

**IN THE ENVIRONMENT COURT**

**UNDER**                    **the Resource Management Act 1991**

**AND**

**IN THE MATTER**    **appeals under clause 14(1) of Schedule 1 of the Act in respect of  
Proposed Southland Water and Land Plan**

**BETWEEN**

**TRANSPower NEW ZEALAND LIMITED**  
(ENV-2018-CHC-26)

**FONterra CO-OPERATIVE GROUP**  
(ENV-2018-CHC-27)

**HORTICULTURE NEW ZEALAND**  
(ENV-2018-CHC-28)

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

**WILKINS FARMING CO**  
(ENV-2018-CHC-30)

*(Continued on next page)*

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**STATEMENT OF PRIMARY EVIDENCE OF GERARD MATTHEW WILLIS  
FOR FONterra COOPERATIVE GROUP LTD AND DAIRYNZ LTD**

**(PLANNING – TOPIC A)**

**15 MARCH 2019**

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**GORE DISTRICT COUNCIL, SOUTHLAND  
DISTRICT COUNCIL & INVERCARGILL  
DISTRICT COUNCIL (ENV-2018-CHC-31)**

**DAIRYNZ LIMITED  
(ENV-2018-CHC-32)**

**H W RICHARDSON GROUP  
(ENV-2018-CHC-33)**

**BEEF + LAMB NEW ZEALAND  
(ENV-2018-CHC-34 & 35)**

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

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

**MERIDIAN ENERGY LIMITED Act 1991  
(ENV-2018-CHC-38)**

**ALLIANCE GROUP LIMITED  
(ENV-2018-CHC-39)**

**FEDERATED FARMERS OF NEW ZEALAND  
(ENV-2018-CHC-40)**

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

**STONEY CREEK STATION LIMITED  
(ENV-2018-CHC-42)**

**THE TERRACES LIMITED  
(ENV-2018-CHC-43)**

**CAMPBELL'S BLOCK LIMITED  
(ENV-2018-CHC-44)**

**ROBERT GRANT  
(ENV-2018-CHC-45)**

**SOUTHWOOD EXPORT LIMITED,  
SOUTHLAND PLANTATION FOREST  
COMPANY OF NZ, SOUTHWOOD EXPORT  
LIMITED (ENV-2018-CHC-46)**

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

**PETER CHARTRES**  
(ENV-2018-CHC-48)

**RAYONIER NEW ZEALAND LIMITED**  
(ENV-2018-CHC-49)

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

*Appellants*

*and:*

**SOUTHLAND REGIONAL COUNCIL**  
*Respondent*

## 1. EXECUTIVE SUMMARY

- 1.1 This planning evidence addresses physiographic zones, Objectives 2, 6, 7, 9 and 13 and Policies 9, 10, 11, 45 and 47.
- 1.2 Having considered the statutory planning framework (in particular the National Policy Statement for Freshwater Management (**NPSFM**) and the Southland Regional policy Statement (**RPS**)) I have reached a conclusion on the most appropriate form that those provisions should take. That conclusion is broadly consistent with that adopted by Mr McCallum Clark in his evidence in chief (**EIC**) for the Regional Council.
- 1.3 In particular:
- (a) The physiographic zones should remain in the proposed Southland Water and Land Plan (**pSWLP**) with the characteristics of each zone considered in the consenting process via the application of policies, and in the formulation of Farm Environment Management Plans (**FEMPs**). They should not, however, be reinstated as an integral part of the rule framework.
  - (b) “Primary production” should be expressly referenced in Objective 2.
  - (c) Objective 6 should retain reference to the word “overall” because that terminology reflects the reality of water quality monitoring, assessment and reporting. In short, there is always temporal, spatial and other technical variability and complexity around individual attributes of water quality that requires judgement to be exercised as to whether *overall* water quality has improved or been maintained in a particular management unit, water body or river reach.
  - (d) Objective 7 should not commit to phasing out over-allocation before Freshwater Management Unit (**FMU**) processes are complete because, in the absence of FMU processes, there can be no certainty as to whether, or to what extent, over-allocation exists or what a reasonable timeframe (or means) for reducing

that over-allocation might be. Nonetheless, opportunities to reduce the contaminant loads of discharges should be taken on a consent by consent basis as is required under the Act. Other objectives (notably Objective 18) of the pSWLP make that clear.

- (e) Objective 9 should not be amended to provide all recreational values recognition equal to that enjoyed by section 6 values or compulsory values under the NPSFM.
- (f) Objective 13 can be read as imposing a very high hurdle by seeking to avoid any adverse effects on human health (and, as sought by Fish and Game, on recreation). Some minor rewording of that objective could clarify that, although many discharges could potentially have an impact on human health, only when those discharges (either individually or collectively) would compromise human health, should they be avoided.
- (g) Policies 9, 10 and 11 should not be amended to make dairy farming, intensive winter grazing and cultivation a prohibited activity. Substantive planning analysis of consent status should be considered in evidence addressing the land use rules.
- (h) Policies 45 and 47 should not be changed as sought by Fish and Game. It would be inappropriate and undermining of FMU objective and limit setting processes to include provisions in the pSWLP that necessarily prevail (unless they are less stringent) over those developed in accordance with Part CA of the NPSFM.

## 2. INTRODUCTION

2.1 My full name is Gerard Matthew Willis.

2.2 I am a director of Enfocus Ltd, a resource management consultancy based in Pukekohe. I have practised as a planner and resource management specialist for the past 30 years.

