

In the Environment Court of New Zealand

Christchurch Registry

ENV-2018-CHC-000040

Under

the Resource Management Act 1991

In the matter of

on an appeal under clause 14 of
Schedule 1 of the Act in relation to
Decisions on the Proposed Southland
Water and Land Plan

Between

**Federated Farmers of New Zealand
(Southland Province)**

Appellant

And

Southland Regional Council

Respondent

**Notice of Southland Fish and Game Council's wish to be party to proceedings
pursuant to section 274 of the Resource Management Act 1991**

Dated this 22nd day of June 2018

To: The Registrar
Environment Court
Level 1, District Court Building
282 Durham Street
Christchurch 8013

Postal address: PO Box 2069
Christchurch 8013

1. Southland Fish and Game Council (**Fish and Game**) wish to be a party pursuant to section 274 of the Resource Management Act 1991 (**the RMA**) to the following proceedings:
 - a. the appeal against part of the decision of the Southland Regional Council (**the Council**) on the Proposed Southland Water and Land Plan (**the Proposed Plan**) by Federated Farmers of New Zealand (Southland Province) (**the Appellant**), ENV-2018-CHC-000040.

2. Fish and Game made a submission and further submission on the Proposed Southland Water and Land Plan.¹

3. Fish and Game also has an interest in these proceedings greater than the general public in that:
 - a. It is the statutory manager of sports fish and game birds within the Southland Fish and Game region under Parts 5A and 5B of the Conservation Act 1987 and Part II of the Wildlife Act 1953 and their associated regulations and notices; and
 - b. Fish and Game Councils are statutory bodies with functions under s 26Q of the Conservation Act 1987 to manage, maintain, and enhance the sports fish and game resource in the recreational interests of anglers and hunters,² including in particular:
 - i. Assessing and monitoring sports fish and game populations;³
 - ii. Assessing and monitoring condition and trend of ecosystems as habitats for sports fish and game;⁴
 - iii. To maintain and improve the sports fish and game resource,⁵ including by:
 - Maintaining and improving access;⁶ and

¹ Submitter number 752.

² Section 26Q(1) of the Conservation Act 1987.

³ Section 26Q(1)(a)(i) of the Conservation Act 1987.

⁴ Section 26Q(1)(a)(iii) of the Conservation Act 1987.

⁵ Section 26Q(1)(b) of the Conservation Act 1987.

⁶ Section 26Q(1)(b)(i) of the Conservation Act 1987.

- Undertaking works to maintain and enhance the habitat of sports fish and game;⁷
 - iv. Promoting recreation based on sports fish and game;⁸ and
 - v. In relation to planning to:
 - To represent the interests and aspirations of anglers and hunters in the statutory planning process;⁹ and
 - To advocate the interests of the Fish and Game Council, including its interests in habitats.¹⁰
4. Fish and Game is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991.
 5. Fish and Game is directly affected by an effect of the subject of the that appeal that:
 - a. Adversely affects the environment; and
 - b. Does not relate to trade competition or the effects of trade competition.
 6. Fish and Game is interested in all (or part of) the appeal.
 7. The part of the proceedings Fish and Game is interested in are:
 - a. Objective 9B;
 - b. Objective 10;
 - c. Policy 16A . Industrial and trade processes that may affect water quality;
 - d. Policy 17A . Agricultural effluent management;
 - e. Policy 26 . Renewable energy;
 - f. Policy 39 . Application of the permitted baseline;
 - g. Rule 20(a)(ii) . Farming;
 - h. Rule 35 . Discharge of agricultural effluent to land;
 - i. Rule 52A . Manapouri hydro-electric generation scheme;

⁷ Section 26Q(1)(b)(v) of the Conservation Act 1987.

⁸ Section 26Q(1)(c)(ii) of the Conservation Act 1987.

⁹ Section 26Q(1)(e)(i) of the Conservation Act 1987.

¹⁰ Section 26Q(1)(e)(vii) of the Conservation Act 1987.

- j. Appendix A . Regionally significant wetlands and sensitive waterbodies in Southland; and
 - k. Appendix E . Receiving water quality standards.
8. The particular issues and whether Fish and Game supports, opposes or conditionally opposes the relief sought are set out in the attached table . Attachment 1.
9. Fish and Game agree to participate in mediation or other alternative dispute resolution of the proceedings.

