeric outcomes in the Plan. In my opinion, the relief significantly diverges outside the scope of the Fish & Game appeal by introducing a new planning framework.
47. Further, to adopt region-wide standards in this Plan does not align with the planning framework set out in the SRPS⁷ that directs water quality to be maintained or improved in accordance with freshwater objectives formulated under the NPSFM. This objective recognises that freshwater values and objectives vary across the region, and relies on the FMU process to set out those specific values and objectives.
48. Policy B1 of the NPSFM requires every Council making or changing regional plans to establish freshwater objectives in accordance with Policies CA1-CA4 for all freshwater management units in its region. Policy CA2(b) requires every Regional Council to identify the values for each FMU (during the FMU process) which must include both compulsory national values, and any value in relation to fresh water, that is not a national value, which a regional council identifies as appropriate for regional or local circumstances.
49. In this case, no values have been set as the FMU process is yet to commence. On that same basis, it is also appropriate to defer any value setting as part of the FMU process as contemplated by the NPSFM.
50. I therefore do not agree with Mr Farrell for Fish & Game that region-wide numeric values should be set as part of this process.

⁷ Objective WQUAL.1- Water Quality Goals

Objective 9 & Objective 9A

51. Objective 9 in the decisions version reads as:

The quantity of water in surface waterbodies is managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes, and natural character are safeguarded.

Fish & Game

52. Fish & Game sought the inclusion of recreational values to the list of criteria to be safeguarded when managing surface water quantity. Forest & Bird supported the appeal. The appellant sought:

Objective 9

The quantity of water in surface waterbodies is managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes, recreational values and natural character are safeguarded.

53. Federated Farmers considers adopting the relief suggested by Fish & Game, as supported by Forest & Bird would result in recreational values (e.g. walking, photography or kayaking) being prioritised above social and economic needs such as potable supply of water, or stock drinking water. Additionally, the infrastructure associated with the supply of potable water or stock drinking water may be at odds with those recreational values.
54. The tension within the competing interests for this provision mirrors the very concerns raised by Fish & Game in terms of Objective 2⁸, albeit by adopting the reverse argument.
55. Recreational values are a subset of social well-being. It is not appropriate to refer to recreational values in an Objective that already addresses the natural environment values.

⁸ Where primary production is specifically recognised in Objective 2 yet is captured within the social or economic subset also included within the Objective.

56. Mr McCallum-Clark in his evidence⁹ and Mr Farrell in his evidence¹⁰ suggest Objective A3 of the NPSFM provides some justification to include recreational values in Objective 9. I disagree, as Objective A3 of the NPSFM relates to water quality in relation to primary contact as a measure of addressing human health rather than in a recreational context. As primary contact is a subset of recreation values, this is not appropriate to justify a broader category in a subservient document. Objective 9 relates to water quantity and is not directly relevant to the direction of the NPSFM which promotes water quality that is suitable for human use.
57. In my opinion, there is a clear distinction between the intended outcomes of Objective A3 of the NPSFM and that of Objective 9 in the Plan. The justification by Messer's McCallum-Clark and Farrell of incorporating recreational values into Objective 9 is therefore erroneous.
58. Further, it is my opinion that the term 'recreation values' should not be included in Objective 9 as they are already addressed in Objective 9A which sets out to sustainably manage the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.

Heritage New Zealand & Nga Runanga

59. Heritage New Zealand (and Nga Runanga)¹¹ sought that the inclusion of historic values of surface water bodies and their margins be included in Objective 9.
60. Heritage New Zealand (and Nga Runanga) submitted in support of Objective 9 in the notified version stating activities relating to the use of water and land have the potential to adversely affect

⁹ Para 82, EIC

¹⁰ Para EIC

¹¹ Noting that Federated Farmers did not include Objective 9 in its s274 notice on Nga Runanga

historical and cultural heritage values, and that appropriate management of these values is necessary.

