

IN THE MATTER of an appeal under clause 14(1) of
the First Schedule of the Resource
Management Act 1991

AND IN THE MATTER OF the Proposed Southland Water
and Land Plan

BETWEEN **ROYAL FOREST & BIRD
PROTECTION SOCIETY OF NZ
INC**

Appellant

AND **SOUTHLAND REGIONAL
COUNCIL**

Respondent

**NOTICE PURSUANT TO SECTION 274
OF THE RESOURCE MANAGEMENT ACT 1991**

To: The Registrar
Environment Court
Christchurch

TAKE NOTICE that Federated Farmers of New Zealand (Southland) gives notice pursuant to s274 of the Resource Management Act 1991 that it wishes to appear as a party to the above proceedings.

This Notice is made upon the following grounds:

- 1 Federated Farmers of New Zealand (Southland) lodged a Submission and Further submission to the Proposed Southland Water and Land Plan to which this appeal relates and/or has an interest in these proceedings that is greater than the public generally.
- 2 Federated Farmers of New Zealand (Southland) is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
- 3 Federated Farmers of New Zealand (Southland) has an interest in all of the appeal, in particular in relation to:

Objective 6

- Federated Farmers lodged a Submission and Further Submission on this objective.
- It is our view the reference to “overall” water quality should be retained. The objective requires a broad qualifier otherwise the more specific trends of up, down or indeterminate would fail the objective.
- This approach is inconsistent with the NPS-FM Objective 2 seeking “the overall quality of fresh water within a FMU is maintained or improved....”
- We oppose the appellant’s relief sought for the objective.

Objective 9, 9A & 9B

- Federated Farmers lodged a Submission and Further Submission on objective 9, and has lodged our own appeal on these objectives.
- Objective 9 was expanded through the decisions version of the plan to three separate, but interrelated objectives, being 9, 9A, and 9B.
- Federated Farmers opposes the relief sought by the appellants with respect to reinstating the reference to recreational values and waterbody margins in the objective.
- Reintroducing recreational values to Objective 9 would result in recreational values (e.g. walking or kayaking) being prioritised above social and economic needs such as potable supply of water, or stock-water drinking.
- Objective 9 as sought by the appellant sets up a hierarchy between instream and out-of-stream values that is not consistent with Part 2 of the RMA.
- Federated Farmers opposes the relief sought.

Objective 13, 13A & 13B

- Federated Farmers lodged a Submission and Further Submission on Objective 13.
- Notified Objective 13 has been reframed as Objective 13, 13A and 13B through the decisions version of the plan. 13C has been deleted.

- For Objective 13A, Federated Farmers prefers the proposed phrasing of seeking to ‘manage to avoid irreversible degradation’ in lieu of “not irreversibly degraded” as it is challenging to quantify when a soil profile may be irreversibly degraded.
- With respect to Objective 13B, Federated Farmers opposes the suggested deletion of the word ‘significant’. The threshold sought is simply too low when the objective seeks to avoid all and any adverse effects and fails to take into account minor transient events and subsequent effects that may have negligible but detectible short term adverse effects. Retaining the term ‘significant’ provides a suitable limit for discharges to avoid that is both practical and achievable.
- For Objective 13B, Federated Farmers opposes the suggested addition of the word “recreation” in terms of effects to be avoided from discharges. The term is simply too open and subjective for applying an objective relating for an activity to avoid. Only criteria that can be quantitatively measured should be applied to this objective.
- We oppose the proposed reinstatement and rewording of what was objective 13C. The intent of this objective is sufficiently captured in Objective 14. The proposed phrasing captures land use and values that have little relationship with water or soil quality in terms of cultural or historical heritage values. Federated Farmers also opposes the term “safe guarded” in the appellant’s appeal phrasing for this provision.
- Overall, Federated Farmers opposes the suggested reframing of the appeal for Objective 13.

Objective 14

- Federated Farmers lodged a Submission and Further Submission on this objective,
- We oppose the relief sought by the appellant on this objective as it is overly complex and difficult to quantify. The approach of the appellant would establish a litigious framework without certainty.
- The relief sought by the appellant has already been sufficiently addressed in both the Southland RPS and District Plans.
- We oppose the appeal on this matter.

Objective 17

- Federated Farmers lodged a Submission and Further Submission on this objective.
- We oppose the relief sought by the appellant as the additional term ‘preserved’ is difficult to quantify in terms of habitat quality which encompasses non-significant indigenous vegetation and habitats.
- The relief sought by the appellant is complex to quantify when a natural habitat is, or is not being preserved. The wording provides an additional and unacceptable level of uncertainty for land users.

- It is not appropriate to address this issue in lieu of the NPS for Biodiversity, which is currently being developed.
- Federated Farmers opposes the relief sought by the appellant.

