

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

UNDER the Resource Management Act 1991

IN THE MATTER of appeals under Clause 14 of the First Schedule of the Act

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)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
19 September 2018**

Judicial Officer: Judge Borthwick and Judge Hassan

**WYNN WILLIAMS
LAWYERS
CHRISTCHURCH**

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

DAIRYNZ 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,
SOUTHWOOD EXPORT LIMITED**
(ENV-2018-CHC-46)

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

MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) in respect of the appeals against the Council's decision on the proposed Southland Water and Land Plan (**pSWLP**).
- 2 In accordance with the Minute of the Court dated 12 September 2018 (in respect of the record of the pre-hearing conference), this Memorandum addresses:
 - (a) The proposed substance for the Topic A hearing;
 - (b) The relevant pSWLP provisions and related appellants and parties for Topic A;
 - (c) A proposed evidence and expert witness conferencing timetable for Topic A; and
 - (d) The Council's position on the Court's request that a document hosting service be provided by the Council.

Proposed substance for the Topic A hearing

- 3 The Council supports the Court's proposed sub-topic order and groupings for Topic A, as set out at page 4 of the Court's Minute dated 11 September 2018, subject to the following amendments:
 - (a) Topic A2 is amended to include all of the Objectives in the pSWLP; and
 - (b) The Freshwater Management Unit Process policies are added as a new Topic A5 to Topic A, which includes Policies 45 to 47.
- 4 The Council has considered whether to include Policies 15A and 15B in Topic A (namely Topic A5) in light of the parties' positions at the Pre-hearing Conference and the Court's comments in relation to the initial interim decision.
- 5 Due to the interaction of Policies 15A and 15B with Appendix E (Receiving Water Quality Standards) the Council considers that it would be more appropriate to consider Policies 15A and 15B, along with Appendix E, as part of the mediation and/or hearings on Topic B (i.e., as part of Topic B2 Water Quality/Discharge). This would also enable the parties' positions for the mediation/hearings on Policies 15A and 15B to

be considered in light of the interim decision on the Objectives and FMU Policies.

- 6 The Council Officers have prepared a table that sets out the proposed substance of the Topic A hearing, incorporating the Council's proposed amendments set out at paragraph 3, above. This table is attached as **Appendix A**.

Topic A - Relevant Provisions and Parties

- 7 In accordance with the Court's direction, the table attached at **Appendix A** also identifies the relevant provisions of the pSWLP that have been appealed and fall under Topic A and identifies the relevant Appellant/s and section 274 parties on each provision.
- 8 In respect of Topic A1 (issues, including state of the environment matters, and physiographic zones), the pSWLP contains the issues and physiographic zones in pages 15 to 18 and pages 19 to 22, respectively. There are no appeals that appear to directly challenge the particular content of the issues and/or physiographic zones of the pSWLP itself. However, some parties have challenged these matters as part of their appeal on particular provisions of the pSWLP. The Council Officers have sought to identify those parties and have included the relevant parties in Topic A1. Appellants that have challenged the physiographic zone policies have been included in Topic A4 - Physiographic Policies and have not also been included in Topic A1. Parties should advise the Court in accordance with the direction at paragraph 35(c) of the Minute dated 12 September 2018 if they consider they should / should not be included in Topic A1 (and any other part of Topic A).
- 9 The section 274 parties for which a decision from the Court as to their standing to join the pSWLP appeals under section 274 of the Resource Management Act 1991 (**RMA**) is awaited (being O Buckingham, Waiau River Liaison Committee, and Waiau Rivercare Group) have been included in the table, with a footnote referring to this issue (for ease of reference).

