

In the Environment Court of New Zealand

Christchurch Registry

ENV-2018-CHC-000047

Under:

the Resource Management Act 1991

In the matter of:

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

And:

the Proposed Southland Water and Land Plan

Between

Te Runanga O Ngai Tahu & others

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 Te Runanga O Ngai Tahu & others (**the Appellant**)- ENV-2018-CHC-000047.

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 the proceedings.
 7. Without limiting the above, Fish and Game is interested in the following particular issues:
 - a. General . water quality provisions;
 - b. General . ~~excluding~~ ephemeral rivers;
 - c. Objective 2;
 - d. Objective 6;
 - e. Objective 9A;
 - f. Objective 9B;
 - g. Objective 10;
 - h. Objective 13;
 - i. Objective 18;

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. Policy 4 - Alpine;
 - k. Policy 5 . Central Plains;
 - l. Policy 9 . Old Maitaura;
 - m. Policy 10 . Oxidising;
 - n. Policy 11 . Peat wetlands;
 - o. Policy 12 - Riverine;
 - p. Policy 13 . Management of land use activities and discharges;
 - q. Policy 15A . Maintain water quality where standards met;
 - r. Policy 15B . Improve water quality where standards are not met;
 - s. Policy 15C . Maintaining and improving water quality after FMU processes;
 - t. Policy 16 . Farming activities that affect water quality;
 - u. Policy 20 . Management of water resources;
 - v. Policy 25 . Priority takes;
 - w. Policy 26 . Renewable energy;
 - x. Policy 26A - Infrastructure;
 - y. Policy 29 . Provide for the extraction of gravel;
 - z. Policy 39A . Integrated management;
 - aa. Rule 5 . Discharges to surface waterbodies;
 - bb. Rule 52A . Manapouri hydro-electric generation scheme;
 - cc. Rule 74 - Wetlands;
 - dd. Rule 78 . Weed and sediment removal for drainage maintenance;
 - ee. Appendix A . Regionally significant wetlands and sensitive waterbodies in Southland;
 - ff. Appendix E . Receiving water quality standards; and
 - gg. Deleted Appendix Q . Sensitive waterbodies.
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

Address for service for Southland Fish and Game Council:

Contact: Ben Farrell
Physical address: Level 2, 36 Shotover Street
Queenstown, 9300
Postal address: PO Box 95
Queenstown 9300
Email: ben@jea.co.nz
Telephone: 021 767 622

Contact persons at Southland Fish and Game Council:

Name: Zane Moss . Manager
Phone: (03) 215 9117 or 021 244 5384
Email: Zane@southlandfishgame.co.nz
or
Name: Jacob Smyth . Resource Management Officer
Phone: (03) 215 9117 or 021 280 0755
Email: Jacob@southlandfishgame.co.nz

Attachment 1

Provision of Proposed Southland Water and Land Plan appealed by Te Runanga O Ngai Tahu & others	Relief sought by Te Runanga O Ngai Tahu & others	Scope for s 274 – Southland Fish and Game Council submission point reference	Support / oppose	Reasons
General . water quality provisions in proposed plan	Maintain and improve water quality be established from when the Regional Water Plan for Southland became operative inn January 2010.	752.7 + further submissions on 210.3, 265.8, 265.9, 279.1 and 749.5 752.22 + further submissions on 17.3, 48.5, 265.19, 288.15, 330.1 and 661.6	Support	The Proposed Plan should maintain or improve water quality from the date the existing Regional Water Plan for Southland was made operative, not the date at which the review has occurred.
General . reference to excluding ephemeral rivers+throughout the Proposed Plan, including from Objective 16	Delete text <i>excluding ephemeral rivers</i> ” wherever it occurs in the proposed plan.	Rule 20 - 752.112, Rule 21 - 752.113, Rule 22 - 752.115 and Rule 23 - 752.116, 752.227, Rule 25 752.118 + further submissions on Rule 20 (62.8, 210.82, 247.9, 265.83 and 279.67), Rule 21 (265.84 and 803.39), Rule 22 (62.9, 210.84, 265.85279.68 and	Support	The definition of ephemeral waterbody is not sufficiently clear to ensure that farming activities will not adversely impact on water quality in rivers. Ephemeral water bodies are critical source areas for contaminants that are excluded from policies and rules, principally with respect to land use activities, that provide for the implementation of good management practice. Removing ephemeral rivers these from provisions managing water means land use activities, including farming activities, may adversely impact on water quality.

