

In the Environment Court of New Zealand
Christchurch Registry

I Te Koti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-26 to 50

Under the Resource Management Act 1991 (**RMA**)

In the matter of appeals under clause 14 of Schedule 1 of the RMA relating to the proposed Southland Water and Land Plan (**pSWLP**)

Between **Gore District Council, Southland District Council and Invercargill City Council (TLAs)**

Appellants in ENV-2018-CHC-31, and section 274 party to appeals: ENV-2018-CHC-37 Southland Fish & Game Council; ENV-2018-CHC-39 Alliance Group Limited; ENV-2018-CHC-40 Federated Farmers of New Zealand; ENV-2018-CHC-50 Royal Forest and Bird Protection Society of New Zealand; ENV-2018-CHC-41 Heritage New Zealand Pouhere Taonga; ENV-2018-CHC-47 Te Rūnanga o Ngāi Tahu, Hokonui Rūnaka, Waihopai Rūnaka, Te Rūnanga o Awarua & Te Rūnanga o Oraka Aparima

And **Southland Regional Council (Environment Southland)**

Respondent

Brief of Janan Dunning prepared for Expert Conferencing – 6 & 7 August 2020

3 August 2020

Appellants' solicitor:

Michael Garbett
Anderson Lloyd
Level 10, Otago House, 477 Moray Place, Dunedin 9016
Private Bag 1959, Dunedin 9054
DX Box YX10107 Dunedin
p + 64 3 477 3973 | f + 64 3 477 3184
michael.garbett@al.nz

Introduction

- 1 My full name is Janan Saul Dunning.
- 2 I am a Principal Planner with Stantec New Zealand.
- 3 My qualifications and experience are set out in my evidence in chief dated 22 March 2019 on behalf of the Gore District Council, the Southland District Council and the Invercargill City Council (the TLAs).
- 4 I confirm that I have read the Code of Conduct for expert witnesses in the Environment Court's Practice Note 2014. I confirm that I have complied with the practice note when preparing this brief and the opinions I express are within my area of expertise and are my own unless stated otherwise. I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

Scope of brief

- 5 In the Court's Minute dated 13 July 2020 the Court directed that the Regional Council was to issue a brief prepared by Mr McCallum-Clark regarding further evidence requested by the Court¹, to assist the conferencing of planning witnesses in respect of Topic A matters in hearing appeals on the proposed Southland Water and Land Plan (pSWLP). All other planning witnesses were to file briefs responding to the same matters and if relevant, to any points raised by Mr McCallum-Clark by 3 August² if required.
- 6 I have prepared this brief in respect of the matters the Court requested further evidence on³ and matters set out in Mr McCallum-Clark's brief dated 20 July 2020 as relate to the objectives.
- 7 In preparing this brief I have read and considered the following material:
 - (a) The Court's First, Second and Third Interim Decisions
 - (b) Evidence filed on behalf of planning witnesses for the Topic A hearing
 - (c) The Court's Minutes of 29 June and 13 July 2020
 - (d) Memoranda of Counsel dated 10 July 2020

¹ Minute of the Court dated 13 July - para [22]

² Minute of the Court dated 13 July - para [27(f)]

³ Minute of the Court dated 29 June 2020 – para [3]–[10] and [12]–[19]

- (e) The National Policy Statement for Freshwater Management 2014 (amended 2017) (the **NPS-FM**)
- (f) The Southland Regional Policy Statement 2017 (**RPS**)
- (g) The appeals version of the proposed Southland Water and Land Plan (**pSWLP**)

Summary

- 8 In paragraph 8 of his brief, Mr McCallum-Clark provided a summary table setting out his understanding of the outcome of the Topic A hearings to date. He also provided proposed changes to the provisions, set out in Annexure 1 to his brief.
- 9 I have considered the consolidated tracked changes proposed in Annexure 1 of Mr McCullum-Clark's brief. I generally agree with the changes as set out in that Annexure, and subsequent discussions with other planning experts. I have set out my understanding of the agreed changes in Appendix 1 to my brief.

Objective 6

- 10 The Court amended Objective 6 in the first Interim Decision, as:

Water quality in each freshwater body will be:

- (a) *maintained where the water quality is not degraded; and*
- (b) *improved where the water quality is degraded by human activities.*

- 11 The Court's minute dated 29 June 2020 directs planning witnesses to confer and confirm the waterbodies to be referenced in Objective 6. In my view, as the reference in the objective to 'each freshwater body' encompasses all bodies of freshwater, separately listing freshwater waterbody types is unnecessary.
- 12 The NPS-FM promotes the integrated management of water and acknowledges the connection between freshwater and coastal water quality. The preamble of the NPS-FM notes that the New Zealand Coastal Policy Statement 2010 (and therefore regional coastal plans formulated to give effect to it) addresses water quality in the coastal environment, noting *'the management of coastal water and fresh water requires an integrated and consistent approach.'* Policy A1 of the NPS-FM directs regional councils to make or change regional plans to set freshwater objectives aligned with NPS-FM policies CA1 – CA4, and to set freshwater quality limits that give effect to the NPS-FM objectives while amongst other matters, having regard to *'the connections between freshwater bodies and coastal water;'*⁴.

