

IN THE MATTER of the Resource Management Act 1991
AND of appeals under Clause 14 of the First Schedule
of the Act

BETWEEN **SOUTHLAND FISH AND GAME COUNCIL**
Appellant

BETWEEN **ROYAL FOREST AND BIRD PROTECTION**
SOCIETY OF NEW ZEALAND INCORPORATED
Appellant

AND **SOUTHLAND REGIONAL COUNCIL**
Respondent

**REBUTTAL EVIDENCE OF BEN FARRELL ON BEHALF OF THE
SOUTHLAND FISH AND GAME COUNCIL AND THE ROYAL FOREST AND
BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

Dated: 15 May 2019

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INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1 My full name is Ben Farrell. I am an Independent Planning Consultant based in Queenstown. I am owner and director of Cue Environmental Limited. My qualifications and experience are set out in my Evidence in Chief dated 17 February 2019.

CODE OF CONDUCT

- 2 I have read the Environment Court's Code of Conduct for Expert Witnesses 2014, and I agree to comply with it. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. I have specified where my opinion is based on limited or partial information and identified any assumptions I have made in forming my opinions.

SCOPE OF EVIDENCE

- 3 My evidence provides a response to matters arising from the evidence of other experts which I have not already addressed in my EIC dated 17 February or my s.274 party evidence dated 1 March 2019. I have reviewed all evidence prepared by other witnesses in these appeals on the pSWLP, and the two Joint Witness Statements, May 2019:
 - “JWS (Rivers & Wetlands)”; and
 - “JWS (Lakes and Estuaries)”.
- 4 This rebuttal evidence deals with Objectives 6, 7, 9, 9A, 9B, 13, 13A, 13B, 17, and 18, and Policies 45, 46, 47 (FMU Policies).

EVIDENCE

OBJECTIVE 6

- 5 I remain of the opinion the term “overall” should be deleted.
- 6 I am of the opinion it is not appropriate to maintain water quality at an FMU scale. I

agree with Mr Willis that the FMU scale is too broad.¹

- 7 The JWS (Rivers & Wetlands) records that the freshwater scientists agreed that, in the application of this Objective in the plan, requiring consideration of overall water quality could be problematic for reasons including (but not limited to) spatial aggregating across contaminants and sites (in essence an ‘overs and unders’ approach)².
- 8 I agree with the evidence of various witnesses³ that the outcome being sought in Objective 6 should not be absolute in respect of preventing some localised change in water quality (such as within a zone of reasonable mixing or to capture natural variability in water quality). As notified, Objective 6 did not include the term overall and I understand it was intended to capture this issue. However, the word “overall” has the potential to be interpreted as meaning that one water body can be degraded, and can continue to be further degraded, so long as another is commensurately improved. In my opinion such an outcome would not give effect to the RPS or the NSPFM (primarily because it will not result in either the maintenance, or improvement, of degraded water bodies).
- 9 Given the uncertainty it could be appropriate to:
 - 9.1 Introduce an interpretation provision to clarify the intended meaning of “maintaining water quality”;
 - 9.2 Amend the definition of Reasonable Mixing Zone (“RMZ”); or
 - 9.3 Introduce an assessment methodology (in the form of a new method with assessment matters).
- 10 Any of the above options could be introduced to stipulate circumstances where such degradation can occur, while still meeting the outcome intended by Objective 6.
- 11 The freshwater scientists agreed definitions for “maintenance of water quality” and “enhancement or improvement of water quality”.⁴ The definition of “maintenance of water quality” in the JWS (Rivers & Wetlands) includes the consideration “within an accepted range of variability”.

¹ Willis at [7.13].

² I acknowledge Ms Bennett and Mr Kitto remain concerned at removing the term overall, including for the reasons stated in Ms Bennett’s evidence.

³ Including Willis [7], Kyle s274 at [3], Sycamore 15 March at [32]-[50], Bennett at [22]-[30], Ruston at [31]-[46], Whyte at [11]-[26], Dunning at [13]-[27].

⁴ At [18] of the JWS (Rivers & Wetlands).