61. Within their submission, Federated Farmers questioned what appropriate management is fitting to ensure such values are not compromised. Some values are intangible i.e. the presence of taniwha, which makes practical farming challenging. Furthermore (and for good reasons), some locations of historical or cultural values are not publicly available to allow landowners to adopt an alternate management approach to.
62. Importantly, irrespective of whether or not Objective 9 or 9A refers to historical values, any heritage feature will continue to enjoy protection under the Heritage New Zealand Pouhere Taonga Act 2014.
63. There are clear statutory limits in section 30(1)(c) of the RMA on the purposes of rules controlling the use of land. Controlling land use for the purpose of historic heritage is not a listed function of regional councils under section 30(1)(c).
64. Section 31(1)(b) sets out the function of district councils including to control "any actual or potential effects of the use, development, and protection of land" on historical interests.
65. Mr McCallum-Clark in his evidence¹² refers to the legal justification of including historical heritage in the objectives and policies in a regional plan. The Hearing Panel noted the lack of jurisdiction under the Act to include rules for protecting historic heritage and "saw no benefit in retaining references to historical heritage in the objective and policies if it wasn't also addressed in the rules"
66. I agree with the Hearing Panel in this regard. The RMA clearly sets out controls on the use of land. It is therefore appropriate for land use controls designed to protect (or otherwise manage) the historic or cultural heritage to be found in the relevant district plan.

¹² Para 86 & 87 EIC

67. In my opinion, it is clear that the functions of District Councils are best suited for managing those interests sought by Heritage New Zealand and Nga Runanga. To include a reference to historic and cultural interests in a regional plan will only serve to confuse plan users and adopt a level of duplication that is not necessary or contemplated in the RMA.
68. It is for the reason above I do not agree with the relief sought by Heritage New Zealand or Nga Runanga.

OBJECTIVE 9B

69. Federated Farmers opposed the relief sought by Forest & Bird in relation to Objective 9B.
70. Objective 9B is a new objective relating to the value of significant infrastructure and gives effect to a number of higher order documents¹³, and reads:
- The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is enabled.*
71. Forest & Bird sought to amend Objective 9B to read as:
- The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is ~~enabled~~ sustainably managed.*
72. Federated Farmers recognises the region includes existing infrastructure that is considered significant and sought alternative relief to that of Forest & Bird.
73. Having considered the Council evidence and notices from appellants and interested parties, I consider the relief sought by Federated Farmers is sub-optimal as is the relief sought by Forest

¹³ The RMA, NSPREGS, NPSET and SRPS.

& Bird. To assist the Court, my evidence in chief¹⁴, offered an alternative view, noting that the relief sought by Fish & Game¹⁵ offered a more balanced policy framework and should be adopted.

74. The relief Fish & Game seeks for Objective 9B reads as:
- The effective development, operation, maintenance and upgrading of Southland’s regionally significant, nationally significant and critical infrastructure is recognised and provided for.*
75. The phrase ‘recognise and provide for’ adopts a sufficiently strong policy direction to highlight the importance of the matters that are to be recognised and provided for. To recognise and provide for something requires the decision maker to both recognise a factor, and then make provision for the factor. Some action is required, as one does not ‘provide for’ a factor by considering and then discarding it.¹⁶ In this case, horizontal infrastructure of Territorial Authorities, State Highways and suchlike should be afforded a sufficiently strong policy framework.
76. It is my view, the relief sought by Fish & Game is correct in this context. While it is important to provide enabling policy to infrastructure that is critical to the community’s wellbeing, the planning framework should not be so enabling such that the degree of effects is lost in the strongly directive phrasing.
77. Conversely, I note Mr McCallum-Clark for the Council supports the term ‘enabling’ in the objective.
78. Turning to the RPS, Objective INF.1 states that:
- Southland’s regionally significant, nationally significant and critical infrastructure is secure, operates efficiently, and is appropriately integrated with land use activities and the environment.*

¹⁴ EIC para 15-26

¹⁵ Appeal by Southland Fish and Game Council on the Proposed Southland Water and Land Plan, Page 13

¹⁶ King Salmon, at [26].

