

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under clause 14(1) of the First Schedule

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)

WILKINS FARMING CO
(ENV-2018-CHC-30)

(Continued next page)

**STATEMENT OF EVIDENCE OF DARRYL SYCAMORE
ON BEHALF OF FEDERATED FARMERS OF NEW ZEALAND INC
15 FEBRUARY 2019**

Judicial Officer: Judge Borthwick and Judge Hassan

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**GORE DISTRICT COUNCIL,
SOUTHLAND DISTRICT COUNCIL &
INVERCARGILL DISTRICT COUNCIL**
(ENV-2018-CHC-31)

DAIRY NZ 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,
SOUTHLAND PLANTATION FOREST
COMPANY OF NZ**
(ENV-2018-CHC-46)

**TE RUNANGA O NGAI TAHU, HOKONUI
RUNAKA, WAIHOPI RUNAKA, TE**

**RUNAKA 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

Introduction

1. My full name is Darryl Allan Sycamore.
2. I am a Senior Policy Advisor for Federated Farmers of New Zealand (Federated Farmers), and have held this position since early 2017.
3. I hold the qualification of Bachelor of Science from the University of Otago. I am a Member of the New Zealand Planning Institute, and the current chairman of the Otago Branch. I have 15 years experience as a resource management practitioner, covering roles with the Dunedin City Council, Otago Regional Council and the West Coast Regional Council.
4. Prior to my employment with Federated Farmers, I was employed as a Planner for over nine years at the Dunedin City Council (DCC). At the Otago Regional Council, I was employed for three years as a Resource Consents Officer, initially considering all forms of consent applications before specialising as the principal officer processing consents for the management and remediation of activities associated with the mining industry, municipal landfills and contaminated sites. At the West Coast Regional Council I was employed for two years as a Compliance Monitoring Officer, dealing primarily with dairy farm management and all aspects of the coal and gold mining industry.
5. I am also Chairman of the Guardians of Lakes Manapouri, Monowai and Te Anau (the Guardians). The Guardians make recommendations to the Minister of Conservation on matters

arising from the environmental, ecological and social effects associated with hydro-electric power generation in Lakes Te Anau-Manapouri and Monowai. The Guardians oversee the implementation of management plans that guide the operation of those schemes by Meridian Energy Limited and Pioneer Generation Limited.

6. For the purpose of clarity, I was not associated with, or employed by Federated Farmers of New Zealand at the time the submission or further submissions were lodged on behalf of Federated Farmers.

Code of Conduct

7. I confirm I have read the Code of Conduct for expert witnesses as set out in Environment Court Practice Note 2014. I have complied with the Code of Conduct when preparing my written statement of evidence and will do so when I give oral evidence.
8. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence. The reasons and justifications for those opinions are also set out in my evidence.
9. Other than where I state I am relying on the evidence of another person, my evidence is within my area of expertise. While evidence presented during the hearings on behalf of the Federated Farmers Southland members comprised a degree of advocacy, my written statement is informed by the expectations of the Code of Conduct. I have not omitted to consider any material facts known to me that might alter or detract from the opinions that I express.

10. With respect to analysis of objectives, policy or rules that relate specifically to Meridian Energy Limited (MEL) interests, I will not be presenting any planning evidence in support of the Federated Farmers appeal, due to a potential conflict of interest given my role on the Guardians. Any evidence on provisions specific to MEL will be provided by an alternate and independent planning expert.

Scope of Evidence

11. I have been asked by Federated Farmers Southland to provide evidence in relation to the Proposed Southland Water & Land Plan (the pSLWP) appeals. My evidence addresses the issues from the Federated Farmers appeal, contained in Topic A :
- Objective 9B
 - Policy 1
 - The physiographic zone policies.
12. In preparing this evidence, I have read and considered the following documents:
- (a) The pSLWP notification and decisions versions
 - (b) The s32 report
 - (c) The s42A hearing report and reply report
 - (d) The decision report of the hearing commissioners
 - (e) The appeals and s274 notices
 - (f) The National Policy Statement for Freshwater Management 2014 (NPS-FM as amended in 2017) and the National Policy Statement for Renewable Electricity Generation 2011
 - (g) The Southland Regional Policy Statement 2017 (SRPS)
 - (h) The Council's Initial Planning Statement, and
 - (i) The Councils Evidence¹ of 14 December 2018.