Proposed evidence timetable

- 10 The Court has directed the Council to propose an evidence and expert witness conference timetable for the Topic A hearing, based on the following assumptions as set out in its Minute dated 12 September 2018:

- (a) The Court has indicated it will schedule a two-week hearing in late May 2019;
 - (b) The timetable is to be based on the evidence exchange sequence set out at paragraph [19] of the Court's Minute dated 12 September 2018;
 - (c) Mediation(s) will occur in parallel, rather than having to precede evidence filing;
 - (d) The last timetabled item is to be completed by the end of the second week in May 2019 (i.e. Friday 10 May 2019);
- 11 A proposed evidence and expert exchange timetable based on the above assumptions is set out below. Counsel notes that some of the section 274 parties support parts of an appeal, while opposing other parts of the same appeal. In these situations, the section 274 party may need to file all its evidence in chief in accordance with the most appropriate step in the timetable.
- 12 Further, the Council considers that there would be some benefit in all section 274 parties filing rebuttal at the same time, and the Council filing its rebuttal last. This is because some section 274 parties might not support the Appellants or the Council's position, and it is unclear when such section 274 parties would file their rebuttal evidence.
- 13 It is submitted that it would also be appropriate for the Council to have the opportunity to consider that rebuttal evidence and respond to it (if required). To this extent, an alternative proposed timetable is set out below, which differs from the Court's sequence by having all section 274 parties file rebuttal evidence at once. It is submitted that no party will be prejudiced by this amendment.
- 14 While the Council prefers its revised timetable sequence set out under the heading 'Alternative Timetable' below, a proposed timetable strictly in accordance with the Court's sequence has set out at paragraph [19] of the Court's Minute dated 12 September 2018 has also been included, as follows.

Proposed timetable – as per Court’s sequence

Step	Date
Evidence-in-chief for the Council to be filed and served	14 December 2018
Evidence-in-chief for Appellants to be filed and served	25 January 2019 ¹
Evidence-in-chief for parties supportive of Appellants to be filed and served	8 February 2019
Evidence-in-chief for parties opposed to Appellants to be filed and served	22 February 2019
Expert witness conferencing to take place	8 to 22 March 2019
Joint Expert Witness Statement to be filed	22 March 2019
Rebuttal evidence for Appellants and section 274 parties supportive of appellants to be filed and served	5 April 2019
Rebuttal evidence for Council and section 274 parties supportive of Council to be filed and served	3 May 2019 ²
Council to file six (6) tabbed, indexed and paginated hard copies of all evidence (including exhibits) with the Court	10 May 2019
Topic A hearing commences	Late May 2019

¹ Being 3 weeks, taking into account the Christmas break.

² Being 3 weeks, taking into account the Easter and ANZAC day public holidays.

Alternative Timetable - s274 rebuttal in one step

Step	Date
Evidence-in-chief for the Council to be filed and served	14 December 2018
Evidence-in-chief for Appellants to be filed and served	25 January 2019 ³
Evidence-in-chief for parties supportive of Appellants to be filed and served	1 February 2019
Evidence-in-chief for parties opposed to Appellants to be filed and served	15 February 2019
Expert witness conferencing to take place	4 to 15 March 2019
Joint Expert Witness Statement to be filed	15 March 2019
Rebuttal evidence for Appellants to be filed and served	29 March 2019
Rebuttal evidence for section 274 parties to be filed and served	12 April 2019
Rebuttal evidence for Council to be filed and served	3 May 2019 ⁴
Council to file six (6) tabbed, indexed and paginated hard copies of all evidence (including exhibits) with the Court	10 May 2019
Topic A hearing commences	Late May 2019

Document hosting service

- 15 The Council Officers have enquired with the Council's Communications Team (who are responsible for administering the Council's website) as to the ability of the Council to provide a document hosting service via its website (similar to that provided in relation to the proposed Queenstown District Plan appeals).
- 16 The Council is willing to provide a document hosting service via its website and it confident that it can do so in an efficient and effective

³ Again, being 3 weeks, taking into account the Christmas break.