2.3 I hold a Bachelor of Regional Planning (Hons) degree from Massey University. I am a full member of the NZ Planning Institute (NZPI) and an accredited decision-maker under the Ministry for the Environment's

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Making Good Decisions Programme. In 2017 I was awarded the NZPI national award for Best Regional or District Plan. In 2018 I received the Commonwealth Association of Planners' award of Excellence for Outstanding Planning Achievement in the Commonwealth.

- 2.4 My previous experience includes working in policy and regulatory planning roles in local government both in New Zealand and in the United Kingdom. I also spent a considerable part of my early career in central government roles including as a senior policy analyst at Ministry for the Environment (**MfE**) and environment adviser to the Minister for the Environment.
- 2.5 Since 2001, I have been a planning and environmental consultant, establishing my own practice in 2002. In that capacity I have acted for a number of district and regional councils on planning issues and provided advice to companies, iwi trusts and government agencies. Of note, over recent years, I have advised five different regional councils on the development of regional policy statements and/or regional plans (in whole or part).
- 2.6 I have also been, and continue to be, involved in reform of freshwater management at the national level:
- (a) I was been previously engaged by MfE under the Sustainable Water Programme of Action to advise on alternatives to first-in-first served allocation regimes and on barriers to tradable permits.
  - (b) In 2010 I was engaged by MfE to assist in the New Start for Freshwater Programme with specific involvement in water governance issues.
  - (c) In 2013 I was engaged by MfE to draft amendments to the NPS-FM, including the incorporation of the National Objectives Framework.
  - (d) In 2016 I was engaged by MfE to provide independent comment on the workability of the proposed changes to the NPSFM.

- (e) In September 2018 I was contracted to MfE, part time basis as a member of the cross agency Water Taskforce, established to implement the Government's "Essential Freshwater" reform programme.

2.7 My relevant experience also involves the preparation of planning evidence for hearings in relation to water quantity and/or quality matters in respect of Horizons One Plan, Variation 6 to Environment Waikato's Regional Plan, Proposed Change 6A to the Otago Regional Plan, the Gisborne Regional Freshwater Plan, the Southland Regional Water and Land Plan, Plan Changes 9 and 10 to the Bay of Plenty Natural Resources Plan, the Northland Regional Plan, the Wellington Natural Resources Plan and, in Canterbury, the Proposed Hurunui and Waiau Rivers Regional Plan, the Canterbury Land and Water Regional Plan (**CLWRP**), including Variations (now Plan Changes) 1 and 2, and Plan Changes 3 and 5 to the CLWRP.

### **3. BACKGROUND**

#### **Code of conduct**

3.1 I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

#### **Scope of evidence and preliminaries**

3.2 I have been asked to prepare this evidence for Fonterra Co-operative Group Ltd (**Fonterra**) and DairyNZ Ltd (**DairyNZ**). My evidence covers the following Topic A provisions:

- (a) Physiographic zones. The issues I address are whether the zones should be retained as part of the rule framework and whether specific activities should be prohibited in certain zones.

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- (b) Objective 2. The issue I address is whether, or how, it should expressly recognise primary production.
- (c) Objective 6. The issue I address is whether the objective should refer to “overall water quality”.
- (d) Objective 7. The issue I address is whether the objective should commit to reducing over-allocation when considering relevant resource consent applications before FMU processes are complete.
- (e) Objective 9. The issue I address is whether all recreational values should be safeguarded in water quantity management.
- (f) Objective 13. The issues I address are:
  - (i) whether the objective should seek to avoid significant cumulative effects or (any) adverse or cumulative effects; and
  - (ii) whether the direction to avoid effects should apply to recreation as well as effects on human health.
- (g) Policies 45 and 47. The issue I address is whether region-wide provisions as contained in pSWLP should prevail over subsequent FMU level provisions.

3.3 In preparing this evidence, I have read the:

- (a) pSWLP (notification and decisions versions);
- (b) Section 32 Report;
- (c) Section 42A Hearing Report and Reply Report;
- (d) Council's Decision Report;
- (e) Appeals and Section 274 Notices;
- (f) Initial Planning Statement;
- (g) Evidence prepared for the Regional Council by Mr McCallum Clark;



- (h) National Policy Statement for Freshwater Management 2014 (as amended 2017); and
- (i) Southland Regional Policy Statement 2017.

#### 4. RELEVANT PLANNING INSTRUMENTS

- 4.1 My understanding of the relevant statutory planning framework is consistent with that set out by Mr McCallum Clark at paragraphs 16 to 27 of his EIC. I do not repeat that here but do refer to specific provisions of the NPSFM and to the RPS in the planning analysis set out later in this evidence.

#### 5. PHYSIOGRAPHIC ZONES

- 5.1 Nine physiographic zones are described at pages 19 to 21 of the pSWLP. The notified version of the pSWLP used these zones to demarcate areas where particular consent requirements/rules applied.
- 5.2 As described by Mr McCallum Clarke at paragraph 222 of his evidence, the Hearing Commissioners adopted the Reporting Officers' advice that the physiographic zones were fit for purpose at a regional scale and in a policy context but that the zones were less appropriate at a property specific level and should be removed from the rules framework.
- 5.3 Accordingly, the physiographic zones remain in the decisions version of pSWLP and the relevant policies can be considered when assessing consent applications (and the conditions that should apply), but are not used within the land use rules framework (to determine, for example, consent status).
- 5.4 Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively, **Ngā Rūnanga**) appealed that aspect of the decision, seeking on appeal that the physiographic zones be reinstated in the rule framework.
- 5.5 I have read the evidence of Ms Davidson for Ngā Rūnanga and note she says that, although the concept of physiographic zones resonates with

Ngā Rūnanga, she recognises the problem associated with the coarseness of mapping and does not support the Ngā Rūnanga appeal point that seeks its reinstatement into the rules within the pSWLP.