79. In my view, the explanatory text to Objective INF.1 adopts the term 'appropriately' to recognise that the extent to which adverse effects may be avoided, remedied, mitigated, offset or compensated for, may vary depending on the particular circumstances of each case.
80. Policy INF.2 of the RPS relating to infrastructure and the environment states that where practicable, infrastructure should avoid, remedy or mitigate the adverse effects on the environment. In determining the practicability of avoiding, remedying, or mitigating adverse effects on the environment, a number of matters should be taken into account.
81. The explanatory text notes that while "public infrastructure provides communities with essential services, this infrastructure should not unnecessarily detract from the environment in which it is placed", and the "assessments of environmental effects should have regard to all matters of national significance, including the significance of the infrastructure activity itself."
82. Having considered the evidence¹⁷ I continue to prefer the relief sought by Fish & Game. I do not support the relief sought by Forest & Bird or the view of Mr McCallum-Clark for the Council.

Objective 10

83. Federated Farmers did not lodge an original submission on Objective 10 of the Proposed Plan, but lodged a further submission on the original submission of Meridian Energy and DoC.
84. Meridian sought the following relief in its original submission to amend Objective 10 to read:

The national importance of the existing Manapouri Power Scheme in the Waiau catchment is provided for, and

¹⁷ Of Council, Meridian, Fish & Game and Forest & Bird and the appeal of Federated Farmers Inc

1. is recognised in any resulting flow and level regime,
and
2. the Manapouri Power Scheme including its associated water takes, use, damming, diverting and discharge of contaminants and water to water or onto and into land where this enters water is considered as part of the existing environment; and
3. allows for enhancement of the scheme where the effects of these can be appropriately managed.

85. In its further submission, Federated Farmers opposed the relief Meridian sought, as other water users need to be recognised in the Waiau Catchment. It is inappropriate to prioritise one use to the detriment of all others.
86. The reporting officers recommended this provision be retained as notified.¹⁸
87. The decisions version Objective 10 recognises that the structures associated with the Manapouri Power Scheme (MPS) are considered part of the existing environment. Federated Farmers does not agree as Objective 10 seeks to give effect to the NPSREG which recognises the national importance of renewable energy generation, rather than the infrastructure associated with the scheme.
88. Mr McCallum-Clark for the Council adopts a similar view in terms of what constitutes the existing environment. I agree with the evidence¹⁹ of Mr McCallum-Clark that resource consents are only granted for a finite period and therefore it is inappropriate to include water takes, discharges, damming and diversions as part of the existing environment.

¹⁸ p 5.128 s42A report

¹⁹ Para 130-131

89. Ms Whyte for Meridian states she would be comfortable with alternative relief, which removes any reference to the existing environment²⁰ (neither of her two alternative wordings offered for Objective 10²¹ includes reference to the existing environment).
90. Federated Farmers agrees to the removal of any reference to the existing environment in Objective 10. It is not the scheme itself that the objective relates, rather the national importance of the scheme.
91. Ms Whyte also suggests Objective 10 should contemplate 'enhancement' of the scheme. I remain unsure what the term enhancement may ultimately comprise as it lacks any specificity or certainty. Whilst I am uncertain, the Waiau catchment is either fully or over-allocated as a result of the consumptive nature of the scheme, it would not be appropriate for the appellant to intend for 'enhancement' to mean increase in consumption, or upgrade of the scheme that contemplates an increase in consumption. In reality, given the allocation status of the catchment, 'enhancement' could only ever translate to increased mean flows and improved flushing flows to the lower catchment.
92. On that basis, I do not consider the term "enhancement" is helpful in this context.
93. At a wider level, Objective 10 in the decisions version also applies to all schemes in Southland, not just the Manapouri Power Scheme. As a consequence, all existing hydro-electric schemes irrespective of their scale or significance will be subject to a level of protection that may not be appropriate in all circumstances.
94. Allowing any existing hydro-electric scheme, irrespective of scale or effects on the environment such broad protections in the Plan may introduce unintended consequences.

²⁰ Ms Whyte, evidence in chief 25 February 2019, paragraph 56.

²¹ EIC para 60

95. I understand Meridian only operates the one hydro-electric scheme in Southland, being the Manapouri scheme that is contemplated in the objective.
96. It is my opinion the notification versions of the Objective should be retained as it provides certainty and clarity to both applicants and Plan users while giving effect to the higher order planning instruments, promotes sustainable management and is consistent with Part 2 of the Act.