⁴ Being 2 weeks, taking into account the Easter and ANZAC day public holidays.

manner. The Council provided a similar service throughout the Council-level hearings on the pSWLP and has currently uploaded all of the Appeal Notices on its website, along with the Appeals Version of the pSWLP.⁵

- 17 Subject to the Court's direction, a document hosting service could include the following documents:
- (a) Documents already filed with the Court, including the appeals and section 274 notices;
 - (b) Minutes of the Court;
 - (c) Memoranda filed by the parties; and
 - (d) Evidence.
- 18 Counsel notes that the Court has the power to waive or give directions as to the method of service of documents under section 281 of the RMA, on the application of any person. Such waivers or directions may include that once a document is filed with the Court (and the Council), service is effected by the Council uploading documents onto its website (and dispensing with other service obligations).⁶
- 19 Depending on the Court and the other parties' views as to the use of a document hosting service, to the extent that an application is required under section 281 of the Resource Management Act 1991 in order for the Court to make such waivers and directions, the Council is agreeable to making such an application at the suitable time.
- 20 It is noted that due to the number of parties and amount of evidence likely to be involved in the pSWLP hearings, it is respectfully submitted that any direction include that the Council will upload copies of documents received onto its website as soon as is practicable, but within three working days of the document being served on it.
- 21 Further, to ensure the Council can arrange for documents to be uploaded in a timely and efficient manner, along with serving the documents on Counsel for the Council, it would also be appropriate for

⁵ Which can be found at: <https://www.es.govt.nz/document-library/plans-policies-and-strategies/regional-plans/proposed-southland-water-and-land-plan/Pages/default.aspx>

⁶ For example see the decision of the Environment Court in relation to the proposed Auckland Unitary Plan, *Re Auckland Council* [2016] NZEnvC 153.

any directions to include that documents are also served on the Council electronically. The Council will set up a dedicated email address that the relevant pSWLP documents can be sent to, to be uploaded to the document hosting service.

DATED this 19th day of September 2018



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K J Wyss
Counsel for the Southland Regional Council

Appendix A – Topic A: Horizontal Consideration of pSWLP’s issues, objectives and specified policies

Topic	Relevant Provisions	Appellant/s	Section 274 parties
A1 Issues (including state of the environment matters) and Physiographic Zones (pp19-22)	“Issues” (including state of the environment matters) at pages 15-18	Alliance Group Ltd Southland Fish & Game Council (Fish & Game) Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (Ngāi Tahu)	Royal Forest & Bird Protection Society of New Zealand Inc (Forest & Bird) Fonterra Co-Operative Group Ltd (Fonterra) Gore District Council, Southland District Council and Invercargill City Council (Territorial Authorities) Director General of Conservation Federated Farmers of New Zealand – Southland Province (Federated Farmers) Fish & Game Aratiatia Livestock Ltd Ngāi Tahu
	“Physiographic Zones” at pages 19-22)	Ngāi Tahu	Dairy NZ Ltd Fonterra Dairy Holdings Ltd Horticulture New Zealand Alliance Group Ltd Territorial Authorities Meridian Energy Ltd
A2 Objectives	Objective 2	Fish & Game Ngāi Tahu	Forest & Bird Fonterra Ballance Agri-Nutrients Limited (Ballance) Horticulture New Zealand Aratiatia Livestock Ltd

			Federated Farmers Fish & Game
	Objective 6	Fish & Game Ngāi Tahu Forest & Bird	Forest & Bird Fonterra Ballance DairyNZ Ltd Horticulture NZ Aratiatia Livestock Ltd Alliance Group Ltd Territorial Authorities Meridian Energy Ltd Director-General of Conservation Federated Farmers Fish & Game
	Objective 7	Fish & Game	Forest & Bird Fonterra Ballance Horticulture NZ DairyNZ Ltd Alliance Group Ltd Ravensdown Ltd Territorial Authorities Meridian Energy Ltd