- 12 The amendments suggested above could help facilitate the “flexibility” sought by Mr Willis⁵ and to a limited extent Ms Bennett’s concerns.⁶ This approach could also be used for the monitoring, assessment and reporting issues that Mr Willis has raised in his evidence (regarding interpretation of water quality monitoring data),⁷ however I do not consider that is necessary.
- 13 To clarify, I consider the ‘spatial flexibility’ desired in the evidence of Mr Willis⁸ and Ms Bennett⁹ should not capture the whole of an individual waterbody system. This scale of an entire waterbody system is too broad and would effectively allow an ‘overs and unders’ approach. I observe the FMU process will allow parties to identify more localised or bespoke water quality parameters.
- 14 In addition, in relation to the concerns raised by Ms Bennett giving evidence for the Territorial Authorities, there is a potential avenue through NPSFM Policy CA3(b) and CB(3)(c) for existing infrastructure to be given special dispensation (by inclusion in the NPSFM Appendix 3).

OBJECTIVE 7

- 15 In my opinion the Objective should be amended to send strong and clear signal that, until such time as freshwater quality objectives and limits are established under the FMU process, there is not to be any further decline of the quality of freshwater water within the Region.
- 16 The RPS provisions (relating to water quality) seek to halt the decline of the quality of freshwater ahead of freshwater objectives and limits being established under the FMU process.
- 17 The freshwater science experts state that changes need to be made to stressors affecting ecosystem health and appropriate thresholds established, in the interim, otherwise maintenance (or improvement) of water quality may not occur.¹⁰
- 18 There is also statutory policy direction in the NPSFM, NZCPS, and RPS for improving water quality ahead of the FMU process, namely where improvement is required to safeguard the life-supporting capacity of water and related ecosystems

⁵ Willis at [7.8].

⁶ Bennet at [28].

⁷ Willis EIC at [7.7] – [7.9].

⁸ Willis at [7.8(c)].

⁹ Bennett at [28].

¹⁰ JWS (Rivers & Wetlands) at [83] and [84].

or safeguard the health of people and communities.

- 19 I acknowledge this plan preparation process cannot (and is not intended to) be used in place of the FMU process, and that there is comprehensive statutory policy direction for improving water quality under the provisions governing the FMU process. However, it is very conceivable that the processes could be protracted and remain unresolved for the next decade, and that water quality will continue to degrade during this interim period.
- 20 I query the appropriateness of the use of the term “overallocation” in Objective 7 if “overallocation” cannot be determined or implemented until after the FMU process is complete. I observe Policy 16 intentionally employs the term “overallocated” and states that where existing water quality is already degraded to the point of being overallocated then applications for new, or to further intensify, will “generally not be granted”.
- 21 The freshwater science experts have identified and summarised the waterbodies they consider are already degraded or at risk¹¹. The freshwater science experts who participated in expert conferencing regarding lakes did not similarly identify degraded water bodies, but I am unsure whether this means lakes are not degraded, or simply that the experts did not consider that issue at conferencing.
- 22 I do not agree with other witnesses¹² that the suite of objectives and policies, in their current form, will maintain the quality of freshwater during this interim period. I cannot see how these provisions can effectively work to halt the decline of freshwater quality, particularly if an “overall” ‘overs and unders’ approach is applied.
- 23 I acknowledge Mr Willis’s point¹³ that the relief sought by Fish & Game could create inconsistencies in its application to discharge consent applications prior to FMU processes. However, this concern is likely to be overstated, given the developments discussed in the next paragraph. In any event, given the state of water quality in the Region I consider some level of inconsistency is justifiable. Any inconsistencies would be better (in my opinion) than the *status quo* which is allowing ongoing degradation of water quality.
- 24 More relevantly, the freshwater scientists¹⁴ have agreed that interim limits can and should be developed for ecosystem and human health. These limits would help

¹¹ At [50]-[78] and Appendices 1-2 in the JWS (Rivers & Wetlands) and at [42]-[47] (in relation to estuaries) in the JWS (Lakes and Estuaries)

¹² Including Ms Taylor at [2], Dunning at [31], Kyle 15 March at [47]-[59].

¹³ JWS (Rivers & Wetlands) at [8.8] - [8.9].

¹⁴ JWS (Rivers and Wetlands) at [21].

particularise the “life supporting capacity” reference in Policy A4 NPSFM to have some further definition and application on individual resource consent application processes. Policy A4 already requires this analysis through consideration of cumulative adverse effects (as does section 70 RMA in its reference to “significant adverse effects on aquatic life”). I note the national guidance document in relation to Policy A4 states: ¹⁵

The process and timeframes for setting freshwater objectives and limits under the NPS may be significant for some regions. Policy A4 allows regional councils to consider water quality matters in consent decisions in the interim, to ensure the objectives of the NPS for water quality can still be achieved. ...