¹ Being the evidence of Roger Hodson, Nicholas Ward, Rebecca Robertson, Dr Kelvin Lloyd, Ewen Rodway, Dr Antonius Snelder; and Matthew McCallum-Clark.

OBJECTIVE 9B

13. Objective 9B is a new objective relating to the value of significant infrastructure and gives effect to a number of higher order documents², and reads:

The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is enabled.

14. Federated Farmers recognises the region includes existing infrastructure that is considered significant. Federated Farmers sought that Objective 9(B) read as:

The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is recognised.

15. Having considered the Council evidence and notices from appellants and interested parties (in particular by the Oil Companies), the relief sought by Federated Farmers was problematic. In my opinion the evidence by Fish & Game³ offers a more balanced policy framework for the reasons set out below.

16. The relief Fish & Game seeks for Objective 9B reads as:

The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is recognised and provided for.

17. The phrase 'recognise and provide for' adopts a sufficiently strong policy direction to highlight the importance of the matters that are to be recognised and provided for. To recognise and provide for something requires the decision maker to both recognise a factor, and then make provision for the factor. Some action is required, as one does not 'provide for' a factor by considering and then

² The RMA, NSPREGS, NPSET and SRPS.

³ Appeal by Southland Fish and Game Council on the Proposed Southland Water and Land Plan, Page 13

discarding it.⁴ In this case, horizontal infrastructure of Territorial Authorities, State Highways and suchlike should be afforded a sufficiently strong policy framework.

18. It is my view, the relief sought by Fish & Game is appropriate in this context. While it is important to provide enabling policy to infrastructure that is critical to the community's wellbeing, the planning framework should not be so enabling such that the degree of effects is lost in the strongly directive phrasing.
19. Objective INF.1 of the SRPS states that:
Southland's regionally significant, nationally significant and critical infrastructure is secure, operates efficiently, and is appropriately integrated with land use activities and the environment.
20. The explanatory text to the Objective notes the term 'appropriately' is used in this objective to recognise that the extent to which adverse effects may be avoided, remedied, mitigated, or where appropriate, any such measures are volunteered by the resource user, offset or compensated for, may vary depending on the particular circumstances of each particular case.
21. Policy INF.2 of the SRPS relating to infrastructure and the environment states where practicable, infrastructure should avoid, remedy or mitigate the adverse effects on the environment. In determining the practicability of avoiding, remedying, or mitigating adverse effects on the environment, a number of matters should be taken into account.
22. The explanatory text notes that while "public infrastructure provides communities with essential services, this infrastructure should not unnecessarily detract from the environment in which it is placed", and the "assessments of environmental effects should have regard to all matters of national significance, including the significance of the infrastructure activity itself."

⁴ King Salmon, at [26].

23. I note the evidence of Mr McCallum-Clark⁵ who sees “little merit in changing the objective from enabling to recognising and provided for”. I disagree. In my opinion such a directive “enabling” objective may skew the assessment balance too heavily in favour of the infrastructure owner, which may result in potentially unintended or perverse outcomes⁶.
24. In my view, the relief of some appellants seeking the retention of the term “enabled” as opposed to Federated Farmers relief of “recognised and provided for” is simply too strong in language. It provides disproportionate leverage to the balancing assessment when assessing the adverse effects of an activity. The threshold is simply too high.
25. The adverse effects of an activity must be more than significant to cross the threshold whereby the consenting authority can rightly decline a proposal when Objective 9B states that regionally significant infrastructure is to be enabled.
26. The term “enabled” is too blunt and confers an at-all-costs mentality. The language could negate the ability for the consent authority to carry out a reasoned balancing exercise when assessing resource consent applications.