Dated this 22nd day of June 2018



Signed: Zane Moss - Manager
Southland Fish and Game Council

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Attachment 1

Provision of Proposed Southland Water and Land Plan appealed by Federated Farmers of New Zealand (Southland Province)	Relief sought by Federated Farmers of New Zealand (Southland Province)	Scope for s 274 – Southland Fish and Game Council submission point reference	Support / oppose	Reasons
Objective 9B	Delete the word enabled and replace it with recognized .	752.25 and further submissions on 48.8, 265.22, 279.9, 390.3 and 414.1	Support	Objective 9B is a new objective. It is not necessary or appropriate to enable Southland's regionally and nationally significant or critical infrastructure. Objective 9B is inconsistent with the intent of the Southland Regional Policy Statement 2017, including INF.1.
Objective 10	Reinstatement of the notified version of Objective 10.	752.26 and further submissions on 210.31 and 562.1	Support	<p>The Manapouri Power Scheme (MPS) is operated by Meridian pursuant to resource consents that allow the diversion of the greater part of the out flow from Lake Manapouri. The taking and use of water for the MPS is consumptive in terms of the Lower Waiau River. Accordingly:</p> <ol style="list-style-type: none"> 1. Flow rates / flow variability in the Lower Waiau River are highly modified and severely comprised compared to historic levels; and 2. The highly modified flow regime is largely ineffective in flushing the bed of the Lower Waiau River and removing nuisance periphyton. <p>As a consequence of the operation of the MPS the Waiau catchment is over allocated.</p>
Policy 16A	Deletion of the word minimise in Policy 16A and replacement of it with avoid .	Policy 16 . 752.60 and further submissions on	Support	The use of the term minimise in Policy 16A is inconsistent with the principle of sustainable management in Part 2 of the RMA and, because the term is not defined in the Proposed Plan, will lead to uncertainty in its application and relationship

		210.55, 265.47 and 279.24 Policy 16A was introduced through submissions. Further submission on Policy 16A (277.40)		to the overarching requirement that the quality of water be maintained.
Policy 17A	Deletion of the word % minimise +in Policy 16A and replacement of it with % avoid +	Policy 17 . 752.61 and further submissions on 17.20, 210.56, 583.16 and 759.5 Policy 17A was introduced through submissions	Support	The use of the term % minimise +in Policy 17A is inconsistent with the principle of sustainable management in Part 2 of the RMA and, because the term is not defined in the Proposed Plan, will lead to uncertainty in its application and relationship to the overarching requirement that the quality of water be maintained.
Policy 26	Insertion of the words " <u><i>While having particular regard to:</i></u> <u><i>(a) The potential to avoid, remedy or mitigate any adverse effects on the Waiau River and downstream users by increasing minimum flows and flushing flow provisions.</i></u> "	Further submissions on 24.45 and 437.14	Support	The Manapouri Power Scheme (MPS) is operated by Meridian pursuant to resource consents that allow the diversion of the greater part of out flow from Lake Manapouri. Accordingly: 1. The taking and use of water for the MPS is consumptive in terms of the Lower Waiau River; 2. Flow rates / flow variability in the Lower Waiau River are highly modified and severely comprised compared to historic levels. The highly modified and stable flow regime is largely ineffective in flushing the riverbed and removing nuisance periphyton, such as didymo.