		622.23), Rule 23 (62.10, 190.13, 247.10, 249.25, 265.86, 279.69, 622.24, 797.40 and 803.41) and Rule 25 (62.11, 190.14, 210.86, 265.88 and 279.41)		
Objective 2	Remove specific reference to %primary production+	752.18 + further submission on 265.15	Support	The activities of primary production are captured by the reference to %economic, social and cultural wellbeing+. Specific mention of primary production is not necessary.
Objective 6	Remove reference to %overall+	752.22 + further submissions on 17.3, 48.5, 265.19, 288.15, 330.1 and 661.6	Support	Overall as used in objective 6 provides no certainty that the proposed plan will maintain or improve water quality. The addition of %overall+removes the certainty that the intent of the proposed plan is that the quality of all freshwater and water in estuaries and coastal lagoons in Southland are to be maintained or improved.
New Objective 9A	Reinstate reference to managing first the needs of the surface waterbody for aquatic ecosystem health, life supporting capacity, outstanding natural features and landscapes and natural character.	752.53 + further submissions on 48.8, 265.22, 279.9, 390.3 and 414.1	Support	Splitting Objective 9 into three Objectives (Objectives 9, 9A and 9B) has diminished the intent and clarity of the Objective, including the primacy given to safeguarding the quantity of water so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes, recreational values, and natural character are first met. Using the term %sustainably managed+in Policy 9A does not achieve the same outcome and will have an adverse effect on water bodies.
New Objective 9B	Delete new objective 9B	752.53 + further submissions on 48.8, 265.22, 279.9, 390.3 and 414.1	Support	The objective and definitions provide insufficient clarity as to what constitutes effective development, operation, maintenance and upgrading of %regionally significant infrastructure%. It is also uncertain as to what is intended to be captured by the rules that is not defined as %critical+infrastructure or captured by Objective 10.

Objective 10	Delete the text %hydro-electric schemes, including the+and %and their structures are considered a part of the existing environment+	752.26 + further submissions on 210.31 and 562.1	Support	Not all hydro-schemes within Southland are nationally important, nor should existing structures be considered a part of the existing environment, particularly where these structures are operating below what would be considered current best management practice.
Objective 13	Reject changes that create three separate Objectives (Objectives 13, 13A and 13B)	752.29 + further submissions on 210.34, 277.14, 279.12 and 803.11	Support	The amendment does not recognise that enabling use and development should only occur if it does not adversely affect ecosystems
Objective 18	Retain Objective 18 as notified	752.34 + further s submissions on 17.7, 48.10, 265.30, 277.16, 661.10, 759.12 and 803.12	Support	Objective 18 as redrafted provides little certainty as to what Good Management Practice will achieve. Fish and Game supports the Section 42A report which provides that: <i>“Objective 18 recognises an overall aim of the pSWLP to encourage good practice by all water and land users in the region, irrespective of activity status under the pSWLP”.</i>
Policy 4	Delete text %decision makers generally not granting+and replace with %strongly discouraging the granting of+	752.49 + further submissions on 210.43, 265.35, 319.1, 797,11 and 803.13	Support	Fish and Game supports Ng i Tahu’s Notice of Appeal seeking that water quality is maintained or improved from the date the existing Regional Water Plan for Southland was made operative in 2010. %Generally not granting+does not provide certainty that the line will be held against further water quality degradation.
Policies 5, 9, 10, 11 and 12	Delete the following text from new clause 3 of each policy %decision makers generally not granting+and replace with %strongly discouraging the granting of+	Policy 5 . 752.49 + further submissions on 210.44, 265.36, 319.2, 797.12 and 803.14 Policy 9 . 752.53 + further submissions on 265.40, 319.6, 797.16 and	Support	Fish and Game supports Ng i Tahu’s Notice of Appeal seeking that water quality is maintained or improved from the date the existing Regional Water Plan for Southland was made operative in 2010. %Generally not granting+does not provide certainty that the line will be held against further water quality degradation.