...The requirement for consent authorities to have regard to the listed matters is no stronger than the requirement of section 104 of the RMA to have regard to a number of matters, including any actual or potential effects on the environment, and the NPS. This interim policy therefore draws further attention to specific matters related to water quality, and the connection between land use and water quality over and above the more general considerations required by the RMA.

- 25 I consider the RMA and the NPSFM support Fish & Game’s argument that if there is opportunity to avoid further overallocation prior to FMU processes then that should be done. Numeric water quality parameters as proposed in the JWS would assist in preventing inconsistent approaches.
- 26 For diffuse discharges that do not require resource consents¹⁶, I acknowledge the shortcomings with “in-stream” standards discussed by Willis [at 13.14] in that in-stream standards may not provide guidance as to the level of discharge any individual activity should be allowed to result in (or be required to reduce to). I consider it is more appropriate in these circumstances (particularly in water bodies already identified by the freshwater scientists as degraded) to manage or prohibit the land use activities which are expected to result in further or ongoing degradation of water quality until bespoke freshwater objectives and limits are established in accordance with the FMU processes. Activities that are continuing to degrade an already degraded water body are unlikely to be consistent with section 70, and should not be permitted activities.

POLICIES 45 AND 47 (FMU POLICIES)

- 27 Mr Willis raises concerns regarding provisions, particularly Policies 45 and 47, ‘pre-

¹⁵ Page 47 of Ministry for the Environment. 2017. *A Guide to the National Policy Statement for Freshwater Management 2014 (as amended 2017)*. Wellington: Ministry for the Environment.

¹⁶ Where the directives in NPSFM Policy A4 do not apply, and where it could be difficult to apply numeric outcomes to individual land use activities.

empting' the FMU process.¹⁷ My position remains that it is more appropriate to provide an interim planning framework that applies numeric outcomes defining degradation in relation to ecosystem health and human health across the Region. The FMU processes (which I agree are more comprehensive and engaging of various parties in addition to scientists) will provide a more robust, localised, and finer grain approach as is required by the NSPFM. This will include consideration of other values beyond the national compulsory values.

- 28 As discussed above, the freshwater scientists agreed that additional methods for assessing water quality degradation (in relation to ecosystem and human health) should be considered prior to the limit setting process being completed, and that more evidence on this work (which I understand would test and expand the numeric outcomes discussed in Professor Death's EIC) can be undertaken over the next few months.¹⁸

OBJECTIVES 9 AND 9A

- 29 In my EIC I said it was appropriate to safeguard human health and incorporate "recreational values" into the list of matters to be considered in these Objectives. I maintain it is appropriate for human health to be safeguarded. I also maintain it is appropriate for recreation values to be specifically listed in Objective 9 and 9A. However, with reference to the evidence of other planners¹⁹, I agree it is more appropriate for recreation values to be maintained or enhanced rather than "safeguarded". I recommend Objective 9 and 9A be amended to state:

The quantity of water in surface waterbodies managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes, and natural character of waterbodies and their margins are safeguarded, and recreational values are maintained or enhanced.

OBJECTIVES 13, 13A, 13B

- 30 In my EIC I said it was appropriate for recreation values to be included in the suite of 'qualifiers' (in Objective 13B) and for the ecosystem qualifier to focus on indigenous biological diversity of ecosystems (not just diversity), and for these to be safeguarded (as opposed to being maintained and enhanced).

¹⁷ Section 13 of Mr Willis's evidence.

¹⁸ JWS (Rivers and Wetlands) at [41]-[49].