Objectives 13, 13A & 13B

97. Objectives 13, 13A and 13B in the decisions version reads as:
- Objective 13
Enable the use and development of land and soils to support the economic, social, and cultural wellbeing of the region.
- Objective 13A
The quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land.
- Objective 13B
The discharges of contaminants to land or water that have significant or cumulative adverse effects on human health are avoided.
98. These objectives recognise the importance of soils (and water in 13B) to the Southland community, particularly in terms of economic, social and cultural well-beings. Under Section 67(3)(c) of the RMA, a regional plan must give effect to any regional policy statement. The objectives seek to give effect to sections 5, 6(e), 7(aa), 7(c), 7(d), 7(f) and 7(g) of the Act.
99. The suite of objectives recognises the economic, social, and cultural importance of land and soils to Southland. Together the three objectives seek to ensure the soil resource is used efficiently for production while safe-guarding the health of the soil resource and human health.

100. Federated Farmers had concerns with Objective 13 as notified, including the fact that it made the use or development of land conditional on addressing the effects in clauses (a) to (c).

Fish & Game and Forest & Bird

101. Federated Farmers Southland opposes the suggested deletion of the word 'significant' in Objective 13B sought by Fish & Game and Forest & Bird. The threshold sought by the appellants 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.
102. I prefer the approach of John Kyle²² for the Alliance Group with respect to the phrasing of this objective. Objective 13B in the decisions version requires the avoidance of significant *or* cumulative adverse effects. This suggests significant adverse effects *or* any cumulative effects, irrespective of significance, are to be avoided. As Mr Kyle suggests, this may be a consequence of the drafting rather than intent. The relief sought by Mr Kyle appropriately suggests a correction to the ambiguity.
103. It is my opinion that either option below should be adopted in preference to the relief sought by Fish & Game or Forest & Bird.

(A) Objective 13, 13A and 13B be deleted and replaced with Objective 13 from the notified version of the proposed Plan,²³ (while taking into account the preferred relief sought in the FFNZ appeal), or

²² EIC of John Kyle for Alliance paragraph 3.8

²³ Objective 13

Enable the use and development of land and soils, provided:

(B) Objective 13B is redrafted to remove the reference to cumulative effects, as cumulative effects are contained within the definition of effects.

Recreation Values

104. For the reasons set out above in relation to Objective 9, Federated Farmers opposes the relief sought by Fish & Game for Objective 13B to include the word “recreation” in terms of effects to be avoided from discharges.
105. It is my opinion the term ‘recreation values’ should not be included in Objective 13B as they are already addressed by implication in Objectives 13 and 13B.
106. Recreational values are a subset of social well-being and are therefore already captured in terms of addressing adverse effects on human health.

Heritage Values

107. Heritage NZ sought the inclusion of heritage values into Objectives 13, 13A and 13B.
108. As noted above in the analysis of Objective 9 there are clear statutory limits in section 30(1)(c) of the RMA on the purposes of rules controlling the use of land. Controlling land use for the purpose of historic heritage is not a listed function of regional councils under section 30(1)(c).
109. Section 31(1)(b) sets out the function of district councils including to control "any actual or potential effects of the use, development, and protection of land" on historical interests.

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- (a) The quantity, quality and structure of soil resources are not irreversibly degraded through land use activities and discharges to land;
 - (b) The discharge of contaminants to land or water that have significant or cumulative effects on human health are avoided; and
 - (c) Adverse effects of ecosystems (including diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure those values are maintained or enhanced.

110. Mr McCallum-Clark in his evidence²⁴ refers to the legal justification of including historical heritage in the objectives and policies in a regional plan. The Hearing Panel noted the lack of jurisdiction under the Act to include rules for protecting historic heritage and “saw no benefit in retaining references to historical heritage in the objective and policies if it wasn’t also addressed in the rules”
111. I agree with the Hearing Panel in this regard. The Act clearly sets out controls on the use of land. It is therefore appropriate for land use controls designed to protect (or otherwise manage) the historic or cultural heritage to be found in the relevant district plan, rather than the regional plan as sought by the appellant.
112. I do not agree it is appropriate to adopt the relief sought by Heritage New Zealand in this case.

Objective 14

113. Objective 14 reads as:

The range and diversity of indigenous ecosystem types and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.