5.6 I agree with Ms Davidson on this matter. In my opinion, the evidence of Dr Sneldor clearly describes the characteristics of the physiographic zones and demonstrates that, in terms of property specific regulation, the zones are not fit for purpose.

5.7 Accordingly, I do not support Ngā Rūnanga's appeal on this matter but I do support the retention of the zones in the pSWLP policies and the application of those policies in the consenting process and in the formulation of FEMPs.

## 6. OBJECTIVE 2

6.1 Objective 2 states that:

*Water and land is recognised as an enabler of primary production and the economic, social and cultural well-being of the region.*

6.2 Fish and Game has appealed the point stating that the wording provides an imbalance in favour of primary production generally, above other relevant activities and values.

6.3 Mr Farrell supports the Fish and Game appeal and makes various points (from page 56 of his EIC) consistent with the view that an imbalance is created by the Objective and that primary production is elevated above other values and uses of land and water. He states:

*Placing "primary production" before any of these other matters, in my opinion, implies that primary production, literally, comes first in Southland.*

6.4 I disagree with the Fish and Game position and the opinion of Mr Farrell. The objective makes a factual statement (i.e. that water and land is an enabler of, amongst other things, primary production) and recognises that reality. In my opinion that is appropriate and simply reflective of the scope of the pSWLP. If the pSWLP did not recognise that fact it would not provide for farming and related activities through a suite of rules that permit and control various primary production activities that rely on water

and land (recognising that there will be demand for those activities to occur). Hence, I do not consider that the objective provides an “imbalance” but simply that it recognises that water and land is important for primary production and will be in demand for primary production.

6.5 I do not agree that the objective elevates primary production above other factors. It clearly recognises water and land as an enabler of economic, social and cultural wellbeing through means other than primary production. Moreover, consistent with the principles of plan interpretation, Objective 2 will not, and cannot be, read alone but will be read and applied in the context of other general and directive objectives and policies of the pSWLP.

6.6 In that regard it is important to note that Objectives 3, 4 and 5 refer to various Maori values and interests. Objective 8 recognises drinking water as an important value. Objective 9 recognises the values of aquatic ecosystem health, life supporting capacity outstanding natural features and natural character. Other objectives, appropriately, specifically recognise other values and interests. In my opinion, it is incorrect to suggest that the wording of Objective 2 means it prevails over those other objectives.

6.7 It is also important is note that the RPS contains Policy RURAL.1 which is very similar in its emphasis and effect (at least in respect of land). That policy states:

*Recognise that use and development of Southland’s rural land resource enables people and communities to provide for their social, economic and cultural wellbeing.*

6.8 With regard to the inclusion of the words “enabler of primary production” Mr McCallum Clarke says:

*I am also of the view that the addition of these words does not materially alter the likely outcomes, in terms of land and water management and the control of diffuse discharges, as there are other, more specific and directive objectives and policies on these matters.*

6.9 I concur with Mr Mc Callum Clark on this matter. As noted above, other provisions recognise other values and they must be read as having equal

weight. Furthermore, it is well-known (and recognised in the Introduction to the RPS<sup>1</sup>) that primary production is important to Southland's social and economic well-being. Accordingly, I accept that there is an argument that primary production could be read into the objective even if not expressly mentioned. However, the same argument could be applied to other objectives. That is, that they need not be specific but could remain generic in nature with specific values being read in as necessary. However, that is not been the approach take to other objectives and I would not support such an approach. Taken to its logical extreme that would lead to a very small number of very high-level objectives that would not assist in policy development or consent decision making.

6.10 Accordingly, for all the reasons outlined above, it is my opinion, that Objective 2 should remain as currently worded in the pSWLP.

## 7. OBJECTIVE 6

7.1 Objective 6 seeks that *“There is no reduction in the overall quality of freshwater, and water in estuaries and coastal lagoons by...”*

7.2 Appropriately, in my opinion, Objective 6 seeks to maintain the quality of water where it is not degraded and improve that quality of water where it is degraded.

7.3 Fish and Game and Ngā Rūnunga have appealed the decision on Objective 6 and, amongst other things, seek that the word “overall” be deleted.

7.4 In my opinion, the reference to “overall” water quality is appropriate. That is in part because Objective A2 of the NPSFM refers to maintaining or improving the “overall quality of freshwater” and the pSWLP must give effect to that policy. However, it is also because using the term “overall” more accurately reflects how decisions about whether water quality has improved or not are made in practice.

7.5 Although plans (and the NPSFM itself) commonly refer to “water quality” as though it is a single monitorable metric, in fact water quality managers

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<sup>1</sup> This states: *“This highlights the importance of agriculture to the region and the significant contribution it makes to the national economy. The agriculture industry including primary processing, is the largest contributor to Southland's regional economy. It also contributes to Southland's social and cultural well-being”*

do not monitor ‘water quality’ as such but rather they monitor a wide range of physical, chemical and biological attributes and indicators, across a network of different sites and over an extended period of time and make an assessment (based on expert judgement and statistical analysis) as to whether water quality, as a whole, is getting better or worse, or staying the same.