		<p>803.18</p> <p>Policy 10 . 752.54 + further submissions on 210.49, 265.41, 319.7, 797.17 and 803.19</p> <p>Policy 11 . 752.55 + further submissions on 210.50, 265.42, 319.8, 797.18 and 803.20</p> <p>Policy 12 . 752.56 + further submissions on 210.51, 265.43, 319.9, 797.19 and 803.21</p>		
Policy 13	Retain Policy 13 as notified.	752.57 + further submissions on 17.17, 265.44, 749.45 and 895.25	Support	Policy 13 has been redrafted to be development focused, where the original policy as notified focused on protection. The activities of primary production are captured by the references to economic, social and cultural wellbeing. Specific mention of primary production is not necessary. As drafted the policy does not recognise other uses that water may have. Policy 13(2) does little more than introduce policies 15A, 15B and 15C.
Policy 15 and new Policies 15A, 15B and 15C	Retain Policy 15 as proposed by the s42A report. Delete new Policies 15A, 15B and 15C.	752.59 + further submission on 17.19	Support	<p>Policies 15A and 15B do not provide for maintaining or improving water quality as it diminishes the overall intent of by introducing the terms where practicable and mitigating into the policies.</p> <p>The intent or purpose of policy 15C is uncertain, as following the establishment of FMU freshwater objectives, this will provide direction on how specific water bodies are maintained or improved.</p>

Policy 16	Policy 16 1(a) . amend to read strongly discouraging . Delete Policy 16(1)(c) and (3).	752.60 + further submissions on 210.55, 265.47 and 279.24	Support	<p>Policy 16(1)(a) relates to regionally significant water bodies. Discouraging the establishment of new dairy farming of cows is weaker in intent and suggests a less active role of the Proposed Plan in achieving the outcome than strongly discouraging.</p> <p>The intent of Policy 16(1)(c) is uncertain, as provisions relevant to how freshwater is managed for farming and intensive winter grazing can be included within the Proposed Plan following the establishment of Freshwater Objectives and Limits.</p> <p>Policy 16(3) is unnecessary, but could set an expectation that, while a decision maker has flexibility to aggregate consents, consent durations of more than 5 years will occur in most instances.</p>
Policy 20(1A)	Delete the text including for primary production in Policy 20(1A).	752.63 + further submissions on 172.9, 210.58 and 277.27	Support	The activities of primary production are captured by the reference to economic, social and cultural wellbeing. Specific mention is not necessary.
Policy 25	Delete Policy 25(2a) or otherwise clarify meaning of industries that process perishable foods .	752.68 + further submission on 749.54	Support	The extent of operations and the reasonable water abstractions for industries that process perishable foods is uncertain.
Policy 26	Delete the text we need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading .	Further submissions on 24.45 and 437.14	Support	The additional wording gives a preference to new generation activities where the policy was originally intended to apply to existing renewable resources.
Policy 26A	Delete Policy 26A in its entirety.	Further submissions on 24.45, 330.10 and 437.14	Support	The objective and definitions provide insufficient clarity as to what constitutes effective development, operation, maintenance and upgrading of regionally significant infrastructure, and what is not already covered by the definition of critical infrastructure or captured by Objective 10.

Policy 29(1)	Delete the text requires the restoration of and replace with maintains or enhances .	752.70 + further submissions on 81.16, 145.2, 207.2, 210.62, 279.35, 288.22, 342.5, 749.56 and 792.10	Support	In some areas restoration is insufficient, and enhancement of the habitat is necessary.
Policy 39A	Delete the words When considering the cumulative effects of land use and discharge activities within whole catchments, consider . Replace with the words to improve .	752.79 + further submissions on 172.12 and 279.45	Support	The wording to improve recognises the need to improve integrated management of freshwater management with the use of land, and the interactions of them with ecosystems.
Rule 5(a)(3)	Delete the text from Rule 5(a)(3) that provides except for discharges from a territorial authority reticulated Storm water or wastewater system .	752.97 + further submissions on 17.25, 249.16, 265.74, 279.60, 390.21, 562.11, 622.14 and 750.9	Support	<p>Rule 5(a)(3) provides for discharges from territorial authority reticulated storm water or wastewater to water that contain raw sewage as a discretionary activity rather than a non-complying activity, which negates the significance of the activity. This approach is weaker than that set out in the operative Regional Water Plan, which provides that the discharge of raw sewage, foul water or untreated agricultural water is a prohibited activity,¹¹ and is inconsistent with the overarching requirement that the quality of water be maintained.</p> <p>The discharge of untreated / raw sewage to water has ecological, recreational, aesthetic and human health impacts and is culturally offensive. It is not acceptable to use surface water, such as rivers and lakes, for this type of waste.</p>
Rule 20(aa)	Delete Rule 20(aa) in its entirety.	Rule 20 - 752.112, Rule 21 - 752.113, Rule 22 - 752.115 and Rule 23 - 752.116 + further submissions on	Support	The definition of ephemeral waterbody is not sufficiently clear to ensure that contaminants from farming activities will not impact on water quality.