114. Forest & Bird sought that dryland ecosystems be included in the objective and include reference to species in addition to indigenous ecosystem types. The appeal by Forest & Bird stated, “reference to dryland environments is needed in order to set an objective to guide decision makers in the implementation of Rule 79 related to High Country burning, which can have adverse impacts on dryland environments and which also impact upon soil and water values and indigenous biodiversity”.
115. There are clear statutory limits in section 30(1)(c) of the RMA on the purposes of rules controlling the use of land. Controlling land

²⁴ Para 86 & 87 EIC

use for the purpose of protecting dryland environments is not a listed function of regional councils under section 30(1)(c).

116. Section 31(1)(b) sets out the function of district councils including to control "any actual or potential effects of the use, development, and protection of land" on dryland interests.
117. The Southland RPS and relevant District Plans give effect to the interests of the Forest & Bird relief, and the appellant was heavily involved in Environment Court proceedings on both processes. Further, the proposed draft NPS for Indigenous Biodiversity is in development. It would cause unnecessary uncertainty and potential duplication or contradiction to have dryland ecosystems managed by the SRPS, the District Plan, the NPS (in the future) and also in this Plan.
118. Equally and referring to the relief sought, Rule 79 relating to High Country Burning is not appropriate in a regional plan, and therefore there is no need for an objective to give effect to a rule that otherwise belongs in a District Plan and should also be deleted.
119. In my opinion, it is clear the functions of District Councils are best suited for managing activities on land. To include a reference to dryland ecosystems in a regional plan will only serve to confuse plan users and adopt a level of duplication that is not necessary or contemplated in the Act.
120. This sentiment is mirrored by Mr McCallum-Clark, who in his evidence²⁵ considered matters associated with dryland environments are best suited in District Plans. I agree with the position of Mr McCallum-Clark on this provision.
121. I do not agree with the relief sought by Forest & Bird. The issues raised by Forest & Bird should be addressed within the RPS and filter down into the relevant District Plans.

²⁵ EIC paragraphs 163 & 164

Objective 15

122. Objective 15 in the decisions version reads as:

Taonga species, as set out in Appendix M, and related habitats are recognised and provided for.

123. Fish & Game appealed the provision and sought the following relief:

Taonga species, as set out in Appendix M, and related habitats are ~~recognised and provided for~~ protected.

124. Federated Farmers opposed the relief sought by the appellant and noted that in fact the appellant may have challenges in managing their own interests in salmonids while protecting Appendix M taonga species and habitat.

125. Fish & Game subsequently lodged a memorandum with the Courts withdrawing their interest in the provision. Given the matter is withdrawn, Federated Farmers will not pursue the matter further unless it is otherwise re-raised.

Objective 17

126. Objective 17 reads as:

The natural character values of wetlands, rivers and land and their margins, including channel and bed form, rapids, seasonally variable flows and natural habitats, are protected from inappropriate use and development.

127. Forest & Bird sought the following amendment to the objective on the basis it did not reflect the wording of s6(a):

The natural character values of wetlands, rivers and land and their margins, including channel and bed form, rapids, seasonally variable flows and natural habitats, are preserved and protected from inappropriate use and development.

128. Federated Farmers opposed the relief of Forest & Bird.

129. The s274 notice by Meridian against the Forest & Bird appeal offers a balanced and objective analysis. The notice states “*if all natural character values of wetlands, lakes and rivers (and their margins) are to be preserved reference to protection is otiose.*”
130. Meridian's s274 notice continues with “Not all natural values are of equal significance and sustainable management does not require that they all be preserved”.
131. The term ‘protect’ requires something stronger than recognising and providing for a matter. It has been used in the sense of its dictionary definition²⁶ which is ‘to keep safe, defend, guard’ etc. This interpretation has been supported by the Environment Court in *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council*²⁷.
132. The Objective is clear on its intent, and should be preserved and protected from unnecessary verbiage.
133. In Mr McCallum-Clark’s evidence²⁸ he comments on the s274 notice lodged by Federated Farmers where he refutes the suggestion that the term ‘preserved’ is difficult to quantify. I agree with his assessment, and accept his analysis.
134. I consider the reasons provided by Meridian Energy within their s274 notice opposing the appellants relief is persuasive. In my opinion, it should be adopted in favour of the relief sought by Federated Farmers in their appeal. I also consider the relief sought by Forest & Bird should be disregarded.