- 7.6 There has been considerable attention given to the question of what “overall” means in the context of water quality. Although no definitive position has been reached amongst planning practitioners, practitioners have been guided by the Environment Court decision in *Ngati Kahungunu*<sup>2</sup> that “overall” ought not be read to allow water quality in one location to deteriorate provided that, at the same time, water quality is improved in another location (described as an “unders and overs” approach). I agree.
- 7.7 However, retaining reference to “overall” in Objective 6 is important because it ensures that some level of expert judgement and assessment can be taken to the interpretation of what is often a large amount of monitoring data to come to a reasoned conclusion. In simple terms, reference to “overall” ensures that judgements about the state of water quality are not reduced to whether a single attribute, at a single monitoring point, at a single time of the year or over a short period necessarily represent a decline in water quality. That is simply not how water quality monitoring and assessment works and using the term “overall” reflects that reality.
- 7.8 In short, “overall” allows for:
- (a) a *temporal* dimension to be considered, including whether there is a change in state over time that is statistically significant (being a core part of trend analysis);
  - (b) the *net effect* of changes in various physical, chemical and biological attributes to be weighed and assessed together (such that, deterioration in one attribute does not necessarily mean water quality as a whole declines (and *vice versa*); and

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<sup>2</sup> ENV-2013-WLG-000050

- (c) the river system to be assessed as a whole rather than, necessarily assessment being undertaken solely on a monitoring point-by-monitoring point basis without regard to scale and proportion of relative changes recorded at different monitoring points.

7.9 In my opinion, inclusion of the word “overall” in Objective 6 is important not because it would somehow make the task of the pSWLP easier but because it will allow the effectiveness of the plan in meeting its objectives to be assessed in a manner that reflects the reality of water quality monitoring, assessment and reporting.

7.10 I note that Mr McCallum Clarke does not come to a firm conclusion on this matter but suggests that retaining “overall” might be considered to give effect to the NPSFM but that if it is retained there *“would need to be reliance on the stronger direction of RPS provisions and other policies in the pSWLP to ensure that the wording was not considered to be a softening of the simple and clear message of no further decline in water quality other”*. I agree with that sentiment but remain of the opinion that the retaining the word “overall” is important for the reasons explained above and because retaining the word “overall” need not be regarded as softening key message as described by Mr McCallum Clarke.

7.11 Finally, it is relevant to note that the current MfE Guidance on the NPSFM addresses the meaning of NPSFM Policy A2, and that guidance recognises:

*“that maintaining or improving all aspects of water quality everywhere may not be possible or desirable, economically or socially”*.

7.12 That same guidance suggests flexibility is provided in two ways:

- (a) Policy A2 allows for some [spatial] variability in water quality *“as long as the overall water quality within an FMU is maintained or improved”*; and
- (b) The guidance describes ‘maintain’ as meaning *“setting a freshwater objective, using an attribute listed in Appendix 2, within the same attribute band (ie, state) as the current water quality; or, if the attribute is not in Appendix 2 (and therefore has*

*no predetermined bands) so that the value(s) it is being set for will be no worse off"*

7.13 Accordingly, in my opinion, there can be no argument that Objective 6 could be said to not "give effect" to the NPSFM. While the qualifier "at the FMU level" could be added to reflect the advice in (a) above, in my opinion, that could have the effect of inappropriately broadening the degree of flexibility.

## **8. OBJECTIVE 7**

8.1 Objective 7 states:

*Any further over-allocation of freshwater (water quantity and quality) is avoided and any existing over-allocation is phased out in accordance with freshwater objectives, freshwater quality limits and timeframes established under Freshwater Management Unit processes.*

8.2 As I understand it, Objective 7 expresses the desire to avoid any further over-allocation and phase out any existing over-allocation in line with the freshwater objectives, limits and timeframes developed through the, still to come, FMU objective and limit setting process.

8.3 Objective 7 makes clear that over-allocation relates to both water quantity (volume abstracted) and water quality (contaminants discharged). I support that objective, noting that it sets a framework for future management consistent with the expectations of the Policy A2 of the NPSFM (which states that a regional council is to "*specify targets and implement methods ... to meet those targets within a specified timeframe*").

8.4 The key point is that this is required under the NPSFM "*Where freshwater management units do not meet the freshwater objective made pursuant to Policy A1*". Policy A1 in turn specifies that freshwater objectives are to be made in accordance with Policy CA1- CA4. Those policies set out the processes for developing freshwater objectives. As the pSWLP makes clear (page 7), those processes have not yet occurred and freshwater objectives are not included in the plan at this time but will be developed and implemented through the FMU processes. Accordingly, Objective 7 is, in my opinion, consistent with the NPSFM when it focuses on

achieving reductions in discharges of contaminants once FMU processes are (progressively) completed.

- 8.5 Fish and Game has appealed the decision on Objective 7 seeking that it takes effect *before* FMU objective and limit setting processes have been undertaken. To that end, Fish and Game seeks that the policy reads as follows:

*Any further over-allocation of freshwater (water quality and quantity) is avoided and any existing over-allocation is phased out in accordance with freshwater objectives, freshwater quality limits and timeframes established under Freshwater Management Unit processes or earlier when considering relevant consent applications.*

- 8.6 I disagree with that proposed amendment for several reasons. First, in my opinion, it is inconsistent with the terminology of the NPSFM to suggest that there can be “over-allocation” before FMU freshwater objectives have been established.

