

**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 IN
RELATION TO THE SUBSTANCE OF THE TOPIC A HEARING
31 October 2018**

Judicial Officer: Judge Hassan and Judge Borthwick

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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 The Minute of the Court dated 19 October 2018 (in respect of the memoranda filed by parties in relation to the substance of the Topic A hearing) directed the Council to incorporate the amendments suggested by the other parties and to re-file the Topic A table by Wednesday, 31 October 2018.¹
- 3 The Court also directed the Council to file a proposed mediation schedule with the Court by Friday 2 November 2018.²
- 4 The Court also reserved leave for any party to apply for further directions.³
- 5 This Memorandum addresses:
 - (a) the amendments to the Topic A table as directed by the Minute of the Court dated 19 October 2018; and
 - (b) further directions sought by the Council in respect of the substance of the Topic A hearing; and
 - (c) further directions sought by the Council in respect of the mediation schedule.

Amendments to the Topic A table

- 6 The Court notes that parties have all had the opportunity to consider the proposed sub-topics for the Topic A hearing and that some parties have requested slight adjustments to it, none of which the Court takes any issue with. The Court has directed the Council to file an amended version of the Topic A table incorporating the amendments suggested by various parties.

¹ Minute of the Environment Court dated 19 October 2018 at [5].

² Minute of the Environment Court dated 19 October 2018 at [14].

³ Minute of the Environment Court dated 19 October 2018 at [19].

- 7 The following parties filed memoranda in relation to the Topic A table:⁴
- (a) Alliance Group Limited (**Alliance**);
 - (b) Horticulture New Zealand (**Horticulture NZ**);
 - (c) Director-General of Conservation;
 - (d) Federated Farmers of New Zealand (Southland Province) (**Federated Farmers**);
 - (e) Southland Fish and Game Council (**Fish & Game**);
 - (f) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**);
 - (g) Meridian Energy Limited (**Meridian**);
 - (h) Ravensdown Limited (**Ravensdown**); and
 - (i) Ngā Rūnanga;⁵
- 8 The Council has amended the Topic A table in accordance with the amendments suggested by the parties. Amendments are set out tracked changes, with additions in red underlining and deletions in red strikethrough. The amended Topic A table is attached as **Appendix A**.
- 9 However, Counsel seeks further directions from the Court in respect of the inclusion of some provisions in the Topic A hearings, as some parties have sought opposing amendments.
- 10 The amendments to Topic A, and the issues still in contention, are outlined below.

⁴ Memorandum of Alliance Group Limited dated 26 September 2018; Memorandum for Horticulture New Zealand dated 28 September 2018; Memorandum of Counsel for Director-General of Conservation dated 26 September 2018; Memorandum of Counsel for Federated Farmers dated 26 September 2018; Joint Memorandum of Counsel (Timetabling and hearing arrangements) dated 26 September 2018; Memorandum of Counsel for Meridian Energy Limited dated 26 September 2018; Memorandum on behalf of Ravensdown Limited – Section 274 Party dated 26 September 2018; Memorandum of Counsel for Ngā Rūnanga regarding proposed content of Topic A and timetable dated 26 September 2018.

⁵ Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively Ngā Rūnanga). Ngā Rūnanga is currently listed in Topic A as “Ngāi Tahu”. However, this has been amended to “Ngā Rūnanga” to reflect their Notice of Appeal.

A1 Issues (including state of the environment matters) and Physiographic Zones (pp19-22)