²⁶ New Zealand Oxford Dictionary, p903.

²⁷ *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 2019, at [63]

²⁸ EIC para 180

New Objective X

135. Federated Farmers lodged a s274 notice in opposition to Meridians relief seeking to create a new Objective to recognise the national significance of renewable generation activities in Southland.
136. In my opinion Objectives 2 and 9B in conjunction with the NPSREG sufficiently addresses the concerns the Appellant seeks to incorporate into the Plan.
137. To include an additional enabling objective to the suite of existing objectives will create a disproportionate weighting to infrastructure.
138. The NPSREG in Policy B requires decision makers to have particular regard to the effect even minor reductions in generation output can have on national, regional or local renewable electricity generation output.
139. The NPSREG also seeks to recognise renewable energy generation by requiring regional and district councils to regulate for it in a way that recognises the benefits to meet the country's targets for electricity generation from renewable resources.
140. That recognition is not absolute and needs to be tempered with a balancing exercise. The decision in *Day v Manawatu-Wanganui Regional Council*²⁹, the court's decision confirmed the NPSREG does not state that renewable energy generation is prioritised such that it must be established and provided for no matter what the effects.
141. In the context of a resource consent application, the Environment Court in *Blueskin Energy Limited v Dunedin City Council*³⁰, the court

²⁹ [2012] NZEnvC 182 at [2-21]

³⁰ [2017] NZEnvC 150

concluded the NPSREG does not give the provision of primacy by renewable energy generation over other matters in s6 or s7³¹.

142. What the NPSREG does offer is a sufficiently strong policy directive in terms of recognising the significance of renewable electricity generation. In my opinion, when the NPSREG is read in conjunction with the RPS and Objectives 2 and 9B, the interests of Meridian are adequately represented.
143. I do not agree with Meridian that there are no other provisions that adequately address renewable electricity generation activities.
144. It is therefore my opinion, that new Objective X is unnecessary and its adoption will create a disproportionate weighting in favour of renewable energy generation.

Policy 1

145. Policy 1 reads:

Enable papatipu rūnanga to effectively undertake their kaitiaki responsibilities in freshwater and land management through Environment Southland:

- 1. providing copies of all applications that may affect a Statutory Acknowledgement area, tōpuni, nohoanga, mātaītai or taiāpure to Te Rūnanga o Ngāi Tahu and the relevant papatipu rūnanga;*
- 2. identifying Ngāi Tahu interests in freshwater and associated ecosystems in Southland/Murihiku;*
- 3. reflect Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Southland/Murihiku, consistent with the Charter of Understanding.*

146. Federated Farmers opposed Policy 1(3) and sought the wording “and interests” be deleted because those “interests” could be interpreted to include commercial interests, which may give rise to greater weighting in resource management decisions.

³¹ Noting the preservation and protection from inappropriate use of the natural character of lakes, rivers is a matter of national importance under s6 and the benefits from renewable energy under s7 is to be had particular regard to.

147. The submissions during the hearing process were based on member concerns that directly informed the Federated Farmers appeal on this provision.
148. Having read the evidence of Mr McCallum-Clark, I agree that the NPS-FM sets out the language that informs this policy. That includes the term “and interests” in decision making processes related to freshwater and freshwater ecosystems. This in turn gives effect to the Act and Te Tiriti.
149. Nga Runanga lodged a s274 notice in opposition to the appeal provision by Federated Farmers.
150. It is my professional opinion that Policy 1 of the decisions version is appropriate as it gives effect to the intent of those higher order documents. I therefore do not support the appeal point by Federated Farmers.
151. I understand Federated Farmers will not pursue this appeal point further.

PHYSIOGRAPHIC ZONE POLICIES

152. Federated Farmers appealed policies 4.3, 5.3, 9.3, 10.3, 11.3 and 12.3.
153. Federated Farmers lodged s274 notices in opposition to Forest & Bird, Fish & Game and Nga Runanga, The same three parties lodged s274 notices in opposition to the appeal by Federated Farmers.
154. These policies seek to address farm related discharges, whereas any objective policy would address any discharge that would not be consistent with maintaining or enhancing water quality or ensuring ecosystems are safeguarded. These policies ignore the effects of industry or community waste-water plants discharging directly into a waterbody that is located within one of the identified physiographic zones.

