

Submitter No: 752

Submitter Name:  
South Fish & Game

**BEFORE THE SOUTHLAND REGIONAL COUNCIL**

Date Received: 28/9/17

**IN THE MATTER OF** the Resource Management Act 1991

**AND**

**IN THE MATTER OF** Hearings on submissions concerning the  
Proposed Southland Water and Land  
Plan

**AND** Southland Fish & Game Council  
(submitter)

---

**SUMMARY OF LEGAL SUBMISSIONS ON BEHALF OF SOUTHLAND FISH & GAME  
COUNCIL**

**Date: Wednesday, 27 September 2017**

---

---

**Southland Fish & Game Council**  
17 Eye Street, West Invercargill, Invercargill  
PO Box 159, Invercargill 9840  
Telephone (03) 215 9117  
Facsimile (03) 215 9118

Contact: Jacob Smyth

**May it please the Hearing Panel:**

1. Available science shows current actions by Environment Southland are not maintaining water quality as required by the RMA, NPS-FWM 2014, and the PSRPS.
2. The Proposed Plan is based on a strong scientific foundation for the management of land use and development activities that pose risk to water quality. Key to Fish & Game's submission is that:
  - a. The Proposed Plan must achieve water quality outcomes that safeguard life supporting capacity and ecosystem processes; and
  - b. Provisions should not be introduced or amended to the extent that it would result in further deterioration of water quality. This is important given the stated intent of the Proposed Plan is to maintain or improve water quality prior to the more specific FMU limit setting process.

Legal framework for the Proposed Plan

3. The purpose of the Proposed Plan is to assist Environment Southland, to carry out its statutory functions to achieve the purpose of the RMA,<sup>1</sup> which include:
  - a. Controlling the use of land for soil conservation, maintenance and enhancement of water quality, maintenance of water quantity and maintenance and enhancement of ecosystems in water bodies; and
  - b. Controlling the discharge of contaminants into or onto land or water and discharges of water into water.<sup>2</sup>

These statutory functions are not optional, whether it be difficult or easy.<sup>3</sup>

4. Environment Southland must implement the NPS-FWM through the Proposed Plan. The requirement of which is to strive for management practices that will prevent degradation of water quality to ensure that water quality is, at a minimum, maintained.<sup>4</sup> Courts are finding in favour of the obligation and function of Regional Councils to maintain and restore degraded water bodies.<sup>5</sup>

Physiographic zones

5. Fish & Game is strongly supportive of the use of physiographic zones, including zone specific objectives, policies and rules to manage effects of land use and development on water quality in a targeted fashion. There is scientific rationale for new or increased dairy farming in the Riverine, Central Plains and Oxidising physiographic zones and intensive winter grazing in the Riverine and Oxidising physiographic zones to be treated the same as the Old Maitara and Peat Wetland physiographic zones for the purpose of consent under Rules 22 and 23 (non-complying activity status), a

---

<sup>1</sup> Section 63 of the RMA.

<sup>2</sup> Section 30(1)(c)(i) – (iia) and (f) of the RMA

<sup>3</sup> *Ngati Kahungunu Iwi Inc v Hawkes Bay Regional Council* [2015] NZEnvC 50 (27 March 2015) at [29].

<sup>4</sup> Objective A2 of the NPS-FWM.

<sup>5</sup> See for example, *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182 (30 August 2012) at [5-5] – [5-6] and *Ngati Kahungunu Iwi Inc v Hawkes Bay Regional Council* at [29], [56], [57] and [69] – [78].

fact acknowledged by the s 42A report.<sup>6</sup> Instead the recommendation is to treat the Riverine, Central Plains and Oxidising physiographic zones more permissively under Rules 22 and 23 (discretionary activity status), on the basis of adverse effects on land values and the notion of “public acceptance” or rather lack thereof.<sup>7</sup> It is unclear how treating the Riverine, Central Plains and Oxidising physiographic zones more permissively than scientifically warranted for economic and social as opposed to environmental reasons gives effect to the requirement, as a minimum, to maintain water quality prior to FMU limit setting.