- 11 Alliance does not consider that it has appealed the “Issues” in Topic A1,⁶ therefore it has been deleted as an Appellant from Topic A1. Consequential deletions have been made to the associated section 274 parties.
- 12 Further, on reviewing Alliance’s section 274 Notices to the appeals on Topic A1, it became apparent, that Alliance had inadvertently been added as a section 274 party to Topic A1 “Physiographic zones”, instead of Topic A1 “Issues” (in relation to Ngā Rūnanga’s general appeal point to maintain and improve water quality as at 2010). Accordingly, Alliance has been added as a section 274 party to Topic A1 “Issues” and deleted as a section 274 party to Topic A1 “Physiographic Zones”.
- 13 Dairy NZ Limited were also inadvertently omitted as a section 274 party in relation to Nga Rūnanga’s appeal point on Topic A1 “issues”.⁷ Accordingly, Dairy NZ has also been added as a section 274 party to Topic A1 “issues”.
- 14 Further, it also became apparent, that the Territorial Authorities⁸ had inadvertently been added as a section 274 party to Topic A1 “Physiographic zones”. Accordingly, the Territorial Authorities have been deleted as a section 274 party to Topic A1 “Physiographic Zones”.
- 15 Meridian seeks clarification on which particular provisions are included in Topic A1, in order to assess whether it is a section 274 party.⁹
- 16 Federated Farmers also seek clarity on which part of the appeal by Ngā Rūnanga relates to Topic A1, in order to assess whether they are a section 274 party. Federated Farmers considers it should be a party if Ngā Rūnanga is referring to the physiographic zone policies.¹⁰

⁶ Memorandum of Alliance Group Limited dated 26 September 2018 at [5].

⁷ Notice of Alliance Group Ltd’s wish to be party to the appeal by Ngā Rūnanga dated 15 June 2018 at [5(a)]. Notice of Dairy NZ Ltd’s wish to be party to the appeal by Ngā Rūnanga dated 22 June 2018, Schedule 1 (see row 1).

⁸ Being Gore District Council, Southland District Council and Invercargill City Council.

⁹ Memorandum of Counsel for Meridian Energy Limited dated 26 September 2018 at [4(a)].

¹⁰ Memorandum of Counsel for Federated Farmers dated 26 September 2018 at [6].

- 17 In response to Meridian, the relevant part of Fish & Game’s appeal included in Topic A1 “Issues” is in respect of the pSWLP’s lack of response to scientific evidence that confirms water quality has significantly degraded.¹¹
- 18 In response to Meridian and Federated Farmers, the relevant parts of Ngā Rūnanga’s appeal included in Topic A1 are:
- (a) In respect of “Issues”, Ngā Rūnanga’s general relief sought that maintenance and improvement of water quality be established from when the Regional Water Plan for Southland became operative (January 2010).¹²
 - (b) In respect of “Physiographic zones”, Ngā Rūnanga’s general relief sought to retain physiographic zones in the objectives (and policies) of the pSWLP and to reinstate physiographic zones in the rules relating to diffuse discharges from agriculture and their effect on water quality.¹³
- 19 It is noted that Ngā Rūnanga’s specific relief in respect of the physiographic zone policies will be addressed in Topic A4 Physiographic Policies.
- 20 Fish & Game and Forest & Bird seek to be included as appellants in Topic A1 “Physiographic Zones”. Fish & Game and Forest & Bird have appealed each specific physiographic zone policy (and have been included in Topic A4 in respect of these appeal points).
- 21 In their Joint Memorandum, Fish & Game and Forest & Bird state that 7(a)(vii) of Fish & Game’s appeal covers Topic A1 “Physiographic zones”, in that the pSWLP “does not include any method to apply or implement the [physiographic] approach to managing land use activities which affect water quality”.¹⁴ Counsel for the Council note that this is included in Fish & Game’s Notice of Appeal as a “reason” for the appeal and not as a specific appeal point. However, Fish and Game’s Notice of

¹¹ Notice of Appeal on behalf of Fish & Game, [7(b)] at 7.

¹² Notice of Appeal on behalf of Ngā Rūnanga dated 17 May 2018, Appeal Point 1, at 4; see also Notice of Appeal on behalf of Ngā Rūnanga at [5].

¹³ Notice of Appeal on behalf of Ngā Rūnanga dated 17 May 2018, Appeal Point 2, at 4.

¹⁴ Joint Memorandum of Counsel (Timetabling and hearing arrangements) dated 26 September 2018 at [4], and see footnote 2.

Appeal states that it seeks “the following relief...such other changes to the provisions listed in paragraph 6 above that address the reasons for this appeal, and consequential changes”.¹⁵ Accordingly, Counsel considers that Fish & Game should be included as an appellant to Topic A1 – “Physiographic zones”. Consequential changes have also been made to the section 274 parties.