¹¹ See Rule 14 . Discharge of raw sewage, foul water or untreated agricultural effluent in the Regional Water Plan for Southland

		Rule 20 (62.8, 210.82, 247.9, 265.83 and 279.67), Rule 21 (265.84 and 803.39), Rule 22 (62.9, 210.84, 265.85279.68 and 622.23) and Rule 23 (62.10, 190.13, 247.10, 249.25, 265.86, 279.69, 622.24, 797.40 and 803.41).		
Rule 52A	Redraft Rule 52A so it is a restricted discretionary activity.	Submission on Rule 52 (752.145) + further submissions on Rule 52 (246.5, 279.98 and 562.14) Further submission on Rule 52A (562.15)	Support	Controlled activity status in Rule 52A for activities associated with the MPS is inappropriate for the following reasons: 1. It is arguable that as a consequence of the operation of the MPS the Waiau catchment is over allocated with respect to water quantity in terms of the NPS-FWM; 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: 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 irrespective of limit

				<p>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> <p>1. Restricted discretionary activity status under Rule 52A(a) if the proposal complies with all relevant conditions; and</p> <p>2. Non-complying activity status under Rule 52A(b) if the proposal does not comply with all relevant conditions.</p>
Rule 74	Amend Rule 74 to include: <u>Wetlands</u> d) <u>The draining of any natural wetland is a prohibited activity.</u>	752.167 + further submissions on 108.103, 125.5, 265.104, 279.106, 797.51 and 897.2	Support	The number and extent of natural wetlands in the Southland region are significantly reduced, and the drainage of these should be prohibited.
Rule 74(ab)	Delete Rule 74(ab)	752.167 + further submissions on 108.103, 125.5, 265.104, 279.106, 797.51 and 897.2	Support	Rule 74(ab) provides little certainty that peat wetlands will be protected
Rule 78	Add a new clause: <u>(xv) No activity in relation to drainage maintenance shall significantly adversely affect the habitat or health of any taonga species as identified in Appendix M.</u>	752.171 + further submissions on 108.107, 210.95, 279.109 and 797.52	Support	Rule 78 applies to modified watercourses, but does not recognise or protect taonga species or their habitat that may be found or established within the watercourse.

Appendix A and deleted Appendix Q	Ensure those sensitive water bodies not already covered in Appendix A into the list this includes adding New Estuary and Waituna Lagoon, Lake Te Anau, Lake Manapouri, and Waimatuku Estuary.	Appendix A - 752.176 + further submissions on 108.109, 156.15, 210.97, 279.112, 437.24 and 871.6 Appendix Q . 752.193 + further submissions on 108.112, 210.101, 279.126 and 811.26	Support	Neither the decision nor the Section 42A report appears to have sought the deletion of Sensitive Water Bodies, which were previously set out in Appendix Q, from the Proposed Plan. Rather, it appears that they sought to merge Appendices A and Q together. It appears therefore that many of the sensitive water bodies in Appendix Q, such as Lakes Te Anau and Manapouri, have not been incorporated into Appendix A. This needs to be rectified.
Appendix E	Delete the following statement from Appendix E due to the effects of the operation of the Manapouri hydro-electric generation scheme that alters natural flows, that parameter cannot be applied:	752.180 + further submissions 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 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.</p>