Policy 4.3

155. Nga Runanga, in their appeal sought deletion of the words “generally not grant” and sought that it be replaced with “strongly discourage the granting of” in the third limb of Policy 4. Federated Farmers joined the appeal and opposed the appellant’s relief. The s274 notice opposed Policy 4.3 in respect to the first limb, relating to the assessment criteria for dairy farming and intensive winter grazing in the alpine zone as a prohibited activity.
156. In my opinion, the suggested prohibition within Policy 4.3 is appropriate for the alpine zone and provides certainty for landholders.
157. Having considered the appeal by Federated Farmers, I adopted a similar view to that of Nga Runanga on this provision which is acknowledged in my evidence in chief³².
158. It is my opinion Policy 4.3 should read as:

Policy 4.3 – Dairy farming and intensive winter grazing is a prohibited activity.

Other Physiographic Zone Policies

159. Federated Farmers lodged s274 notices opposing the appeals lodged by DoC, Fish & Game and Forest & Bird in relation to these policies.
160. The rationale for the appeals by Fish & Game and Forest & Bird is that the removal of the directive component³³ of the policy would be less stringent and would not be consistent with maintaining or enhancing water quality or ensuring ecosystems are safeguarded.

³² EIC paras 33 and 34.

³³ For example for the Old Matura zone, that Policy 9.3 states decision makers generally not granting resource consents for additional dairy farming of cows or additional intensive winter grazing where contaminant losses will increase as a result of the activity.

161. Similarly, DoC states in their s274 notice³⁴ that the removal of the directive component to a Consenting Officer would not give effect to a range of higher order policies.
162. I disagree with each of these appellants positions. The Act requires that a balancing exercise against the relevant instruments and provisions be carried out before any decision is made. The directive guidance in these policies (4.3, 5.3, 9.3, 10.3, 11.3 and 12.3) as promoted by DoC, Fish & Game and Forest & Bird will influence the decision makers by influencing a full and balanced assessment against all the relevant objectives and policies, and effectively fetter the discretion of the consenting authority. This approach may introduce unintended outcomes not contemplated by the Act.
163. For example, such a policy negates the ability to contemplate positive effects of a proposal despite the potential for increased contaminant losses. A landowner may wish to expand their farm where concentrations of contaminant losses may increase within the platform, whilst installing a series of wetlands or retiring blocks of land elsewhere. At a farm level, and crucially not because of the activity (as the policies are framed) or on the land directly associated with the activity, the overall environmental outcomes may be improved.
164. Section 104(1)(ab) requires consent authorities to, subject to Part 2, have regard to any measure agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensation adverse effects. Adopting the relief of the appellants may negate this opportunity.
165. The requirement to apply s104(1)(ab) is at odds with the strongly directive policy direction for 4.3, 5.3, 9.3, 10.3, 11.3 and 12.3.

³⁴ Pages 5 and 6 of DoC's s274 notice against the appeal for Federated Farmers

166. In my opinion, there is no need for such strongly phrased policy direction. Either an application will survive the scrutiny of the consent authority when applying consideration against the full suite of planning documents, or it will not.
167. There is no rational justification for the directive aspects of policies 4.3, 5.3, 9.3, 10.3, 11.3 and 12.3 to be retained. Applying the pSWLP holistically, in conjunction with an appropriate analysis of the higher order documents, will provide sufficient support to ensure a well-informed and robust decision-making process takes place. The intent of the pSWLP to “hold the line” will be achieved by the policy framework without the directive component of the policies.
168. Isolating only dairy farming and intensive winter grazing as part of a directive policy to the exclusion of all other activities is not good resource management practice. Other activities such as mining, forestry, or additional urban development could equally result in adverse effects to freshwater over the life of the pSWLP.
169. Fettering the decision maker in respect to only two land use activities, (dairying and intensive winter grazing) does not give effect to the RPS. The RPS³⁵ does not limit activities of concern to dairy farming or intensive winter grazing.
170. The narrative to the RPS goes on to say³⁶:

“Where possible, an effects-based approach is the preferred approach to managing water quality. However, where it is known that land use activities are causing non-point source discharges that are affecting water quality and which need to be managed, it is appropriate to focus on managing the activities themselves.”