Policies 4-12 Physiographics

- Federated Farmers lodged a Submission and Further Submission on these policies. We also appealed Policies 4,5,9,10,11 and 12.
- We oppose the relief sought by the appellant for policies 4,9,10 and 11. It is socially and economically irresponsible to suggest dairy farming, intensive winter grazing or cultivation be a prohibited activity in these areas. This position underpins a complete disregard for the rural Southland community.
- These policies direct and control activities rather than manage effects. There is no relationship to managing the discharge of contaminants within these physiographic zones.
- Section 104 of the RMA sets out matters for the Consent Authority to consider when deciding on a resource consent application, of which the provisions of the plan are one matter to have regard to.
- The physiographic science does not itself confirm a causal link between water quality with respect to each physiographic zone. The science highlights key risk pathways rather than whether water quality will or will not be degraded irrespective of land use.
- Federated Farmers opposes the relief sought by the appellant and prefers the relief sought in their own appeal.

Policy 13

- Federated Farmers lodged a Submission and Further Submission on this policy.
- Forest & Bird seek to remove any recognition of the contribution the primary sector brings to the social, cultural and economic wellbeing of the Southland community.
- Federated Farmers opposes the relief sought.

Policy 15 – Maintaining and Improving Water Quality

- Federated Farmers lodged a Submission and Further Submission on this policy. This policy was deleted in lieu of Policy 15A.
- The appellant seeks to reinstate and amend the wording of the policy, which we consider unnecessary and inconsistent with the broad direction taken within the Plan.
- We oppose the relief sought by appellant.

Policy 15A – Maintain Water Quality Where Standards Are Met

- Federated Farmers lodged a Submission and Further Submission on Policy 15.
- The appellant seeks to remove references to “remedy” or “mitigate”. The resultant policy will therefore only refer to the need to avoid adverse effects.

- We oppose the use of the word “avoid” in this context, as a consequence of the Supreme Court’s decision in the King Salmon case¹. The term “avoid” now essentially means the activity is prohibited. The relief sought is overly blunt and fails to consider social and economic wellbeings. This approach is too restrictive and could have implications on land use, both in the urban and rural setting.
- We oppose the relief sought by the appellant.

Policy 15B – Improve Water Quality Where Standards Are Not Met

- Federated Farmers lodged a Submission and Further Submission on Policy 15.
- The appellant seeks to remove references to “remedy” or “mitigate”. The resultant policy will therefore only refer to the need to ‘avoid’ adverse effects.
- We oppose the use of the word “avoid” in this context as a consequence of the Supreme Court’s decision in the King Salmon case², where avoid essentially means the activity is prohibited. This approach is too restrictive and could have a consequence on land use, both in the urban and rural setting.
- We oppose the relief sought by the appellant.

Policy 15C – Maintaining & Improving Water Quality After FMU process

- Federated Farmers lodged a Submission and Further Submission on Policy 15.
- The appellant seeks to remove references to non-regulatory methods despite acknowledging both regulatory and non-regulatory methods are possible. We consider that both regulatory and non-regulatory methods have their place, and as such oppose the removal of the reference to non-regulatory methods.
- We also oppose the additional phrase “it has been allocated beyond a limit or” in the policy. Naturally some waterbodies will be considered over allocated after the FMU process is complete, such as the Waiau River where nutrient assimilative capacity has been lost due to approximately 95% of the catchment water inputs being utilised in one water take and lost from the catchment entirely.
- We oppose the relief sought by the appellant.

Policy 16 – Farming Activities That Affect Water Quality

- Federated Farmers lodged a Submission and Further Submission on Policy 16.
- The appellant seeks to remove terms that provide planners some direction without being absolute. They seek to remove the term ‘discouraging’ and ‘generally not granting consent...’ and prefer more certainty in phrasing. We consider the phrasing as it stands provides planners a clear indication of the policy direction and consider any more stringent phrasing will in effect seek to decline any consent.
- We oppose the use of the word “avoid” in this context as a consequence of the Supreme Court’s decision in the King Salmon case, where ‘avoid’ essentially means the activity is prohibited.

¹ Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38

² Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38

- The relief sought by the appellant is not consistent with sections 5, 6 or 7 of the RMA, and demonstrates a lack of understanding of how the suggested policy would affect the social and economic wellbeing of Southland's communities.
- We oppose the relief sought by the appellant.

Policy 16A –

- Federated Farmers lodged a Submission and Further Submission on Policy 16.
- We appealed Policy 16A. In that appeal we sought the phrasing “~~Minimise~~ Avoid the adverse environmental effects....”. That was an oversight as Federated Farmers intended the sentence to read “ ~~Minimise~~ Avoid significant adverse effects....” This will be corrected for the record at the earliest possible opportunity.
- The appellant seeks to avoid adverse effects outright.
- We oppose the use of the word “avoid” in this context as a consequence of the Supreme Court's decision in the King Salmon case, where ‘avoid’ essentially means the activity is prohibited.
- The relief sought by the appellant is not consistent with sections 5, 6 or 7 of the RMA, and demonstrates a lack of understanding of how the suggested policy would affect the social and economic wellbeing of Southland's communities.
- We oppose the relief sought by the appellant.