⁵ Paragraph 115 EIC

⁶For example, the recent decision by Environment Southland (APP-20168843) by Invercargill City Council authorising the discharge of water and contaminants into surface water bodies from the reticulated storm-water system. Given the ongoing discharges of human waste to water during rain events (being a prohibited activity), in my opinion granting consent for a 15-year term of consent was too permissive and not consistent with other discharge permit decisions within the region. The Council promoted the essential nature of that infrastructure and by adopting objectives that are “enabling”, could provide additional leverage in a similar situation in future.

POLICY 1

27. Policy 1 reads:

Enable papatipu rūnanga to effectively undertake their kaitiaki responsibilities in freshwater and land management through Environment Southland:

- 1. providing copies of all applications that may affect a Statutory Acknowledgement area, tōpuni, nohoanga, mātaimai or taiāpure to Te Rūnanga o Ngāi Tahu and the relevant papatipu rūnanga;*
- 2. identifying Ngāi Tahu interests in freshwater and associated ecosystems in Southland/Murihiku;*
- 3. reflect Ngāi Tahu values and interests in the management of and decision-making on freshwater and freshwater ecosystems in Southland/Murihiku, consistent with the Charter of Understanding.*

28. Federated Farmers opposed Policy 1(3) seeking the wording “*and interests*” be deleted because those “*interests*” could be interpreted to include commercial interests, which may give rise to greater weighting in resource management decisions.

29. The submissions during the hearing process were based on member concerns which directly informed the Federated Farmers appeal on this provision.

30. Having read the evidence of Mr McCallum-Clark, I agree that the NPS-FM sets out the language which informs this policy. That includes the term “*and interests*” in decision making processes related to freshwater and freshwater ecosystems. This in turn gives effect to the Act and Te Tiriti.

31. As such, it is my professional opinion that this policy is appropriately phrased, as it gives effect to the intent of those higher order documents.

32. I understand Federated Farmers will not pursue this appeal point further.

PHYSIOGRAPHIC ZONE POLICIES

Policy 4.3

33. The appeal by Federated Farmers seeks the deletion of Policies 4(3), 5(3), 9(3), 10(3), 11(3) and 12(3). The prescriptive direction to decision makers set out in the last limb to these policies was considered inappropriate as they direct and control activities rather than manage effects.
34. However, the appeal did not seek to delete the prohibition limb of the Policy 4.3, which in my opinion is appropriate and should be retained. Policy 4.3 (Alpine) would then read:

Policy 4.3 – Dairy farming and intensive winter grazing is a prohibited activity.

Other policies

35. Good policy governing land use must strike an appropriate balance against all four wellbeings of the Act while being equally informed by robust science. The Southland Physiographic Zones project was a significant investment by Environment Southland to quantify regional variation in water quality outcomes associated with different landscapes. It is described it as “A landscape scale classification that broadly stratifies land in Southland in terms of land use risks to water quality”⁷.
36. Some areas with poorer water quality were subject to similar land use and farming activities as adjacent areas where water quality was significantly better⁸. The model suggested differing geology and key nutrient pathways directly correlated with water quality.

⁷ Evidence of Dr Snelder, paragraph 13

⁸ Rissmann, C., 2012. The Extent of Nitrate in Southland Groundwaters: Regional 5 Year Median (2007–2012 (June)). Environment Southland Technical Report, Environment Southland, Invercargill, New Zealand.

37. Federated Farmers considered the implications of the physiographic model as drafted in the decisions version of the proposed plan. I understand that while the premise underpinning the model was broadly accepted, there remained concern in how the physiographics were implemented and the Federated Farmers subsequently appealed a number of policies⁹.
38. The physiographic zones do not indicate the water quality with respect to each physiographic zone but highlight the key risk pathways at a landscape scale.