- 8.7 According to the *Interpretation* of the NPSFM, “over-allocation” occurs when a resource has been allocated beyond a limit or where a freshwater objective cannot be met. As noted above, there are no freshwater objectives (and hence no limits) until the FMU processes are completed. For that reason, there can be no over-allocation in NPSFM terms. I note that Mr McCallum Clarke reaches a similar conclusion at paragraph 68 of his EIC for the Regional Council.

- 8.8 The purpose of FMU processes is to determine how much resource use can be enabled (or needs be reduced) to protect freshwater values. To the extent that reductions from current use are necessary, those same processes will set timeframes to make those reductions taking into account other planning (i.e. RPS and possibly Part 2) policy considerations. To require reductions aimed at “phasing out over-allocation” ahead of that consideration undermines the purpose of the FMU processes.

- 8.9 Another important consideration is about how the objective might (in combination with other provisions) take effect. As noted above, the



appropriate timing/phasing and extent of reductions required is not specified and cannot be known until the FMU processes are complete. That makes applying the objective in a consenting context problematic. A planning officer, and a consent authority, would need to determine what the appropriate level of reduction is at a catchment or sub catchment scale is and what the appropriate share is for the activity that is the subject of consent. In my opinion that could lead to all manner of inconsistencies in the way different activities are treated by the consent authority.

- 8.10 A particular problem arises because only some contaminant-contributing activities will need consent in the timeframes before FMU processes are complete. Hence what level of reductions are reasonable and appropriate to impose becomes a question because consent officers are only ever dealing with a small part of a bigger picture and have no detailed policy framework to guide them.
- 8.11 In short, it does not make sense to deal with one activity in isolation from others – in respect of activities that occur both at the catchment scale but also at an individual property scale. For example, under the pSWLP, the discharge of farm dairy effluent (**FDE**) requires consent. The continuation of an existing dairy farm as a land use activity does not require consent provided the number of cows remains as consented in the FDE consent. It would be perverse, in my opinion, to require a set level of reduction in contaminants in the context of an FDE consent renewal while discharges from the wider dairy system of which they form a part can remain at the current levels. That is simply because across a farm system there may be easier, less costly and less disruptive ways to achieve a required level of reduction. That is not to say that a FDE consenting process should not look to ensure good management practice (**GMP**) is adopted in the management and discharge of FDE but that is, in my opinion, distinguishable from an objective of “phasing out over-allocation” - a concept that implies set reductions in contaminant loss that may be unrelated to the level of reductions achievable by the adoption of GMPs for the relevant activities.
- 8.12 In my opinion, the requirement for any activity to operate at GMP (and hence, presumably, reduce contaminant discharges when that activity is not already at GMP) is already required by Objective 18 and will be a

relevant consideration in consenting processes before FMU processes are complete.

- 8.13 For those reasons, I do not consider that the amendment sought to Objective 7 by Fish and Game is necessary or appropriate in planning terms.

## **9. OBJECTIVE 9**

- 9.1 Objective states:

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

- 9.2 Fish and Game seeks an amendment to Objective 9 so that “recreational values” are included in the list of values to be safeguarded (as it was in the notified version of pSWLP).

- 9.3 Mr Farrell supports the inclusion of recreational values on the basis that such values are mentioned in other parts of the plan and because Objective A3 of the NPSFM aims to make water suitable for primary contact more often. He also notes that, although mentioned generally in the RPS, recreational values are not expressly referred to in any objective or policy of the RPS.

- 9.4 I do not agree with Mr Farrell. Objective A3 of the NPSFM relates to water *quality*. Objective 9 of the pSWLP relates to water *quantity*. Although there is a relationship between the two that does not justify the unqualified inclusion of recreational values in Objective 9 as proposed.

- 9.5 Furthermore, the NPSFM does not refer to recreational values but to the narrower concept of use for “primary contact” – generally considered to refer to swimming. While I accept that recreational values need to be considered in water take/allocation decisions (and hence reference to them elsewhere in pSWLP is appropriate) I do not consider it appropriate that all recreational values should always be regarded as having to be “safeguarded”, which is a high standard of protection. Such a high threshold in respect of kayaking or jet boating, for example, could easily be breached by a take for municipal, industrial or agricultural needs that

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reduced the days when a river was suitable for kayaking or jet boating or reduced the kayaking/jet boating experience in any way.

9.6 Mr McCallum Clarke does not appear to reach a firm conclusion on this matter but does not find any need to address Fish and Game’s appeal point from his analysis of the RPS and section 6 of the Act.

9.7 Again, I agree with Mr McCallum Clarke’s analysis. There is an obligation under NPSFM Policy A3 to acknowledge swimming as a value but in my opinion that would be more appropriately located in objectives relating to water quality.

## 10. OBJECTIVE 13B

10.1 Objective 13B results from a decision of the Hearing Panel to divide Objective 13 as notified into four separate objectives. Objective 13B states:

*The discharges of contaminants to land or water that have significant or cumulative adverse effects on human health are avoided.*

10.2 The Alliance Group has sought that the words “or cumulative” be deleted (see planning evidence of Mr Kyle).

10.3 Fish and Game has sought (amongst others things) that the word “significant” be deleted and replaced with the word “adverse” (Fish and Game has also sought that the four objectives be re-bundled into one.) Furthermore, Fish and Game seeks that the duty to “avoid” apply not just to effects on human health but also to recreation.