⁴ Policy A1(a)(iii) of the NPS-FM.

- 13 Objective WQUAL.1 of the RPS aims to maintain or improve freshwater quality in accordance with objectives formulated under the NPS-FM. Objective WQUAL.2 seeks to improve water quality in *'lowland water bodies and coastal lakes, lagoons, tidal estuaries, salt marshes and coastal wetlands'*.
- 14 There is strong direction in higher order documents for the integrated management of freshwater and coastal water, acknowledging that the two are connected, consistent with the philosophy of ki uta ki tai.
- 15 Including reference to *'coastal lagoon and estuary'* as proposed by Mr McCallum-Clark⁵ is consistent with the direction of higher order documents, and in my view does not present an overlap with the provisions of the Southland Regional Coastal Plan which have a separate and distinct focus. The proposed addition will help to promote awareness of freshwater and coastal water integration, the consideration of the effects of using, developing or protecting freshwater on coastal water quality, and help to emphasise ki uta ki tai by keeping it at the forefront of decision making.
- 16 I support the addition of *'coastal lagoon and estuary'* to this objective.

Objective 9/9A

- 17 The Court merged Objective 9 and Objective 9A in the first Interim Decision, and made additional changes such that the objective reads:

The quantity of water in surface water bodies is managed so that:

- (a) *~~the~~ aquatic ecosystem health, life-supporting capacity, the values of outstanding natural features and landscapes, the natural character and historic heritage values of waterbodies and their margins are safeguarded;*
- (b) *there is integration within the freshwater quality objectives and values (including the safeguarding of human health for recreation); and*
- (c) *provided that (a) and (b) are met, surface water is sustainably managed, in accordance with Appendix K to support the reasonable needs of people and communities to provide for their economic, social and cultural wellbeing.*

- 18 The Court has asked what is meant by 'life-supporting capacity' in the context of this objective⁶. In his brief of 20 July 2020 Mr McCallum-Clark notes that in his discussions with Mr Hodson, that ecologists prefer the term 'ecosystem health',

⁵ McCallum-Clark Brief dated 20 July 2020 - para [14]

⁶ First Interim Decision – para [157] and Memoranda of Counsel 16 July 2020 – para [3].

and in the context of Objective 9/9A the phrase is 'rather overlapping'⁷ with 'life supporting capacity'. In my discussions with Ms Bennett who gave environmental science evidence at the first hearing we reached a similar conclusion, noting that the key difference between the terms is that 'life-supporting capacity' may be a slightly broader term, with 'ecosystem health' being a component of 'life-supporting capacity'.

- 19 Ms Bennett and I also noted that the objective specifically refers to aquatic ecosystem health, excluding other ecosystems that may be affected by surface water quantity such as birds that rely on river environments. Retaining both terms would require the quantity of water in surface waterbodies to be managed to safeguard aquatic ecosystem health and more broadly, the capacity of a waterbody to support non-aquatic life as well. This would align with reference in clause (a) of the objective to 'margins' which support more than just aquatic ecosystems. It also aligns with reference in Objective 2 to Te hauora o te Taiao (the health and mauri of the environment) in respect of how surface water quantity contributes to the health of the wider environment.
- 20 Accordingly, I consider that 'life-supporting capacity' should be retained in this objective.

Objective 9B

- 21 The Court redrafted Objective 9B in the first Interim Decision as:

The importance of Southland's regionally and nationally significant infrastructure is recognised and its sustainable and effective development, operation, maintenance and upgrading is enabled.

- 22 To address the Court's first question in regard to Objective 9B, I consider that reference to 'regionally and nationally significant infrastructure' should be retained, and as the definition of 'regionally significant infrastructure' includes 'critical infrastructure', the latter term is superfluous. The definitions of all three terms however should be retained in the pSWLP's glossary as all three are referenced in Policy 26A. I agree with Mr McCallum-Clark that there would be no difference in outcome from simplifying the objective in this manner.
- 23 The Court also requested clarification of the resource management issues that Objective 9B seeks to address. Chapter 15.1 of the RPS sets out the resource management issues in Southland as they relate to infrastructure, with the most relevant being Issue INF.3:

⁷ McCallum-Clark Brief dated 20 July 2020 - para [21]

Issue INF.3

The provision of infrastructure and associated activities are important to enable people and communities to provide for their social, economic and cultural wellbeing, but, where not appropriately managed, can result in significant adverse effects on land use and the environment.