Decision making

39. Section 67 of the Act sets out what a Regional Plan must include. It reads:
- 67 Contents of regional plans*
- (1) A regional plan must state—*
- (a) the objectives for the region; and*
- (b) the policies to implement the objectives; and*
- (c) the rules (if any) to implement the policies.*
40. Section 67(1)(b) provides policies must implement the objectives.
41. In my opinion the policies - 4(3), 5(3), 9(3), 10(3), 11(3) and 12(3) - do not need to rely on the directive limb instructing the decision maker, to give effect to the objectives. The policies (as proposed by Federated Farmers) as a whole¹⁰ will implement the objectives (in particular, Objectives 1,2 and 6). The physiographic policies will provide zone specific guidance to inform the decision maker of the key risks, and assist, along with other policies in the proposed plan, in determining what management approach is appropriate to implement the objectives.

⁹ Policy 4.3 (Alpine zone), 5.3 (Central plains zone), 9.3 Old Mataura zone), 10.3 (Oxidising zone), 11.3 (Peat wetland zone) and 12.3 (Riverine zone).

¹⁰ As per the relief sought in the Appeal by Federated Farmers and any subsequent amendments in this evidence.

42. Applying the pSWLP holistically, in conjunction with an appropriate analysis of the higher order documents, will provide sufficient support to ensure a well-informed and robust decision-making process. The intent of the pSWLP to “hold the line” will be achieved by the policy framework without the directive component of the policies.
43. The Act is future focussed. Isolating only dairy farming and intensive winter grazing as part of a directive policy to the exclusion of all other activities is not good resource management practice. Other activities such as mining, forestry, or additional urban development could result in adverse effects to freshwater over the life of the pSWLP.
44. Fettering the decision maker in respect to only two land use activities, (dairying and intensive winter grazing) does not give effect to the SRPS. The SRPS¹¹ does not limit activities of concern to dairy farming or intensive winter grazing.
45. The narrative to the SRPS goes on to say¹²:
- “Where possible, an effects-based approach is the preferred approach to managing water quality. However, where it is known that land use activities are causing non-point source discharges that are affecting water quality and which need to be managed, it is appropriate to focus on managing the activities themselves.”*
46. I agree with the SRPS narrative that an effects-based approach is appropriate to focus on managing water quality. This does not however translate to directing decision makers to a predetermined outcome before a full balanced assessment against the relevant documents are carried out.
47. To have a policy strongly directing a decision maker on the outcome of a consent before they can carry out a broad assessment against