				As a consequence of the operation of the MPS the Waiau catchment is over allocated.
Policy 39	Deletion of Policy 39 in its entirety.	752.78 and further submissions on 279.44 and 265.58	Oppose	<p>Land use activities, including farming activities, can have an adverse effect on water quality. As such, it is appropriate that Council when considering any application for resource consent for the use of land for farming activities, should consider all adverse effects of the proposed activity on water quality, whether or not the Proposed Plan permits an activity with that effect.</p> <p>The proposed deletion of Policy 39 does not support the overarching requirement of the Proposed Plan that the quality of water be maintained, nor does it give effect to Part 2 of the RMA and Part B of the NPS-FWM.</p>
Rule 20(a)(iii)	Amend Rule 20(a)(iii)(1) to provide: <i>“(1) from 1 May 2019, intensive winter grazing does not occur on either more than 15% of the area of the landholding or 100 hectares, whichever is lesser, and . . . “</i>	752.63 (Rule 20) 752.116 (Rule 23) + further submissions on Rule 20 - Farming (62.8, 210.82, 247.9, 265.83 and 279.67) and Rule 23 . Intensive winter grazing (62.10, 190.13, 247.10, 249.25, 265.86, 279.69, 622.24, 797.40 and 803.41)	Oppose	<p>The appellant does not support the maintenance of freshwater quality, which is the overarching requirement of the Proposed Plan. Intensive winter grazing can have significant adverse effects on water quality from the transport of contaminants (nutrients, sediment and microbial contaminants) to ground and surface water.</p> <p>The objective of Rule 20(a)(iii)(1) is to:</p> <ol style="list-style-type: none"> 1. Target those who are undertaking wintering on a large scale; 2. Avoid capturing those with smaller scale wintering; and 3. Capture large-scale graziers. <p>The proposed amendment erodes the application of Rule 20(a)(iii)(1) in relation to addressing the effects of large scale intensive winter grazing to maintain or improve water quality.</p>
Rule 35	Deletion of Rule 35(a)(xii), which refers to <i>“the location of any known</i>	752.18 and further	Oppose	Extensive networks of sub-surface drains (commonly known as tile drains or tiles) to help manage water logging and land

	<i>sub-surface drains with the discharge area and their outlet position and relative depth, is mapped and provided to the Southland Regional Council upon request.”</i>	submissions on 279.81, 464.20 and 797.46		drainage are found throughout Southland. ¹¹ Sub-surface drains are a significant pathway for contaminants to enter water. The location of sub-surface drains should be mapped as an appropriate tool to avoid, remedy or mitigate the effects and risks of effluent discharges to land that may enter water. This information should be provided to Southland Regional Council upon request as a mechanism to ensure that it has been undertaken.
Rule 52A(a) and (b)	<p>Deletion of Rule 52A to the effect that any applications for consent for the taking or use of water, the discharge of contaminants and the damming or diversion of water in relation to the Manapouri Power Scheme that would have been a controlled activity under Rule 52A require:</p> <ol style="list-style-type: none"> 1. Discretionary activity status if the proposal complies with all relevant conditions in Rule 52A(a) . Rule 52A(a); and 2. Non-complying activity status if the proposal does not comply with all relevant conditions in Rule 52A(a) . Rule 52A(b). <p>Deletion of all references to Rule 52A elsewhere in the Proposed Plan.</p>	<p>Submission on Rule 52 (752.145) + further submissions on Rule 52 (246.5, 279.98 and 562.14)</p> <p>Further submission on Rule 52A (562.15)</p>	Support	<p>Controlled activity status for activities associated with the MPS is inappropriate for the following reasons:</p> <ol style="list-style-type: none"> 1. As a consequence of the operation of the MPS the Waiau catchment is over allocated; 2. As a controlled activity, Council must grant consent for resource consent applications associated with the MPS under Rule 52A(a). As a controlled activity: <ol style="list-style-type: none"> a. The Proposed Plan will be unable to give effect to the NPS-FWM, including Objectives A1- A4, Policies A1 . A3, A5 and A7, Objectives B1 . B5, Policies B1, B2 and B4 . B7, Objective C1 and Policy C1. The Proposed Plan will only give effect to the NPS-FWM if the renewal of water takes and use consents relating to the MPS requires assessment as a discretionary activity (if the proposal complies with all relevant standards) or a non-complying activity (if the proposal does not comply with all relevant standards); and b. Council will be significantly hindered in its ability to reduce the volume of take in future renewal consents

¹¹ Pearson, L., *Artificial subsurface drainage in Southland – Environment Southland Technical Report (No 2015-07)*, September 2015.