			Director-General of Conservation Ngāi Tahu
Objective 9	Fish & Game Heritage New Zealand Pouhere Taonga Forest & Bird		Forest & Bird Fonterra DairyNZ Ltd Horticulture NZ Z Energy Ltd, BP Oil New Zealand Ltd and Mobil Oil New Zealand Ltd (Oil Companies) Aratiatia Livestock Ltd Territorial Authorities Meridian Energy Ltd Director-General of Conservation Federated Farmers Fish & Game Ngāi Tahu
Objective 9A	Ngāi Tahu Forest & Bird		Horticulture NZ DairyNZ Ltd Territorial Authorities Meridian Energy Ltd Director-General of Conservation Federated Farmers Fish & Game
Objective 9B	Fish & Game		Forest & Bird

		<p>Federated Farmers Ngāi Tahu Forest & Bird</p>	<p>Horticulture NZ DairyNZ Ltd Oil Companies Territorial Authorities Meridian Energy Ltd Invercargill Airport Ltd Transpower New Zealand Ltd (Transpower) Director-General of Conservation Federated Farmers Invercargill City Council – Water Manager</p>
	Objective 10	<p>Aratiatia Livestock Ltd Federated Farmers Meridian Energy Ltd Ngāi Tahu</p>	<p>Dairy Holdings Ltd Aratiatia Livestock Ltd Cockburn, G & R Buckingham, O¹ Waiau River Liaison Committee² Waiau Rivercare Group³ Meridian Energy Ltd Director-General of Conservation Federated Farmers English, H</p>

¹ Subject to the Court's decision on the standing of this party under s274 of the RMA.

² Subject to the Court's decision on the standing of this party under s274 of the RMA.

³ Subject to the Court's decision on the standing of this party under s274 of the RMA.

			Fish & Game Ngāi Tahu
	Objective 11	Alliance Group Ltd	Fonterra Horticulture NZ Territorial Authorities Director-General of Conservation Federated Farmers H W Richardson Group Ltd Ngāi Tahu
	Objective 13	Fish & Game Alliance Group Ltd Heritage New Zealand Pouhere Taonga Ngāi Tahu Forest & Bird	Forest & Bird Fonterra Ballance Dairy Holdings Ltd Horticulture NZ DairyNZ Ltd Oil Companies Aratiatia Livestock Ltd Alliance Group Ltd Ravensdown Ltd Territorial Authorities Meridian Energy Ltd Transpower Director-General of Conservation

			Fish & Game Ngāi Tahu
	Objective 13A	Fish & Game Alliance Group Ltd Forest & Bird	Forest & Bird Fonterra Ballance Dairy Holdings Ltd DairyNZ Ltd Horticulture NZ Oil Companies Alliance Group Ltd Ravensdown Ltd Territorial Authorities Transpower Director-General of Conservation Federated Farmers Fish & Game
	Objective 13B	Alliance Group Ltd Fish & Game Forest & Bird	Forest & Bird Fonterra Ballance Dairy Holdings Ltd DairyNZ Ltd Horticulture NZ Oil Companies

			Alliance Group Ltd Ravensdown Ltd Territorial Authorities Transpower Director-General of Conservation Federated Farmers Fish & Game
	Objective 14	Forest & Bird	Director-General of Conservation Federated Farmers Ngāi Tahu
	Objective 15	Fish & Game	Forest & Bird Territorial Authorities Federated Farmers Ngāi Tahu
	Objective 17	Forest & Bird	Territorial Authorities Meridian Energy Ltd DairyNZ Ltd Director-General of Conservation Federated Farmers Fish & Game
	Objective 18	Alliance Group Ltd Fish & Game Ngāi Tahu	Forest & Bird Fonterra DairyNZ Ltd

			Ballance Horticulture NZ Aratiatia Livestock Ltd Alliance Group Ltd Ravensdown Ltd Territorial Authorities Federated Farmers Fish & Game
	New Objective X	Meridian Energy Ltd	Aratiatia Livestock Ltd Federated Farmers Forest & Bird Fish & Game Ngāi Tahu Waiau Rivercare Group ⁴ Waiau River Liaison Committee ⁵
A3 Ngāi Tahu Policies	Policy 1	Federated Farmers	Ngāi Tahu
	Policy 3	Fish & Game	Forest & Bird Federated Farmers Ngāi Tahu
A4 Physiographic Policies	Policy 4	Alliance Group Ltd Director-General of	Forest & Bird Fonterra

⁴ Subject to the Court's decision on the standing of this party under s274 of the RMA.