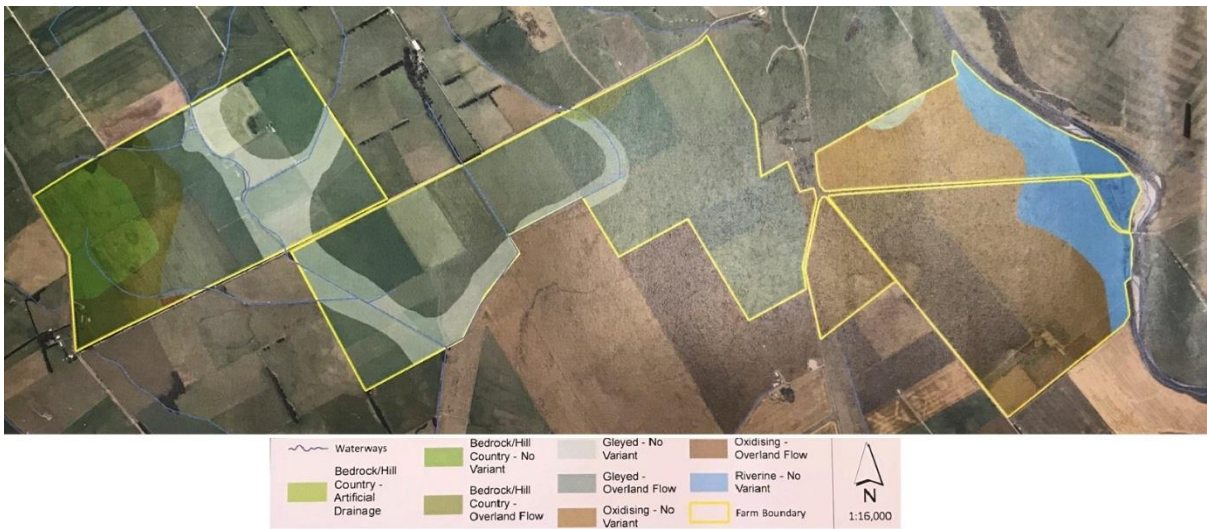
¹¹ Part A- Water Quality page 30 and 31

¹² Part A- Water Quality page 32

the Part 2 considerations, or sections 104(1)(a) and (b), effectively denies a landowner the ability to demonstrate the suitability of the activity on a specific site. Such an approach could also hinder the ability to adopt new technologies or other innovation that manage nutrient losses, despite the underlying physiographic zone. This is contrary to the enabling provisions of the Act which is effects based rather than hierarchical preferring some land use activities over others.

48. While Policy 12A allows for the use of improved site specific physiographic zone information for decision makers, there may be times where that information has not been/is not able to be obtained. Further, the adoption of new technology used on-farm may reduce nutrient losses irrespective of the key nutrient loss pathway specific to a physiographic zone i.e. the key nutrient loss pathway may still remain however the new technology may reduce losses via that pathway.
49. Exactly how decision makers will carry out a balancing exercise during the assessment process is likely to be further complicated by the addition of the third limb to these policies. For those farms in Southland that comprise a mosaic of physiographic zones, the decision maker may apply to the directive nature of these policies inconsistently.
50. Some property owners have land that cuts across numerous physiographic zones. One landowner I am aware of¹³ has 7 different zones within the farm boundary. These are set out below (where the bold yellow lines demarcate the farm boundaries).

¹³ Having viewed documentation issued by Environment Southland that includes the image used above.



51. Resource consent applications should be assessed on their individual merits, to allow contemplation of stocking numbers, nutrient budgets and innovation to manage any effects on the receiving environment. To have a policy with such strongly directive language for two specific activities only, provides little assistance to consenting officers or landowners.
52. The limitations on the physiographic model are set out in the evidence in chief of Dr Snelder for the Council¹⁴. In his evidence Dr Snelder states the “*use of physiographic zones needs to be cognisant of the three limitation*”¹⁵. He concludes in the same paragraph by stating “*I do not consider it would be appropriate to specify actions associated with managing water quality risks for individual properties based purely on that properties members of a physiographic zone*”.
53. There remains a duty of care on Council to ensure any technical work relied on is accurate and any burden should not be on farmers to ‘prove’ where the science or Plan is inaccurate.
54. The Southland Physiographics project is a sound platform for understanding and explaining the spatial controls over hydrochemistry outcomes in Southland at a landscape level. It is exactly as the authors note though, a useful conceptual model

¹⁴ Paragraphs 43-51, Statement of Evidence of Dr Snelder, 14 December 2018

¹⁵ P.56 EIC Dr Snelder

indicating the dominant transport mechanism for contaminants at the landscape-scale.

55. Given the potential for error in defining the extent of each zone, it would be unjust, and contrary to the evidence of Council experts for a consenting officer to rely on the strongly directive policy framework which is (given the language) likely to colour their decision-making process.
56. It is my opinion, landowners should be provided the ability to demonstrate the suitability of a land use activity where the decision maker is not in the first instance strongly encouraged to close their mind to the appropriateness of a consent application. This is aligned with the Wilkins Farming Company¹⁶ who seek amendments to the Policies to focus on nutrient losses from activities, rather than land use activity per se.
57. The policies already provide guidance to decision makers to rely upon. There are policies for each separate zone, with their individual characteristics, so it may be apparent from the type of consent application and where it is located e.g. central plains, the key transport pathways are artificial drainage and deep drainage, which may be more accommodating of certain activities.
58. I consider that Policies 4(3), 5(3), 9(3), 10(3), 11(3) and 12(3) relating to directing decision makers to generally not grant a consent should be deleted, as these policies specify the exact actions that Council experts advise against, and are both inconsistent with the underlying enabling principles of the Act and do not give effect to the SRPS.



Darryl Sycamore
Senior Policy Advisor
Federated Farmers of New Zealand Inc

¹⁶ ENV-2018-CHC-30