- 22 In their Joint Memorandum, Fish & Game and Forest & Bird also assert that Forest & Bird’s appeal covers Topic A1 “Physiographic zones” by stating it appeals “[a]ll Physiographic Zone Policies. The policies do not require that activities are consistent with maintaining, or improving where degraded, water quality. Amend policies 4-12 to ensure they only provide for activities where water quality will be maintained, or enhanced where degraded” and consequential relief”.¹⁶ Counsel for the Council note that the part of the decision appealed is the “Physiographic Zone Policies” and that the only relief sought in Forest & Bird’s Notice of Appeal are amendments to the Physiographic Zone policies. Accordingly, Counsel does not consider Forest & Bird should be included as an appellant to Topic A1 – “Physiographic Zones”, as the physiographic zone policies are included in Topic A4 – Physiographic Policies (for which Forest & Bird has been listed as an Appellant).

A2 Objectives

- 23 Although not requested by Ngā Rūnanga in its memorandum, on amending the table for Topic A, the Council became aware that Ngā Rūnanga has appealed Objective 9 in relation to the removal of historic heritage from Objective 9 (among other provisions) and had inadvertently not been included in the table on this provision.¹⁷ Accordingly, Ngā Rūnanga has been added as an Appellant on Objective 9. There are no additional section 274 parties.
- 24 Fish & Game has been added as a section 274 party to Objective 11 as it was omitted in error.

¹⁵ Notice of Appeal by Fish and Game dated 17 May 2018 at [8].

¹⁶ Joint Memorandum of Counsel (Timetabling and hearing arrangements) dated 26 September 2018 at [4], and see footnote 2.

¹⁷ Notice of Appeal on behalf of Ngā Rūnanga dated 17 May 2018, Appeal Point 4, at 4.

- 25 Federated Farmers has been added as a section 274 party to Objective 13 as it was omitted in error.
- 26 Ngā Rūnanga have been added as an Appellant to Objective 13A as they were omitted in error. There are no additional section 274 parties as a result of the addition of Ngā Rūnanga as an appellant.
- 27 Meridian has been added as a section 274 party to Objective 13A as it was omitted in error.
- 28 Ngā Rūnanga have been added as an Appellant to Objective 13B as they were omitted in error. There are no additional section 274 parties.
- 29 Meridian has been added as a section 274 party to Objective 13B as it was omitted in error.
- 30 Fish & Game has been added as a section 274 party to Objective 14. While Fish & Game's section 274 notice on Forest & Bird's appeal does not include specific reference to Objective 14, its notice is very broad, and therefore Counsel considers they are entitled to join as a party to this appeal point.

A5 FMU Policies

- 31 Ravensdown has been added as a section 274 party to Policy 47 as it was omitted in error.

Proposed additional topics for inclusion

- 32 In addition to the above amendments, parties have suggested a number of other proposed additions to the substance for the Topic A hearing as follows:
- (a) Policy 14;
 - (b) Policies 15A to C (the deletion of Policy 15), and Appendix E;
 - (c) Policy 16;
 - (d) Policy 17A
 - (e) Ephemeral waterbodies; and
 - (f) Definitions of "wetland" and "natural wetland".

Policy 14

- 33 Ngā Rūnanga has sought that Policy 14 be added to Topic A and that they be added as an Appellant and section 274 party to Policy 14.¹⁸
- 34 It is unclear which sub-topic Ngā Rūnanga is seeking Policy 14 be added to, and it is not readily apparent which sub-topic Policy 14 would fall into from the content of this policy.
- 35 Policy 14 is located in the Water Quality policies section of the pSWLP. It seeks to prefer discharges of contaminants to land over discharges of contaminants to water, and also to give particular regard to adverse effects on cultural values associated with a discharge to water.
- 36 Although Policy 14 addresses cultural values, to some extent, it specifically relates to discharges from activities. Accordingly, the Council considers that Policy 14 is more appropriately dealt with as part of Topic B (e.g. in Topic B2 Water Quality/Discharges).
- 37 Further, whilst Ngā Rūnanga has stated that it is an appellant and section 274 party in relation to Policy 14, on reviewing Ngā Rūnanga's Notice of Appeal, it appears that Ngā Rūnanga has not appealed Policy 14.
- 38 Despite the Council's position that Policy 14 should not be included in the Topic A Hearing, and pending further directions from the Court, for ease of reference, a new row with Policy 14 has been added to Table A, set out in tracking and shaded grey, with comments reflecting the above discussion.