10.4 Fonterra and DairyNZ are a section 274 parties in respect of both those appeals.

10.5 Objective 13B, whether considered alone or in a broader re-bundled Objective, is challenging to draft. In my opinion, adverse effects on human health should be avoided (to the extent practicable). However, I can see the potential for the objective to be read to suggest that any discharge that presents any *risk* to human health should be avoided. That would, as Mr Kyle, giving planning evidence for Alliance states, “*seem to be an implausible outcome to achieve...*” Both point and diffuse discharges typically have a level of microbial contamination that with the

right conditions and concentrations can, if people interact with them or the immediate receiving environment, present a risk to human health in terms of drinking water and/or the ability to play and swim safely (i.e. full or partial immersion). Those discharges that result in that risk exceeding prudent levels should be avoided but that is not to say that any adverse effects (in terms of contaminant load) or any cumulative effect (which will include most if not all diffuse discharges from pastoral land) should be avoided. Consistent with the approach of the NPSFM it is about managing within appropriate limits.

10.6 While I consider that the objective could be read more narrowly than Mr Kyle suggests, I consider that it would be better if the Objective was reworded to be clearer on what will likely be a key point of debate in future consenting (and FMU) processes.

10.7 To that end I propose the following amendments to Objective 13B:

*The discharge of contaminants to land or water that, by itself or in combination with other discharges, have ~~significant or cumulative adverse effects~~ on that would compromise human health ~~are~~ is avoided.*

10.8 I note the Mr McCallum Clark (paragraph 155) does not adopt a firm position on this aspect of the policy but does recognise that the particular use of the word “avoid” may be inappropriate.

10.9 I do not support the wording proposed in Fish and Game’s notice of appeal. In my opinion avoiding any discharge with any adverse effect or any cumulative effect (whether positive or negative) on human health or recreation would, if applied literally, allow for very few discharges to occur in Southland.

## 11. OBJECTIVE 18

11.1 Objective 18 states that:

*All activities operate with “good management practice” or better 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.*

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- 11.2 Fish and Game has appealed the provision, seeking its replacement with the following wording:

*All activities implement the best practical option to optimise efficient resource use and achieve the following:*

- (a) Soil conservation;*
- (b) Maintain and improve water quality;*
- (c) Maintain or improve water quantity; and*
- (d) Maintain and improve ecosystems in freshwater.*

- 11.3 Mr Farrell agrees with Fish and Game's new wording but does not support the deletion of existing wording. He proposes that Objective 18 contains both wordings with the existing wording followed by the Fish and Game wording within a single objective. I disagree with Mr Farrell's proposal and suggest that it would be wordy, repetitious and confusing for plan users.

- 11.4 In my experience, the concept of best practicable option (**BPO**) tends to be applied to point source discharges while the concept of good management practice (**GMP**) tends to be applied to diffuse discharges from land use practices.

- 11.5 However, I accept the point Mr Farrell makes, namely that Policy A3 (b) of the NPSFM does require regional councils to make rules requiring the adoption of BPO. That policy, however, relates to rules relating to *discharges* and not expressly to rules relating to *land use*. Hence, I do not understand NPSFM Policy A3 (b) to mean that regional plans cannot take a GMP approach to the control of land use.

- 11.6 I accept that Objective 18 relates to all activities and that this ought to be read to include both land use activities and discharge activities. In that case, I propose that Objective 18 should be redrafted as follows:

*~~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:*

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- *All land use activities operate with “good management practice” or better; and*
- *All point source discharges adopt the best practicable option to prevent or minimise adverse effects on the environment.*

11.7 On a related point I note that the definition of ‘good management practice’ states:

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

11.8 I note that Mr Farrell assumes that these factsheets could be changed at any time (i.e. without a Schedule 1 process). I agree that the definition is unclear on this point and that it would not be appropriate for the definition of GMP to be able to be changed in that manner. I note also that Appendix N also provides direction on what GMPs are, referring both to websites and to a particular (date referenced) publication. The term ‘good management practices’ needs to be lawfully defined but it also needs to reflect the fact that GMPs change over time and that it would be counterproductive to adopt a definition that fixes certain practices in place when they be overtaken with improved knowledge about alternative practices.

11.9 In my opinion this is an issue that will need to be specifically addressed in subsequent hearing topics.

11.10 I note also that Mr McCallum Clark recommends modification of the term GMP to ‘good *environmental* management’ practice arguing that that terminology better reflects the intent. I agree with Mr McCallum Clark in part, but, from a practical perspective, I understand that it can be difficult to separate practices undertaken for environment protection from those practices undertaken for animal health and food hygiene reasons and that, at times, there may even be a tension between these objectives. For that reason, in my opinion, it would be appropriate to retain the terminology commonly used elsewhere which is GMP. While I agree that GMP is predominantly about practices to improve environmental performance, there will be times when practices required to manage other

on farm risks (as noted above) will need to be considered and may influence what the overall “good practice” is.

## **12. POLICIES 4, 9,10 AND 11**

12.1 Policies 4, 9, 10 and 11 address the management approach for specific physiographic zones.

12.2 Forest and Bird seeks that these policies make dairy farming, winter grazing and cultivation prohibited where those policies apply (being the Alpine, Old Maitaura, Oxidising and Peat Wetland physiographic zones).

12.3 Policy 4 (Alpine zone) already signals that dairy farming and winter grazing will be prohibited in the Alpine zone. The policies applying to the other zones mentioned in paragraph 12.2 above set out a position of generally declining consents for those activities unless an applicant can establish that contaminant loss levels do not increase as a result of the activity.