- 24 In my view, Objective 9B as drafted by the Court responds to Issue INF.3 as well as the other infrastructure issues in the RPS and will therefore give effect to the RPS⁸ in respect of infrastructure matters. Sustainable and effective infrastructure is critical to the health, safety and wellbeing of people and communities and their social, cultural and economic wellbeing. It is also essential to safeguarding environmental wellbeing. Sustainable and effective infrastructure is fundamental therefore to appropriately recognising Te mana o te Wai and implementing it in accordance with ki uta ki tai.
- 25 Mr McCallum-Clark⁹ does not consider that there is justification for infrastructure to be separately addressed in the pSWLP's 'Issues' discussion from page 15 of that plan. I agree and consider that a separate section would be unnecessary and out of step with the high-level nature of that part of the pSWLP. Mr McCallum-Clark suggests some changes to the 'River and Lake Beds' section on page [17] of the pSWLP which he considers helps to emphasise the benefits to be derived from infrastructure¹⁰. Ms Kirk on behalf of the Director General of Conservation proposes some further minor changes which I consider improve the objective (Appendix A to this statement).
- 26 I consider that the changes to the introductory text proposed by Mr McCallum-Clark and Ms Kirk add value and assist plan users to understand the importance of infrastructure to achieving the purpose of the pSWLP.
- 27 I agree with Mr McCallum-Clark's view that the integration of infrastructure with land use mainly rests at RPS level, and that in respect of infrastructure, regional plan provisions are generally focussed more on managing the effects of operating infrastructure on air, soil and water, as well as protecting infrastructure from natural hazards and incompatible land use and development. In my view the integration of infrastructure with land use however is fundamental to the development and operation of 'sustainable and effective' infrastructure, and giving effect to the RPS.

⁸ As queried by the Court, Minute of 29 June Para [8]

⁹ McCallum-Clark Brief dated 20 July 2020 - para [30]

¹⁰ McCallum-Clark Brief dated 20 July 2020 – para [30]

- 28 The Court has asked¹¹ whether reference in Objective 9B to infrastructure being ‘sustainable and effective’ is concerned with both the infrastructure itself, and the manner of its development relative to the environment. I consider that the objective will be met by infrastructure that is sustainable in its design, location and operation, and that is also effective in achieving the purpose it is designed for. I agree with the Court’s conclusion¹² that a proposal would not achieve the objective if it was neither sustainable nor effective.
- 29 I do not share Mr McCallum-Clark’s concerns in respect of the potential for decision makers to refer to section 5(2) of the RMA as a result of including the term ‘sustainable’ in the Objective. Reference to the sustainable management of land and water is included in Objective 1 which along with Objective 2 and the Interpretation Statement provide adequate context for interpreting Objective 9B without reference to s5(2) of the RMA. Furthermore, it is well established in planning practice that where plans have been competently prepared under the RMA, reference to the provisions of higher order documents is not necessary, and may add no value to the decision making process.
- 30 In my opinion, the Court’s version of Objective 9B as drafted in the first Interim Decision should be retained.

Objective 13/13A/13B

- 31 I support the change to Objective 13 proposed by Mr McCallum-Clark¹³. While largely a case of reordering the objective, I consider that the proposed changes help to clarify the objective.
- 32 In my view, the objective gives effect to the relevant provisions of the RPS as noted in part in my evidence in chief¹⁴ in March 2019.

Objective 14

- 33 The Court’s first Interim Decision retained the Decisions Version of Objective 14 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.

¹¹ Minute of the Court date 29 June - para [8]

¹² First Interim Decision – para [180].

¹³ McCallum-Clark, Brief dated 20 July 2020, para [36]

¹⁴ EIC Dunning, 22 March 2019, paras [74]-[76], [79]-[80] and [85]-[86]

34 The Court has questioned the retention of the term 'life-supporting capacity' in this objective. In my view, removing the term would weaken the objective as it would then seek only to *maintain or enhance* the range and diversity of ecosystems, but not their health or quality (which are fundamental to their ability to successfully support life).

35 I consider that 'life supporting capacity' should be retained.

Objective 17

36 Objective 17 was amended in the Court's first Interim Decision with the effect of limiting the preservation of natural character values of wetlands, rivers, lakes and their margins to values that are 'of significance to the region':

Preserve the natural character values of wetlands, rivers, lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats that are of significance to the region, and protect them from inappropriate use and development.