¹⁹ Including Willis at par 9, Sycamore 15 March at pars 51-82, Ruston at pars 60-73, and Dunning throughout pars 34-87

- 31 I maintain it is appropriate for recreation values to be superficially referred to in this suite of objectives. However, as above, I agree it appropriate for the Objective to seek to maintain and enhance recreation values, not safeguard them.
- 32 I maintain it is appropriate for the reference to indigenous biological diversity values to be included. I do not agree with Ms Taylor²⁰ that “habitat diversity” should be provided for without reference to “indigenous biodiversity”. This is because reference to “habitat diversity” could inadvertently promote the retention or growth of species which can threaten indigenous biodiversity values, including pest species. In my view the focus should be on promoting indigenous biodiversity values.
- 33 Upon consideration of the evidence of other planners²¹, I support retaining the notified version of Objective 13 subject to inclusion of recreation values and safeguarding of “indigenous biological values”, as follows:

Enable the use and development of land and soils, provided:

a) the quantity, quality and structure of soil resources are maintained and managed to avoid irreversible degradation from ~~not irreversibly degraded through~~ land use activities and ~~or~~ discharges to land;

b) The discharge of contaminants to land or water that, by itself or in combination with other discharges, have ~~significant or cumulative~~ adverse effects on ~~that would compromise~~ human health are avoided; ~~and~~

c) adverse effects on ecosystems (including indigenous biological diversity and integrity of habitats), ~~amenity values, recreation and cultural values and historic heritage values~~ are avoided, remedied or mitigated to ensure these values are safeguarded ~~maintained or~~ enhanced; and

d) adverse effects on ~~ecosystems (including indigenous biological diversity and integrity of habitats)~~, amenity values, recreation values, and cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained or enhanced.

- 34 In addition to the above, as a ‘plan drafting’ issue, it may be appropriate to replace the term “significant” (used above in clause b) with a term that is more definable/certain (such as the above amendment recommended by Mr Willis). I am raising this because I am aware this plan drafting issue has recently arising from a concurrent Court process I am currently involved in (where the Court raised concern about the use of generic wording such as “*significant*” and “*no*”

²⁰ At [3.6].

²¹ Including Taylor at [3], Wills at [10], Kyle EIC at [3], Kyle 274 at [5], Sycamore 1 March at [21]-[31], and 15 March at [97]-[112], Bennett at [31]-[32], Ruston at [60]-[73], Kirk at [58]-[64], Dunning at [72]-[87].

more than minor").²²

OBJECTIVE 18

- 35 I agree with Mr Willis that further definition of what GMP's are is an issue that will need to be specifically addressed in subsequent hearing processes.²³

CONCLUSION

- 36 Reviewing the evidence, the planning experts hold differences of opinion on the appropriateness and effectiveness of the *interim* planning framework (being the period ahead of the FMU process being completed). In my opinion it is appropriate for the objectives and supporting policy framework to be amended to send a strong and clear statement of intent that, during this *interim* period:

36.1 There is not to be any further decline of the quality of freshwater water within the Region; and

36.2 There is a need to begin improving water quality where water quality is clearly degraded as identified by the freshwater experts.

- 37 I conclude the provisions subject to Topic A should be amended as set out in my EIC and it would be appropriate to:

37.1 Introduce definitions, schedules, and/or assessment matters to clarify:

- a) The meaning of maintenance of water quality;
- b) The meaning of improvement of water quality; and
- c) Enabling identification of waterbodies which are degraded.

37.2 Combine and amend Objectives 9 and 9A as follows:

The quantity of water in surface waterbodies is managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features and landscapes, and natural character of waterbodies and their margins are safeguarded, and recreational values are maintained or enhanced.

²² In the context of appeals on the Queenstown Lakes Proposed District Plan.

²³ Willis at [11.9].

37.3 Combine and amend Objectives 13, 13A and 13B as follows, and replace the term “significant” (in clause b) with a defined or more certain term, or for a Policy to be introduced to help interpret what is meant by “significant”:

Enable the use and development of land and soils, provided:

- a) *the quantity, quality and structure of soil resources are maintained and managed to avoid irreversible degradation from ~~not irreversibly degraded through~~ land use activities and ~~or~~ discharges to land;*
- b) *the discharge of contaminants to land or water that, by itself or in combination with other discharges, have ~~significant or cumulative~~ adverse effects on ~~that would compromise~~ human health are avoided; ~~and~~*
- c) *adverse effects on ecosystems (including indigenous biological diversity and integrity of habitats), ~~amenity values, recreation and cultural values and historic heritage values~~ are avoided, remedied or mitigated to ensure these values are safeguarded ~~maintained or enhanced~~; and*
- d) *adverse effects on ~~ecosystems (including indigenous biological diversity and integrity of habitats)~~, amenity values, recreation values, and cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained or enhanced.*

Ben Farrell

DATED this 15th day of May 2019