Policies 15A-15C (deletion of Policy 15), and Appendix E

- 39 Fish & Game, Forest & Bird, and Ngā Rūnanga seek to include Policies 15A-15C (deletion of Policy 15) and Appendix E in the Topic A hearing.¹⁹ These parties are seeking Policies 15A-C and Appendix E be added to Topic A5 FMU policies.

¹⁸ Memorandum of Counsel for Ngā Rūnanga regarding proposed content of Topic A and timetable dated 26 September 2018 at [12]-[13].

¹⁹ Joint Memorandum of Counsel (Timetabling and hearing arrangements) dated 26 September 2018 at [2]; Memorandum of Counsel for Ngā Rūnanga regarding proposed content of Topic A and timetable dated 26 September 2018 at [15]-[17].

- 40 As set out at paragraph 5 of the Council's Memorandum dated 19 September 2018, the Council considers these topics would be more appropriately addressed in the Topic B hearing.²⁰
- 41 Meridian and Horticulture NZ agree with the Council that Policies 15A and 15B and Appendix E should be heard as part of Topic B.²¹
- 42 The Director-General of Conservation agreed with the Topic A proposals put forward by the Council in its Memorandum dated 19 September 2018.²²
- 43 The Council remains firmly of the view that Policies 15A to C and Appendix E should be heard as part of the Topic B hearings (e.g. in Topic B2 Water Quality/Discharges), following the Court's interim decision on the relevant Objectives and FMU Policies (being Policies 44 to 47).
- 44 Counsel submits that it is important, and appropriate, to settle the objectives and over-arching provisions of the pSWLP prior to commencing the hearings on the policies and rules (aside from the over-arching policies in Topic A3 Ngāi Tahu and A5 FMU Policies, along with the Physiographic Policies in Topic A4). This will enable Policies 15A to C and Appendix E to be considered as part of Topic B once the over-arching issues, state of the environment, objectives, and high-level direction of the pSWLP have been determined by the Court (by way of an interim decision). This will also enable the parties' positions for the mediation/hearing on Policies 15A to C and Appendix E to be focussed in the light of the interim decision.
- 45 Despite the Council's, Meridian's and Horticulture NZ's position that Policies 15A to C and Appendix E should not be included in the Topic A Hearing, and pending further directions from the Court, for ease of reference, new rows with Policies 15A to C and Appendix E has been

²⁰ The Council's Memorandum dated 19 September 2018 did not consider the inclusion of Policy 15C in the Topic A hearings as that was not contemplated at the time. Counsel considers that Policy 15C would also be more appropriately addressed along with Policies 15A and 15B in the Topic B hearings for the same reasons as set out in paragraph 5 of the Council's Memorandum dated 19 September 2018.

²¹ Memorandum of Counsel for Meridian Energy Limited dated 26 September 2018 at [3]; Memorandum for Horticulture New Zealand dated 28 September 2018 at [2].

²² Memorandum of Counsel for Director-General of Conservation dated 26 September 2018 at [2].

added to Table A, set out in tracking and shaded grey, with comments reflecting the above discussion.

Policy 16 (or at the very least Policy 16(1))

- 46 Fish & Game and Forest & Bird seek to include Policy 16 (or at the very least Policy 16(1)) in the Topic A hearing.²³ It is unclear which sub-topic these parties are seeking Policy 16 be added to, and it is not readily apparent from the content of Policy 16.
- 47 Policy 16 is located in the Water Quality policies section of the pSWLP and addresses farming activities that affect water quality. Accordingly, the Council considers that Policy 16 is at a level of detail that is too specific for the Topic A hearings. The Council considers that it would be more appropriate to consider Policy 16 in conjunction with the remainder of the farming provisions in the pSWLP (e.g. as part of Topic B5 farming), once the over-arching objectives and high-level direction of the pSWLP has been determined.
- 48 Despite the Council's position that Policy 16 should not be included in the Topic A Hearing, and pending further directions from the Court, for ease of reference, a new row with Policy 16 has been added to Table A, set out in tracking and shaded grey.