⁵ Subject to the Court's decision on the standing of this party under s274 of the RMA.

		Conservation Federated Farmers Fish & Game Forest & Bird Ngāi Tahu Wilkins Farming Co	Ballance Dairy Holdings Ltd DairyNZ Ltd Aratiatia Livestock Ltd Ravensdown Ltd Director-General of Conservation Federated Farmers Fish & Game Ngāi Tahu
	Policy 5	Alliance Group Ltd Federated Farmers Fish & Game Forest & Bird Ngāi Tahu Wilkins Farming Co	Forest & Bird Fonterra Ballance Dairy Holdings Ltd DairyNZ Ltd Aratiatia Livestock Ltd Ravensdown Ltd Director-General of Conservation Federated Farmers Fish & Game Ngāi Tahu
	Policy 6	Alliance Group Ltd Fish & Game Forest & Bird	Forest & Bird Fonterra Ballance

		Wilkins Farming Co	Horticulture NZ DairyNZ Ltd Dairy Holdings Ltd Aratiatia Livestock Ltd Ravensdown Ltd Director-General of Conservation Federated Farmers Ngāi Tahu
	Policy 7	Forest & Bird	Dairy Holdings Ltd Aratiatia Livestock Ltd DairyNZ Ltd Federated Farmers
	Policy 8	Forest & Bird	Aratiatia Livestock Ltd Dairy Holdings Ltd DairyNZ Ltd Director-General of Conservation Federated Farmers
	Policy 9	Alliance Group Ltd Federated Farmers Fish & Game Forest & Bird Ngāi Tahu	Forest & Bird Fonterra Ballance Dairy Holdings Ltd DairyNZ Ltd Aratiatia Livestock Ltd

		Wilkins Farming Co	Ravensdown Ltd Director-General of Conservation Federated Farmers Fish & Game Ngāi Tahu
	Policy 10	Alliance Group Ltd Federated Farmers Fish & Game Forest & Bird Ngāi Tahu Wilkins Farming Co	Forest & Bird Fonterra Ballance Horticulture NZ Dairy Holdings Ltd DairyNZ Ltd Aratiatia Livestock Ltd Ravensdown Ltd Director-General of Conservation Federated Farmers Fish & Game Chartres, P Ngāi Tahu
	Policy 11	Alliance Group Ltd Federated Farmers Fish & Game Forest & Bird	Forest & Bird Fonterra Ballance Dairy Holdings Ltd DairyNZ Ltd

		Ngāi Tahu Wilkins Farming Co	Aratiatia Livestock Ltd Ravensdown Ltd Director-General of Conservation Federated Farmers Fish & Game Chartres, P Ngāi Tahu
	Policy 12	Alliance Group Ltd Federated Farmers Fish & Game Forest & Bird Ngāi Tahu Wilkins Farming Co	Forest & Bird Fonterra Ballance Dairy Holdings Ltd DairyNZ Ltd Aratiatia Livestock Ltd Ravensdown Ltd Director-General of Conservation Federated Farmers Fish & Game Chartres, P Ngāi Tahu
A5 FMU Policies	Policy 45	Fish & Game	Forest & Bird Fonterra Ballance Horticulture NZ

			DairyNZ Ltd Aratiatia Livestock Ltd Alliance Group Ltd Ravensdown Ltd Meridian Energy Ltd Director-General of Conservation
	Policy 46	Forest & Bird	Director-General of Conservation Federated Farmers Fish & Game Ngāi Tahu
	Policy 47	Fish & Game	Forest & Bird Fonterra Horticulture NZ DairyNZ Ltd Meridian Energy Ltd Director-General of Conservation