12.4 In my opinion, that policy setting is appropriate. I would interpret the policy test applying to dairy farming and intensive winter grazing in those physiographic zones as appropriately high (i.e. restrictive). However, the opportunity is there for land use change provided there is no increase in contaminant loss. In my opinion that will be a very challenging test to pass. A full planning rationale for that opinion is best left to the hearing that addresses the rules.

12.5 As a matter of good plan drafting, I would suggest that consent status is a matter for rules rather than policies.

## **13. POLICIES 45 AND 47**

13.1 Policy 45 states:

*In response to Ngāi Tahu and community aspirations and local water quality and quantity issues, FMU sections may include additional catchment-specific values, objectives, policies, attributes, rules and limits which will be read and considered together with the Region-wide Objectives and Region-wide Policies. Any provision on the same subject matter in the relevant FMU section of this Plan prevails over the relevant*

*provision within the Region-wide Objectives and Region-wide Policy sections, unless it is explicitly stated to the contrary.*

*As the FMU sections of this Plan are developed in a specific geographical area, FMU sections will not make any changes to the Region-wide Objectives or Region-wide Policies.*

**Note:** *It would be unfair if changes are made to Region-wide objectives and policies, which apply in other parts of Southland, without the involvement of those wider communities.*

- 13.2 Policy 45 is important because it sets out the relationship of the Region-wide provisions and the future provisions that will be inserted into the plan following FMU processes in respect of specific FMUs. It is important that this relationship is clear and I support the Policy.
- 13.3 As I understand it, one of the key points of Policy 45 is the retention of the ability for the provisions of an FMU process to be more or less stringent than the Region-wide provisions included in the pSWLP (but committing to not alter the Region-wide provisions by subsequent FMU plan changes). That is appropriate in my opinion because the purpose of the FMU process is to look in a more detailed way at the issues and opportunities available at the FMU level and tailor freshwater objectives and limits following the detailed information gathering, consultation and assessment as required by Part CA of the NPSFM.
- 13.4 Fish and Game has appealed this point. It seeks that the FMU provisions prevail over the Region-wide provisions unless:
- the provision in the relevant FMU Section of this plan is not<sup>3</sup> more lenient or less protective of water quality, quantity or aquatic ecology than the Region-wide Objectives and Region-wide Policies*
- 13.5 Mr McCallum Clark for the Regional Council does not support the Fish and Game relief on this point. He appears to agree with my opinion as expressed above when he states that *“the very purpose of the FMU*

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<sup>3</sup> This is the wording sought but this may be an error since the tenor of the appeal and Mr Farrell’s evidence suggests that Fish and Game seeks that the FMU provisions do not prevail over the Region-wide provisions if they are more lenient. I have assumed that is the case for the purpose of my analysis.



*processes is to develop local water quality and quantity limits and targets, and freshwater objectives, based on the identification of local values and uses”.*

- 13.6 Mr Farrell, for Fish and Game, considers<sup>4</sup> the amendment appropriate because some values are compulsory values (notably ecosystem health) for which freshwater objectives can be set now in numeric terms (as proposed by Professor Death for Fish and Game). At paragraph 164 of his EIC Mr Farrell goes on to express his uncertainty as to why there would be any need to await FMU processes before these can be included into the pSWLP. He appears to base his opinion on an understanding that there is the “scientific information” available to simply adopt these ecosystem health freshwater objectives now without the need for further process.
- 13.7 In my opinion Mr Farrell is mistaken in his assessment of how freshwater objectives and limits are to be established. It is beyond my expertise to comment on Professor Death’s technical methodology for establishing the freshwater objectives and the appropriateness of the numeric values he promotes in his evidence. (I note Mr Kitto, who is providing technical evidence for Fonterra and DairyNZ, comments on those matters.) However, from a planning perspective, I do not agree that freshwater objective and limit setting is a purely technical or “scientific” exercise (although I agree it is strongly informed by science). In my opinion Part CA of the NPSFM makes that very clear.
- 13.8 Policy CA2 is lengthy and I include it in full in Attachment 1 to this evidence. For the purpose of responding to Mr Farrell’s point, the salient part of that Policy is subsection f). That subsection sets out a list of matters that must be considered when following the prescribed process to formulate freshwater objectives (as set out in Policy CA a) to e)).
- 13.9 That list includes several matters that require consideration of information other than “scientific information”. These include:

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<sup>4</sup> See paragraph 163 of Mr Farrell’s evidence in chief

- iab. How to enable communities to provide for their economic well-being, including productive economic opportunities, while managing within limits*
- iii. the limits that would be required to achieve the freshwater objectives*
- iv. any choices between the values that the formulation of freshwater objectives and associated limits would require*
- v. any implications for resource users, people and communities arising from freshwater objectives and associated limits including implications for actions, investments, on-going management changes and any social, cultural or economic implications*
- vi. the timeframes required for achieving the objectives, including the ability of regional councils to set long timeframes for achieving targets.*

13.10 It is not clear to me that Professor Death's proposed "numeric standards" have been subject to the comprehensive process and analysis required by Part CA of the NPSFM. Nor do I understand the Region-wide receiving water standards of Appendix E of the pSWLP to have been subject to that process. Therefore, in my opinion it would be wrong to make FMU objectives and limits that are developed under the full Part CA process subservient to those earlier provisions. (I note that there is the question of whether Professor Death's numeric standards are necessary or appropriate additions to the interim framework but I set that aside for now as I consider that to be an entirely different matter, and I understand that this will be the subject of future hearings in Topic B.)

