

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

UNDER THE Resource Management Act 1991 ("**Act**")
IN THE MATTER OF appeals under Clause 14 of the First Schedule of the
Act

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)

(Continued on next page)

**LEGAL SUBMISSIONS ON BEHALF OF FEDERATED FARMERS SOUTHLAND
INCORPORATED IN RESPECT OF THE COURT'S PROPOSED AMENDMENTS
TO APPENDIX N**

1 SEPTEMBER 2023

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WILKINS FARMING CO

(ENV-2018-CHC-30)

**GORE DISTRICT COUNCIL, SOUTHLAND
DISTRICT COUNCIL & INVERCARGILL CITY
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

(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, KODANSHA
TREEFARM NEW ZEALAND LIMITED,
SOUTHLAND PLANTATION FOREST COMPANY
OF NEW ZEALAND**

(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUJ 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

MAY IT PLEASE THE COURT:

1. On 1 August 2023 the Court issued its Eighth Interim Decision on the appeals against Southland Regional Council's (**SRC**) decision on the proposed Southland Water and Land Plan (**pSWLP**).¹ As part of its decision relating to appeals on Rule 78, the Court determined that:²

...Appendix N should be amended by either adding a new objective, Objective 9(c), for flood capacity of streams and rivers or by amending existing Objective 9(b), habitat management, so that natural and cultural resources within scope are safeguarded including from the adverse effects of flood conveyance maintenance work mandated by Policy 30.

2. On 25 August 2023 the Court issued a minute directing that:³

...any party opposing the court's suggested amendments to Appendix N on the grounds of scope, is to identify the provision lacking and provide succinct but comprehensive submissions

3. The purpose of these submissions is to succinctly, but comprehensively, address why Federated Farmers Southland Incorporated (**Federated Farmers**) is concerned the Court may lack the necessary scope to amend the objectives in Appendix N, by either amending Objective 9(b) or including a new Objective 9(c), in response to appeals on Rule 78.
4. Counsel understands that the Eighth Interim Decision records the Court's interim view that it has scope to make the necessary amendments to Appendix N.⁴ With respect, Federated Farmers considers this is unlikely to be the case.
5. For the purposes of these submissions, counsel adopts the law on scope set out in the legal submissions of SRC dated 12 July 2022. Additionally, the background to Rule 78, including the submissions and appeals on the same, is set out in legal submissions on behalf of Federated Farmers in respect of scope to amend Rule 78 dated 7 June 2023 at [9]-[16].

¹ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 158.

² At [114].

³ At [7(b)(ii)].

⁴ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 158 at [118].

Analysis

6. The Court has proposed to either:
- (a) amend the version of Objective 9(b) from the Sixth Interim Decision as follows:
- Habitat management:** activities in waterways (including modified watercourses), natural wetlands and their margins are managed so that in-stream, ~~and riparian habitat, wetland and cultural values, and the sustainable customary use of mahinga kai~~ are ~~not diminished, and where practicable are improved~~ safeguarded and improved progressively, including through the timing, frequency and method of carrying out flood conveyance activities.
- (b) or include a new Objective 9(c) as follows:
- Flood capacity of streams and rivers:** in-stream and riparian habitats, taonga and the sustainable customary use of mahinga kai resources of streams and rivers (including modified watercourses) are to be safeguarded through the timing, frequency, extent, and method of carrying out flood conveyance activities.
7. In relation to the option of amending the version of Objective 9(b) from the Fifth Interim Decision, it is counsel's understanding that no party took issue with the Court's drafting of Objective 9(b) in the Sixth Interim Decision. The amendment proposed in the Eighth Interim Decision significantly broadens the focus of the objective, removes the critical requirement that improvement is where practicable, and would apply to all activities in waterways. No party has sought such extensive change, either generally or via the Rule 78 appeals.
8. The primary concern with the Court's proposed change to Objective 9(b) in the Eighth Interim Decision is the requirement to safeguard and improve the specified values progressively. As no appellant sought an amendment to Appendix N as part of their appeal on Rule 78,⁵ any change to Appendix N needs to be consequential to the relief or reasons for the appellants on Rule 78.
9. Federated Farmers understands the Court's proposed amendments to Objective 9 of Appendix N are in response to "what all witnesses say is a 'paradigm shift' or 'system change' needed when thinking about [maintenance

⁵ The appellants are the Director-General of Conservation, Southland Fish and Game Council, Royal Forest and Bird Protections Society of New Zealand Inc, Te Runanga o Ngai Tahu & Others, and Heritage New Zealand.

of modified watercourses]".⁶ Federated Farmers respectfully submits that no appellant sought amendments to address such a paradigm shift or system change, nor raised the same as an issue in their notices of appeal.

10. The appellants sought amendments to protect threatened fish, taonga species and non-migratory galaxiids from the maintenance of modified water courses, and minimise the removal of gravels from the bed of modified watercourses. None of their reasons or relief could reasonably be seen as extending to safeguarding or progressively improving "in-stream, riparian habitat wetland and cultural values and the sustainable customary use of mahinga kai" per the Court's proposed change to Objective 9(b).
11. In respect of the Court's proposed Objective 9(c), there is simply no appellant that sought a new objective be included in Appendix N to manage flood capacity of streams and rivers. Rule 78 has only every related to modified watercourses and no appeal sought to extend its application beyond that type of water body.
12. Additionally, Federated Farmers submits it could not be foreseen by those who did not take a part in the appeals on Rule 78, which relates only to certain activities in modified watercourses, that the Court would direct either of these options be included in Appendix N and directed to *all* waterways, natural wetlands and their margins.
13. Federated Farmers submits that the Court's proposed amendments to Objective 9 are not at all a foreseeable consequence of the relief sought by the appellants to Rule 78.
14. It is difficult to understand how scope might exist to amend Objective 9 in Appendix N but not for Ms Ruston's rule.⁷ Ms Ruston's rule was squarely aimed at addressing the issues raised in the appellants' notices of appeal⁸ and centred around amendments to Appendix N. If there was a lack of scope to include Ms Ruston's rule, it is difficult to see how there could be scope to amend Objective 9 to Appendix N in the manner proposed.
15. Federated Farmers is, however, open to reconsidering its position in the event an appellant argues such scope exists.

⁶ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 158 at [115].

⁷ *Aratiatia Livestock Limited v Southland Regional Council* [2023] NZEnvC 158 at [98].

⁸ Joint Witness Statement (Planning), 15, 18 and 23 May 2023, Appendix 1 at [9].

Conclusion

16. For the foregoing reasons, Federated Farmers opposes the amendments to Objective 9 proposed in the Court's Eighth Interim decision, either by amending Objective 9(b) or the addition of a new Objective 9(c), on the grounds that the Court lacks scope, and therefore the necessary jurisdiction, to make those amendments.
17. Federated Farmers considers it would be within scope to amend Objective 9(b), using the version from the Sixth Interim Decision, as follows:

Habitat management: activity in waterways (including modified watercourses), natural wetlands and their margins are managed so that in-stream and riparian habitat values are not diminished, and where practicable are improved, including through the timing, frequency, extent and method of carrying out flood conveyance activities.

DATED 1 September 2023



B S Carruthers / M T N Campbell

Counsel for Federated Farmers Southland Incorporated