Policy 17 – Agricultural Effluent Management

- Federated Farmers lodged a Submission and Further Submission on Policy 17.
- The appellant seeks to remove references to “significant” adverse effects arising from effluent management. The resultant policy will effectively prohibit any adverse effect, however minor or transient, which creates uncertainty due to challenges to being able to quantify any adverse effect. The suggested approach by the appellant would make economically viable farming in Southland unachievable.
- We oppose the relief sought.

Policy 17A – Community Sewerage Schemes and On-Site Wastewater Schemes

- Federated Farmers lodged a Submission and Further Submission on Policy 17. We also appealed policy 17A.
- Federated Farmers considers all activities and their effects on the environment should be treated equitably.
- We consider the term ‘minimise adverse effects on water quality’ in the policy should be aligned with the phrasing for Policy 17 which states ‘avoid significant adverse effects on water quality’.
- Federated Farmers prefers the relief sought in our appeal, but have an interest in the appeal on this policy.

Policy 18 – Stock Exclusion from Waterbodies

- Federated Farmers lodged a Submission and Further Submission on Policy 18. We also appealed the policy.

- An ephemeral waterbody relates solely to rainfall or snowmelt and differentiates from a river or intermittent waterbody. In effect, most ephemeral waterbodies are depressions in the topography where water collects.
- The appellant states ephemeral rivers have high ecological values and therefore should be incorporated into the policy. This is simply not true; many ephemeral waterbodies enjoy the same ecological values as any paddock sown in exotic grasses.
- Federated Farmers prefers the relief sought in our appeal, and we oppose the appeal by the appellant.

Policy 20 – Management of Water Resources

- Federated Farmers lodged a Submission and Further Submission on Policy 20.
- We disagree that reference to primary production should not be attributed recognition. The primary sector in Southland directly contributes more to the regional GDP than in any other region on a percentage basis, and should not be discounted simply because it does not align with the appellant's philosophy.
- Federated Farmers opposes the appeal point.

Policy 28 – Structures and Bed Disturbance in Rivers

- Federated Farmers lodged a Submission and Further Submission on Policy 28.
- We disagree the terms 'remedy and mitigate' should be removed. All activities and addition of structures have some effects on the values set out in the policy – for example how can a bridge or culvert (or their installation) avoid (effectively being prohibit) any effects on water quality or landscape values. The proposed wording by the appellant is ideologically driven and lacks logic when applied in a real-world setting.
- Federated Farmers opposes the relief sought.

Policy 29 – Provide for the Extraction of Gravel

- Federated Farmers lodged a Further Submission on Policy 29.
- We consider the reliance of solely the term "avoid" to be overly blunt and lacks certainty.
- Federated Farmers opposes this appeal point.

Policy 39 – Application of the Permitted Baseline

- Federated Farmers lodged a Submission and Further Submission on Policy 39. We also appealed this policy.
- F&B seek to remove the ability for consent authorities to apply the permitted baseline when assessing resource consent. This approach is directly at odds with the RMA, specifically:
 - (1) Section 104(2) states: "When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect."

- (2) Section 95D(b) provides that a consent authority when deciding if adverse effects will be minor "may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect."
- (3) Section 95E(2) provides that the consent authority may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect.
- Federated Farmers is strongly opposed to the relief sought by the appellant and considers such an approach is at odds with the RMA and case law that recognise the permitted baseline
 - We prefer the relief sought in our own appeal where the permitted baseline is applied equitably to all activities.

Policy 46 – Identified FMU's

- Federated Farmers lodged a Further Submission on Policy 46.
- We consider the FMU's are appropriately designed at a catchment level. There is no need to alter the model and introduce Waituna as a separate FMU.
- This policy relates to identified FMU's. As Waituna is not an identified FMU, it does not qualify for inclusion.
- Federated Farmers opposes the relief sought.

Rule 13 – Discharge from Installed Subsurface Systems

- Federated Farmers lodged a Submission and Further Submission on this rule. We also appealed this provision.
- The appellants consider the rule will not maintain or improve water quality and seek to link it to Appendix E. We consider this approach unnecessary as the proposed rules will improve land use outputs.
- The rule however does not contemplate the rare flushing necessary to ensure the network is performing properly.
- Federated Farmers opposes the relief sought by F&B, and prefers the relief sought in our appeal.