13.11 It is also important to note that the approach taken by Policy 45 does not mean that there is some risk that FMU freshwater objective and limit setting processes might allow for degradation in freshwater quality. Objectives and policies of the NPSFM ensure that cannot occur. Policy CA e) iia is particularly relevant. It states:

- ii. in those cases where a freshwater objective seeks to maintain overall water quality in accordance with Objective A2, by every regional council ensuring:
  - A. where an attribute is listed in Appendix 2, that freshwater objectives are set at least within the same attribute state as existing freshwater quality; and
  - B. where an attribute is not listed in Appendix 2, that freshwater objectives are set so that values identified under Policy CA2(b) will not be worse off when compared to existing freshwater quality; and

13.12 For those reasons, it is my opinion that the appropriate relationship between the Region-wide provisions and the FMU provisions is as included in the decisions version of Policy 45 of the pSWLP.

#### **Role of in-stream numeric standards in the interim period**

13.13 On a related matter, I do not agree with Mr Farrell that without Professor Death's numerics *"there will be no consistent region-wide approach to prevent water quality from further degradation, and as a result water quality will get worse rather than better"* (paragraph 172 of Mr Farrell's EIC).

13.14 In my opinion, that significantly overstates the role and effectiveness of setting in-stream numeric standards as a means of managing cumulative effects in the interim period. Cumulative effects (which I agree need to be managed in Southland in both the short and long term) are not effectively managed by simply including in-stream/receiving water standards. From a planning perspective, trying to apply such standards in the context of a resource consent (and in the absence of activity-specific limits) is highly problematic since in-stream standards provide no guide as to the level of discharge any individual activity should be allowed to result in (or required to reduce to). At best such standards assist in determining whether or not there is 'headroom' for additional contaminant load. In that regard I note that Professor Death has provided evidence in relation to the percentage of river reaches where water quality is currently at or exceeds his recommended in-stream standards (Table 5 para 34 of his EIC). As I understand that evidence, apart from Mataura 1 and 2 water bodies, there are reaches with 'headroom' remaining suggesting that consents for further discharges could be granted (other things being equal). Only

at that point when monitoring shows that the headroom is exhausted would those standards provide a basis to decline a consent. In my opinion that is not a sound basis to manage cumulative effects, not simply because it is doubtful that such an approach would meet the obligation to maintain water quality, but also because defining the point at which a consent authority should start to decline applications would be very difficult to do with any precision (dependent as it would be on inevitably variable monitoring information).

- 13.15 In my opinion, the best means to address cumulative effects in the interim period is to set effective and enforceable limits at the individual property scale so as to limit contaminant discharges, if necessary, to the existing discharge levels. In my opinion the pSWLP does that.
- 13.16 I agree that ultimately (i.e. through the FMU objective and limits setting process) a regional plan would include both numeric receiving water standards (“freshwater objectives” in NPSFM terminology) and property-scale limits designed to achieve those in-stream outcomes. In the interim period, however, the primary aim will be to “hold the line” (i.e. maintain water quality consistent with Council’s functions under Section 30 of the Act and Objective A2 of the NPSFM). In that regard the most important provisions of a regional plan are rules that ensure individual property scale discharges do not increase.
- 13.17 Such rules effectively address cumulative effects independent of in-stream numeric standards. In my opinion, if there is any doubt about the ability of the pSWLP to maintain water quality in the interim period before FMU processes are complete, then the appropriate response is to consider the rule and associated policy framework.
- 13.18 For the above reasons, it is my opinion that Policies 45 and 47 should not be amended as sought by Fish and Game.

#### **14. CONCLUSION**

- 14.1 The Topic A hearings address several matters relevant to Fonterra’s and DairyNZ’s interests as s274 parties. In my opinion the wording of the pSWLP is largely appropriate and ought not be amended as requested by the appellants’ relief. The two minor exceptions to this are Objectives

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13B and 18 where some minor rewording might assist clarity and future implementation.

A handwritten signature in blue ink, appearing to read "G. Willis", is centered on the page. The signature is fluid and cursive, with a large initial 'G' and a distinct 'i' at the end.

**Gerard Matthew Willis**

**15 March 2019**

## ATTACHMENT 1 - Policy CA2 of the National Policy Statement for Freshwater Management

### Policy CA2

By every regional council, through discussion with communities, including tangata whenua, applying the following processes in developing freshwater objectives for all freshwater management units:

- a) considering all national values and how they apply to local and regional circumstances;
- b) identifying the values for each freshwater management unit, which
  - i. must include the compulsory values; and
  - ii. may include any other national values or other values that the regional council considers appropriate (in either case having regard to local and regional circumstances); and
- c) identifying:
  - i. for the compulsory values or any other national value for which relevant attributes are provided in **Appendix 2**:
    - A. the attributes listed in Appendix 2 that are applicable to each value identified under Policy CA2(b) for the freshwater body type; and
    - B. any other attributes that the regional council considers appropriate for each value identified under Policy CA2(b) for the freshwater body type; and
  - iii. for any national value for which relevant attributes are not provided in **Appendix 2** or any other value, the attributes that the regional council considers appropriate for each value identified under Policy CA2(b) for the freshwater body type;
- d) for those attributes specified in Appendix 2, assigning an attribute state at or above the minimum acceptable state for that attribute;
- e) formulating freshwater objectives:
  - i. in those cases where an applicable numeric attribute state is specified in Appendix 2, in numeric terms by reference to that specified numeric attribute state; or
  - ii. in those cases where the attribute is not listed in Appendix 2, in numeric terms where practicable, otherwise in narrative terms;