				<p>irrespective of limit setting or allocations findings, including any finding that the Waiau catchment is over allocated with respect to water quantity and / or quality. As such, the existing highly modified flow regime in the Lower Waiau River as a result of the MPS may become entrenched, irrespective of its significant adverse effects; and</p> <p>3. The Council did not give sufficient weight to its own evidence and recommendations on this matter.</p> <p>It is appropriate to consider consent applications for the taking and use of water associated with the MPS by way of:</p> <ol style="list-style-type: none"> 1. Discretionary activity status under Rule 52A(a) if the proposal complies with all relevant conditions; and 2. Non-complying activity status under Rule 52A(b) if the proposal does not comply with all relevant conditions. <p>The use of the non-complying activity status for activities associated with the MPS that do not comply with the conditions of Rule 52A(a) is appropriate.</p>
Appendix A . Regionally Significant Wetlands and Sensitive Water Bodies in Southland	Reinstatement of the list of regionally significant wetlands in Appendix A as notified.	752.176 and further submissions on 108.109, 156.15, 210.97, 279.112, 437.24 and 871.6	Oppose	<p>The list of Regionally Significant Wetlands set out in Appendix A of the Proposed Plan includes:</p> <ol style="list-style-type: none"> 1. A list of wetlands adopted from Appendix B . Regionally Significant Wetlands in the Regional Water Plan for Southland, which was previously carried across from the Regional Policy Statement. This list has not been updated since 1997 and most of the wetlands within it are located on public land, including conservation land; and 2. New wetlands, which are referred to in A <i>Directory of Wetlands in New Zealand</i> or survey reports for the Protected Natural Areas Programme. These reports identify areas that have high ecological values based on their size and presence of indigenous vegetation.

				<p>All new wetlands included in Appendix A of the Proposed Plan have been assessed by Council as:</p> <ul style="list-style-type: none"> a. Meeting the test for significance using the criteria in Appendix 3 of the Proposed Southland Regional Policy Statement. If a wetland already sits in Appendix 2 of the Proposed Southland Regional Policy Statement it is automatically considered a Regionally Significant Wetland which has been through the public consultation process; and b. Having been ground truthed¹²
Appendix E	<p>Deletion of the following provision in Appendix E of the Proposed Plan:</p> <p><i>“the standard for a given parameter will not apply in a [waterbody] where . . . due to the effects of the operation of the Manapouri hydro-electric generation scheme that alters natural flows, that parameter cannot meet the standard”</i> and deletion of any other provisions in the Proposed Plan to similar effect.</p>	752.180 + further submission on 17.45, 189.47, 265.107, 279.116 and 355.15	Support	<p>The effect of changes made by the Hearing Panel to Appendix E in relation to the MPS is that it is excluded from complying with receiving water quality standards.</p> <p>As a result of the MPS:</p> <ol style="list-style-type: none"> 1. Any contaminants entering the Lower Waiau River, including from land use activities in the catchment, are present in much greater concentrations than would otherwise have been the case; and 2. There is little natural state water from Lakes Te Anau and Manapouri entering the Lower Waiau River. Conversely, prior to the MPS the majority of the flow in the Lower Waiau River was derived from out flow from Lakes Manapouri and Te Anau. As a consequence of the MPS the majority of flow in the Lower Waiau River is derived from the heavily sedimented Mararoa River. <p>The extent to which the MPS is having an adverse effect on water quality, including compliance with water quality standards in Appendix E, warrants consideration. Any</p>

¹² See Table A - set out a pages 602 . 606 of the s 42A Hearing Report on the Proposed Southland Water and Land Plan (April 2017).

				consideration of the effects of the MPS should take account of water quality standards in Appendix E that the relevant receiving waterbodies would otherwise be expected to meet and the MPS is currently compromising.
Definition of "Feed pad / lot"	Deletion of the words "sacrifice paddocks" from the definition of feed pad / feed lot	Definition introduced in response to New Rule 35A . Feed pads / lots	Oppose	The use of sacrifice paddocks is typically associated with the grazing of stock behind temporary electric fences on a combination of pasture and supplementary feed, such as silage and balage, to the extent that grazing results in significant de-vegetation of pasture. The use of sacrifice paddocks can result in the loss of contaminants, such as nutrients, e-coli and sediment, to surface water via overland flow and drainage, particularly if they are located within critical source areas. It is appropriate that the effects of this activity are controlled through the Proposed Plan to achieve the overarching goal of maintaining water quality.