Rule 14 – Discharge of Fertiliser

- Federated Farmers lodged a Submission and Further Submission on this rule.
- The appellants suggest an arbitrary setback without any scientific rationale. Modern deliver systems are highly accurate and a 10m setback is both crude and unnecessary.
- We disagree that fertiliser should not be applied to ephemeral rivers, as many are swale-like depressions that comprise part of a typical farming operation. We do not accept ephemeral rivers necessarily, or always have high ecological values, and note they are quite distinct to intermittent waterbodies as set out in the Act.
- Federated Farmers opposes the relief sought by F&B.

Rule 20 – Farming

- Federated Farmers lodged a Submission and Further Submission on this rule. We also appealed the provision.
- We disagree that farming should not occur within ephemeral areas, as many are swale-like depressions that comprise part of a typical farming operation. These depressions where snow-melt or precipitation does collect are not typically known for their high values, and often comprise only exotic pasture species.
- There is little rationale, with the exception of taking a punitive approach to farming, to amend (d) to be a non-complying activity for an activity that does not meet the performance standards.
- We oppose the proposal to increase setbacks by an unspecified distance.
- Federated Farmers opposes the relief sought and prefer our own appeal relief.

Rule 24 – Incidental Discharges from Farming

- Federated Farmers lodged a Submission and Further Submission on this rule.
- We consider the proposed amendments by the appellant to be overly prescriptive and impractical as almost all nutrient pathways have been captured by other rules.
- Federated Farmers opposes the relief sought by F&B.

Rule 25 – Cultivation on Sloping Ground

- Federated Farmers lodged a Submission and Further Submission on this rule. We also appealed this provision.
- It is not appropriate to apply the rule to ephemeral waterbodies as they frequently occur within depressions on paddocks that comprise exotic pasture grasses. We do not accept ephemeral waterbodies necessarily, or always have high ecological values.
- We oppose the proposed matter for discretion to consider “the risks to the preservation of the natural character of...” as the term “preservation” lacks certainty and is unable to be quantified.
- We are opposed to the proposed changes to slopes and setbacks and consider they are arbitrary and are not an efficient use of the land resource.
- Federated Farmers opposes the relief sought, and prefers the relief sought in our appeal.

Rule 52 & 52A – Water abstraction/ damming in the Waiau and Manapouri Hydro Electric Scheme

- Federated Farmers lodged a Submission and Further Submission on this rule. We also appealed this provision.
- For Rule 52, we oppose the relief sought by the appellant that all abstraction, diversion and damming not captured in Rules 49,50, & 51 and takes authorised under s14(3) should be non-complying. The non-complying status is not appropriate and has little consideration of the impact to the economic and social wellbeing of the primary sector.

- Federated Farmers (Southland) share a similar concern with the appellants about Rule 52A. However, we do not believe it is appropriate to delete the Rule entirely. We prefer the relief sought in our appeal, where any replacement permits are assessed a discretionary activity.
- Overall, Federated Farmers opposes the relief sought by F&B, and prefer the relief sought in our appeal.

Rule 70 – Stock Exclusion from Waterways

- Federated Farmers lodged a Submission and Further Submission on this rule.
- It is not appropriate to apply the rule to ephemeral waterbodies as they frequently occur within depressions on paddocks that comprise exotic pasture grasses. We do not accept ephemeral waterbodies necessarily or always have high ecological values.
- We oppose the suggested performance standard for permitted activities with respect to ephemeral waterbodies.
- We oppose the increased setbacks proposed by the appellant. They are arbitrary and lack scientific rationale.
- We oppose the suggested amendments to Table 1.
- It is not appropriate to apply a non-complying status to excluding stock from waterbodies. The appellant suggests a non-complying status will indicate stock access to water is not acceptable. It is our view, that a discretionary status will clearly set out what is required, while putting aside emotive considerations.
- Federated Farmers opposes the relief.

Rule 78 – Weed and Sediment Removal for Drainage Purposes

- Federated Farmers lodged a Submission and Further Submission on this rule.
- We oppose the suggested amendment that “the gravel removed shall not comprise more than 5% of the total sediment removed”. This amendment lacks certainty and will be impossible to quantify. Does the appellant anticipate landowners will feed the material through a screen to determine the ratio and will the landowner need to cease and obtain a consent if they determine 6% of the material comprises gravels?
- The appellant considers this rule does not adequately protect threatened native fish. We consider the greatest threat to native fish species are trout decimating native galaxiid populations, with impunity from criticism, rather than the occasional cleaning of waterways.
- Federated Farmers opposes the relief sought.

4. Federated Farmers of New Zealand (Southland) agrees to attend mediation and/or dispute resolution in regard to these proceedings.

Dated the 22nd day June 2018



Darryl Sycamore
Senior Policy Advisor

Address for Service:
Federated Farmers of New Zealand (Inc)
PO Box 5242
Dunedin

Mobile: 027 242 0177
Email: dsycamore@fedfarm.org.nz