### Benefits and costs

6. Benefits and costs under the RMA are not limited to monetary values.<sup>8</sup> Non-monetary benefits of maintaining and enhancing water quality and life supporting capacity of waterbodies include benefits to ecosystems and recreational users.
7. “Economic well-being” is only one aspect of sustainable management, which does not have primacy in either the RMA or the NPS-FWM. Environmental protection is a core element of sustainable development.<sup>9</sup>
8. Decisions of the Hearing Panel on the Proposed Plan are no doubt difficult, such as in relation to activity status under Rules 22 and 23, however:

*“... economic consequences for private individuals are an inevitable corollary of regulation in the public interest. That is not a reason to manipulate or pervert plan implementation. In fact, it emphasises the importance of consistent and transparent plan implementation to ensure those consequences are evenly and fairly distributed.”<sup>10</sup> (Emphasis added)*

The farming sector does not enjoy a privileged position to the extent that it should be immune from costs or regulation under the Proposed Plan.<sup>11</sup>

### Permitted activity discharge rules

9. Appendix E sets out water quality standards, which are intended to maintain water quality prior to the FMU limit setting process.<sup>12</sup> Appendix E is referred to in Policy 15, which seeks to maintain and improve water quality so that, among other matters, water quality is maintained where it is better than the water quality standards, or improved where it does not meet these standards.
10. Impacts of discharges from land use and development relevant to s 107 include sediment, microbes, nitrogen and phosphorus.
11. Section 70(1) of the RMA requires that before a rule can be included in the Proposed Plan that allows as a permitted activity a discharge of a contaminant into water, or onto land in circumstances where it may enter water, Environment Southland must

---

<sup>6</sup> Sections 7.441 – 7.444 and 7.453 – 7.544 of the s 42A report.

<sup>7</sup> Sections 7.445 and 7.455 of the s 42A report.

<sup>8</sup> “**Benefits and costs** includes benefits and costs of any kind, whether monetary or non-monetary” – Section 2 of the RMA.

<sup>9</sup> *King Salmon* at [24](d) – See also similar statements at: [28], [47], [146], [48], [149] and [152].

<sup>10</sup> *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 (21 March 2017) at [182].

<sup>11</sup> *Day v Manawatu-Wanganui Regional Council* at [5-176]

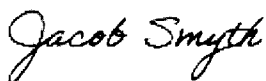
<sup>12</sup> Section 42A Hearing Report (April 2017) – Section 7.334 at page 63.

be satisfied that after reasonable mixing, the following adverse effects are unlikely to arise:

- a. Production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials – s107(1)(c);
  - b. Any conspicuous change in the colour or visual clarity – s 107(1)(d);
  - c. Rendering of fresh water unsuitable for consumption by farm animals – s 107(1)(f); and
  - d. Any significant adverse effects on aquatic life – s 107(1)(g).
12. Rules 13(a) (discharges from from installed subsurface drainage systems) and 24(a) (incidental discharges from farming) do not include permitted activity standards that comprehensively control the actual and potential adverse effects of such discharges on surface water to ensure the above effects do not occur. No evidence has been provided that that the requirements in s 70(1) will be met. Fish & Game seeks amendments to Rules 13(a) and 24(a), which:
- a. Are linked to an objective definition of “conspicuous change” in the receiving waters and a deposited sediment standard; and
  - b. Provide for compliance with Appendix E water quality standards downstream of the zone of reasonable mixing prior to the FMU limit setting process.

#### Order of witnesses

13. Two witnesses will be called by to present evidence for Fish & Game in the following order:
- a. Cohen Stewart – Fish & Game Field Officer.  
  
Mr Stewart’s evidence discusses a case study undertaken by him regarding the adverse effects of fine deposited sediment on ecosystem health in the Otapiri Stream.
  - b. Zane Moss – Fish & Game Manager.  
  
Mr Moss’s evidence discusses the ecological requirements of trout and specific areas of concern in relation to the Proposed Plan, particularly with respect to land use and development activities that pose a risk to water quality.



---

Jacob Smyth

Date: Wednesday, 27 September 2017