

**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 **ARATIATIA LIVESTOCK LIMITED**
(ENV-2018-CHC-29)

ALLIANCE GROUP LTD
(ENV-2018-CHC-39)

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

Appellants

AND **SOUTHLAND REGIONAL COUNCIL**

Respondent

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

Judicial Officers: 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), and have held this position since early 2017.
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.
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, 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 will be provided by an alternate and independent planning expert.

Scope of Evidence

11. I have been asked to provide evidence for Federated Farmers Southland in support of Federated Farmers s274 notices lodged on the listed appeals in relation to certain Topic A issues. Specifically these are:
 - Objectives 10 by Aratiatia Livestock Limited (Aratiatia)
 - Objectives 13, 13A, 13B and 18, for Alliance Group Ltd (Alliance)
 - Objectives 13, 13A and 13B for Nga Runanga.
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 Council's Evidence¹ of 14 December 2018, and
- (j) Appellants' evidence dated 15 February 2019.

OBJECTIVE 10

- 13. 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.
- 14. 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

- 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.

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

15. In its further submission, Federated Farmers opposed the relief Meridian sought (as set out above), 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.
16. The reporting officers recommended this provision be retained as notified.²
17. Federated Farmers lodged a s274 notice on the appeal by Aratiatia as an interested party.
18. Aratiatia sought objective 10 be reinstated as notified, such that it reads:
“The importance of the existing Manapouri Power Scheme in the Waiau Catchment is provided for and recognised in and resulting flow and level regime.”
19. The Southland Federated Farmers support the position of Aratiatia as their relief does not entrench the permits and physical assets as part of the existing environment. Objective 10 in the decisions version 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.
20. In my view, the relief sought by Aratiatia would give effect to the higher order planning instruments, promote sustainable management and would be consistent with Part 2 of the Act.

OBJECTIVE 13, 13A & 13B

21. 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

² p 5.128 s42A report

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.

22. 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.
23. Federated Farmers did not appeal this provision but did join as a s274 party to the appeals by the Alliance Group and Nga Runanga. Notified Objective 13 has been reframed as Objective13, 13A and 13B through the decisions version of the plan. Objective 13C has since been deleted.
24. 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.
25. 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).

Nga Runanga

26. Federated Farmers Southland supported the relief sought in the appeal of Nga Runanga in relation to Objectives 13, 13A and 13B, to the extent it sought to reinstate these into a single objective.
27. In my opinion, although the splitting of the objectives provides separation between the competing interests of land use and the need to

protect the values of the land, the original intent of the objective 13 is lost.

28. The problem arises as despite each objective being framed as independent of the other, there remains a linkage to each in terms of activity and outcomes. This is discussed further below, but there is benefit in reinstating the objectives into a single objective given the inter-relatedness.

Alliance Group

29. I share the concern with Alliance that the original intent of Objective 13 was to enable the use and development of land and soils provided the effects included in the objective were addressed. The decisions version of Objective 13B adopts a completely different focus – that being, the avoidance of discharges of contaminants that have significant **or** cumulative effects on human health.
30. I prefer the approach of John Kyle³ with respect to the phrasing of the 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, 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.
31. I agree with Alliance in their appeal that either
- (A) Objective 13, 13A and 13B be deleted and replaced with Objective 13 from the notified version of the proposed Plan,⁴

³ EIC of John Kyle for Alliance paragraph 3.8

⁴ Objective 13

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

- (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

(while taking into account the preferred relief sought in the FFNZ appeal) or

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

OBJECTIVE 18 & POLICIES 4-6 & 9-12

32. Federated Farmers lodged a submission and further submission on this objective. Objective 18 attempts to give effect to Section 5 matters that promote the sustainable management of natural and physical resources.
33. Federated Farmers in part supports the relief sought in the appeal of the Alliance Group. That appeal focuses on whether good management practice (GMP) is an appropriate mechanism to achieve the purpose of the RMA with respect to industrial discharges.

Good management practices

34. Good management practices are defined in the Plan as:

Good Management Practices Include, but are not limited to, the practices set out in the various Good Management Practices factsheets available on the Southland Regional Council's webpage.