37 Mr McCallum-Clark in his brief dated 20 July 2020 recommended deleting the Court's inserted text limiting the scope of the objective to values of regional significance¹⁵.

38 The wording recommended by Mr McCallum-Clark largely restates section 6(a) of the RMA. While I would prefer some limitation to the values to be preserved as proposed by the Court¹⁶, I accept this version of Objective 17.

Objective 18

39 The Court significantly amended Objective 18 in the first Interim Decision, by replacing (effectively) the decisions version in favour of:

All persons will demonstrate improved land use and water management practice.

40 My concern with this proposed wording is that it does not provide a reference point against which improvements in land use and water management are to be determined. It also does not make allowance for activities that perhaps already demonstrate appropriate, even best practice land use and water management, but which would still need to show improvements in order to accord with the objective.

¹⁵ McCallum-Clark, Brief dated 20 July 2020 – para [48]

¹⁶ First Interim Decision – para [279]

- 41 I note that Mr McCallum-Clark refers¹⁷ to his previously expressed view that the decisions version of the objective was intended to communicate the need for behaviour change to improve the integrated management of land and water, and thereby the quality and quantity of soil and water resources in the Southland region.
- 42 The Court indicated that Objective 18 is critically important¹⁸ to achieving the desired outcomes for water quality under the pSWLP, however Mr McCallum-Clark suggests that the behaviour change sought in natural resource use in Southland may now be appropriately conveyed through Objectives 1 and 2, and that the purpose of Objective 18 in driving behaviour change would be redundant. I agree. In my view, Objectives 1 and 2 provide clear direction in respect of the behaviour change sought through the pSWLP to improve water quality, and hence Objective 18 could be deleted without weakening the plan in that respect.
- 43 I consider that Objective 18 should be deleted.

Janan Dunning

¹⁷ McCallum-Clark, Brief dated 20 July 2020 – para [54]

¹⁸ First Interim Decision – para [281] and Minute of the Court dated 29 June 2020 - para [16].

Attachment A

The following table shows the objectives from the first Interim Decision with the Court's changes accepted. The changes proposed by Mr McCullum-Clark which I support are shown in black strike-through / underline. Proposed changes I do not support are not shown. Changes in red text are the result of discussions with other planning experts which I support.

Objective	Recommended Text
Objective 6	<p><i>Water quality in each freshwater body, <u>coastal lagoon and estuary</u> will be:</i></p> <p><i>(a) Maintained where the water quality is not degraded; and</i></p> <p><i>(b) Improved where the water quality is degraded by human activities.</i></p>
Objective 9/9A	<p><i>The quantity of water in surface water bodies is managed so that:</i></p> <p><i>(a) the aquatic ecosystem health, life-supporting capacity, the values of outstanding natural features and landscapes, the natural character and historic heritage values of waterbodies and their margins are safeguarded;</i></p> <p><i>(b) there is integration with objectives for freshwater quality (including the safeguarding of human health for recreation); and</i></p> <p><i>(c) provided that (a) and (b) are met, surface water is sustainably managed, in accordance with Appendix K to support the reasonable needs of people and communities to provide for their economic, social and cultural wellbeing.</i></p>
Objective 9B	<p>Issues: River and Lake Beds - Page 17 (third paragraph):</p> <p><i>Some of these activities can have positive effects on the natural environment, for example, bridges and culverts allow access across a river without disturbing the bed. Other activities, such as infrastructure, are important to enable people and communities to provide for their have important economic, cultural, and social wellbeing benefits, for example, erosion control works protect community assets. However, These activities in the beds of rivers and lakes can also have adverse effects on the environment, including generating sediment, disturbing habitat and preventing fish passage.</i></p> <p>Objective 9B: - retain first Interim Decision version:</p> <p><i>The importance of Southland's regionally and nationally significant infrastructure is recognised and its sustainable</i></p>

	and effective development, operation, maintenance and upgrading is enabled.
Objective 13/13A/13B	<p><u>Land and soils may be are used and developed to enable the economic, social and cultural wellbeing of the region</u> provided that:</p> <p>(a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and</p> <p>(b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and</p> <p>(c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded.</p> <p>then land and soils are used and developed to enable the economic, social and cultural wellbeing of the region.</p>
Objective 14	The range and diversity of indigenous ecosystems types and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life-supporting capacity are maintained or enhanced.
Objective 17	Preserve the natural character values of wetlands, rivers and lakes and their margins, including channel and bed form, rapids, seasonably variable flows and natural habitats that are of significance to the region , and protect them from inappropriate use and development.
Objective 18	<p>All persons will demonstrate uphold Te Mana o te Wai and recognise ki uta ki tai by demonstrating improved land use and water management practices.</p> <p><u>Delete Objective 18</u></p>