³⁵ Part A- Water Quality page 30 and 31

³⁶ Part A- Water Quality page 32

171. I agree with the RPS narrative that an effects-based approach is appropriate to focus on managing water quality. This does not however translate to directing decision makers to a predetermined outcome before a full balanced assessment against the relevant documents is carried out.
172. The relief sought by the three appellants in my opinion lacks objectivity and appears to adopt an anti-farming mentality irrespective of other land use that can affect water quality. By way of example, the policy and the notices of the three opposing parties are silent about large scale mining, urbanisation or forestry within the identified physiographic zones. Similarly, neither refer to industrial or human waste-water discharges to waterbodies within these zones that may impact water quality.
173. In my opinion, any objective assessment would contemplate all discharge sources within each physiographic zone as a mechanism to maintain or improve water quality.
174. I therefore oppose the relief sought by DoC, Fish & Game and Forest & Bird on these provisions.

Policy 46

175. Federated Farmers submitted a s274 notice in opposition to the relief sought by Forest & Bird, to include the Waituna catchment as a separate FMU.
176. I note Ms Robertson for the Council states that the Waituna Catchment could be addressed as a sub-catchment within the Maitara FMU rather than as a separate FMU.
177. An FMU is defined in the NPS-FM 2014 as:

A water body, multiple water bodies or any part of a water body determined by the regional council as the appropriate spatial

scale for setting freshwater objectives and limits and for freshwater accounting and management.

178. By its own definition,³⁷ an FMU is made up of freshwater bodies. This allows the setting of freshwater objectives for freshwater accounting and management.
179. Freshwater is defined in the Act as all water except coastal water and geothermal water.
180. While the Waituna catchment comprises a series of tributaries that feed into the Waituna Lagoon that are freshwater, the lagoon itself is not freshwater. The water in the lagoon, the key component of the Waituna catchment is not a freshwater body; it is brackish as it includes coastal water.
181. When the lagoon is closed, saline water moves through the gravel bar creating a saline lagoon that typically stabilises as around 4 parts per thousand.³⁸
182. Periodically the lagoon is opened to the sea by an excavator cutting a hole in the bar to enable flushing by coastal water. At these times, saline levels range between 7 and 33 parts per thousand³⁹ depending on location.
183. The MfE Guide to Identifying FMU's goes on to state Councils should consider the surrounding land use and its effect on freshwater bodies when identifying FMUs. It is my opinion, the surrounding land use has an effect on a brackish water body, not a freshwater body, and therefore the Waituna catchment falls outside

³⁷ Ministry for the Environment. 2016. A Guide to Identifying Freshwater Management Units Under the national Policy Statement for Freshwater Management 2014. Wellington: Ministry for the Environment.

³⁸ Schallenberg M, Larned ST, Hayward S, Arbuckle C (2010), Contrasting effects of managed opening regimes on water quality in two intermittently closed and open coastal lakes. Est Coast Shelf Sci 86:587–597

³⁹ Hugh A. Robertson & Emily P. Funnell. Aquatic plant dynamics of Waituna Lagoon, New Zealand: trade-offs in managing opening events of a Ramsar site.

the definition of a FMU and the guidance advice on identifying FMU's.

184. Despite this issue, I recognise the Waituna is a relatively discrete catchment where local scale provisions may be useful. There are also a series of management programmes in place for the catchment.
185. With that in mind, I do agree with Ms Davidson for Nga Runanga that whichever approach is adopted, it must ensure that the necessary values and limits required to improve the Waituna Lagoon are not lost or diminished by discussions at the catchment level.
186. I prefer the approach by Council, that the Waituna Lagoon system is considered as a sub-catchment rather than a separate FMU.
187. However, should the Court consider the Waituna catchment is suitable as a separate FMU, I understand Federated Farmers will not pursue the matter further.

Darryl Sycamore
Senior Policy Advisor