35. Alliance is concerned the reference to GMP is “a vague and uncertain test” for managing discharges from industrial and trade processes.
36. Mr Kyle⁵ rightly notes the factsheets on the Respondent’s webpage primarily relate to farming practices and managing the effects of farming on the receiving environment. The GMP factsheets provide little

(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.

⁵ In his EIC, paragraph 4.2

guidance to managing industry discharges. Mr McCallum-Clarke in his evidence⁶ recognises the scope of the factsheets is indeed directed to the farming sector.

37. While GMP may be subjective and not always suitable for industrial discharges, it is my opinion that GMP is an effective and nimble mechanism for managing on-farm activities. Mr McCallum-Clarke in his evidence agrees with Fonterra and DairyNZ that GMP is a well understood concept for farming.
38. It is my opinion the GMP remains a useful approach to managing land use and discharges in a farming context. Taking into account the evidence of Messrs McCallum-Clarke and Kyle, and having considered the Respondent's GMP factsheets, I agree with Alliance that GMP in an industrial context is not helpful and support the relief outlined by Mr Kyle, by way of amendment to the definition of "good management practices" to focus on farming systems.

Best practicable option

39. The second aspect of the Alliance appeal on Objective 18 relates to the discharge itself. Alliance considers Objective 18 should seek discharges from industrial and trade processes be in accordance with the "best practicable option". Adopting the best practicable option would be consistent with Policy 16A which seeks to minimise adverse effects, including the quality of water in waterbodies.
40. Section 2 of the Act includes the definition⁷ for best practicable option in relation to a discharge of a contaminant.

⁶ Statement of Evidence by Matthew McCallum-Clarke, paragraph 227

⁷ **best practicable option**, in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—

- (a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
- (b) the financial implications, and the effects on the environment, of that option when compared with other options; and

41. In my view, the relief sought by Alliance is an appropriate mechanism to achieve the purpose of the Act while providing for their industrial operations.
42. In its appeal, Alliance seeks that Objective 18 be amended as follows:

Objective 18

All farming activities operate in accordance with “good management practice” or better, and discharges from industrial or trade processes shall operate in accordance with the best practicable option, to optimise efficient resource use, safeguard the life supporting capacity of the region’s land and soils, and maintain or improve the quality and quantity of the region’s water resources.

43. I note that, contrary to the appeal relief sought by Alliance, Mr Kyle doesn’t think it is necessary for objective 18 to specify that industrial and trade processes are to be managed in accordance with the best practicable option test as this is already in policy 16A⁸.
44. In my opinion, as policies give effect to objectives, it is important from a planning perspective to include a specific reference to BPO in objective 18, as sought in the relief of Alliance. Then policy 16A will give effect to Objective 18.
45. I therefore support the relief on Objective 18 outlined in Alliance’s appeal notice, rather than that suggested by Mr Kyle.

(c) the current state of technical knowledge and the likelihood that the option can be successfully applied

⁸ EIC of John Kyle for Alliance paragraph 4.7

Policies 4-6, 9-12

46. Policies 4-6 and 9-12 seek to give effect to Objective 18. The Alliance Group has identified that GMP may not be suitable in policies relating to trade or industrial discharges in specific physiographic zones.
47. As noted above, the Act defines 'best practicable option' which provides certainty to industrial dischargers in managing their operations than that of GMP. The inclusion of the definition in s2 will provide a heightened level of certainty to the appellant's business interests.
48. Originally Federated Farmers in part opposed the relief sought by Alliance Group for policies 4-6 and 9-12⁹. The genesis of Federated Farmers position on this provision was borne from concern that some discharges were being treated inequitably and that the environment does not discern the source of contaminants. In this regard, Federated Farmers is seeking relief in its appeal in relation to the physiographic polices which, if accepted by the Court, would mean the policy focus is on effects, not activities¹⁰.
49. In relation to the definition of the definition of GMP however, I agree with the issue raised, but recognise industry requires a level of certainty for their commercial viability. Having read the appeal by Alliance, I accept that BPO provides a greater level of certainty that GMP may not. As such, I support the position of Alliance and understand Federated Farmers will not pursue any opposition to this relief.



¹⁰ Refer to Evidence in chief of Darryl Sycamore, paragraphs 43 and 44 in particular.

Darryl Sycamore
Senior Policy Advisor
Federated Farmers of New Zealand Inc