Policy 17A

- 49 Nga Rūnanga seek to include Policy 17A in the Topic A hearing.²⁴
- 50 It is unclear which sub-topic Ngā Rūnanga is seeking Policy 17A be added to, and it is not readily apparent from the content of Policy 17A.
- 51 Policy 17A sits in the Water Quality policies section of the pSWLP. It addresses community sewerage schemes and on-site wastewater systems. As an activity-specific policy, the Council considers that Policy 17A is more appropriately dealt with as part of Topic B (e.g. in Topic B2 Water Quality/Discharges or Wastewater and Agricultural Effluent).

²³ Joint Memorandum of Counsel (Timetabling and hearing arrangements) dated 26 September 2018 at [2].

²⁴ Memorandum of Counsel for Ngā Rūnanga regarding proposed content of Topic A and timetable dated 26 September 2018 at [13].

52 Despite the Council's position that Policy 17A should not be included in the Topic A Hearing, and pending further directions from the Court, for ease of reference, a new row with Policy 17A has been added to Table A, set out in tracking and shaded grey, with comments reflecting the above discussion.

Ephemeral waterbodies – Objective 16 and farming provisions

53 Fish & Game, Forest & Bird, and Ngā Rūnanga seek to include the approach to ephemeral waterbodies in the Topic A hearing.²⁵

54 As noted by Ngā Rūnanga, the pSWLP excludes ephemeral waterbodies in two different scenarios:

- (a) It excludes ephemeral waterbodies from Objective 16, which seeks to maintain and enhance public access to river and lake beds, excluding ephemeral rivers.
- (b) It excludes ephemeral waterbodies from some of the provisions regulating farming activities (including stock exclusion, use of land for farming activities, cultivation, fertiliser spreading, feed pads/lots, silage storage facilities). To this extent Rule 20(aa) seeks to provide (unless otherwise stated in the pSWLP) that intensive winter grazing, cultivation, fertiliser spreading, and the disturbance by stock in, on, or over the bed of an ephemeral river is a permitted activity.

55 The Council considers that the issue in respect of the exclusion of ephemeral rivers from Objective 16 should be included in the Topic A hearing, and form part of Sub-topic A2 Objectives.

56 Ngā Rūnanga's appeal point as it relates to Objective 16 has been added to Table A in sub-topic A2 Objectives in tracking. Consequential amendments have been made to add the relevant s274 parties.

57 However, the rationale for the exclusion of ephemeral waterbodies from the farming provisions is different and the Council considers that the rules seeking to exclude ephemeral waterbodies in Rule 20(aa) and the related farming provisions would more appropriately be considered as

²⁵ Joint Memorandum of Counsel (Timetabling and hearing arrangements) dated 26 September 2018 at [2]; Memorandum of Counsel for Ngā Rūnanga regarding proposed content of Topic A and timetable dated 26 September 2018 at [9].

part of the Topic B hearing in conjunction with the wider farming provisions (e.g. Topic B5 Farming).

- 58 Further, Fish & Game and Forest & Bird have appealed the relevant policies and rules seeking changes so as to include ephemeral waterbodies (e.g. Policy 18, Rule 14, Rule 20 etc). If this issue is added to the substance on the Topic A hearing, it will be considered separately from the rest of the relevant policies and rules in question. Further, it is anticipated that a number of other parties also have an interest in the relevant provisions in questions, and addition of this issue would substantially broaden the scope of the Topic A hearing.
- 59 Further, despite the Council's position that the approach to ephemeral waterbodies in the pSWLP rules should not be included in the Topic A Hearing, and pending further directions from the Court, for ease of reference, a new row has been added to Table A, set out in tracking and shaded grey. It is also unclear which sub-topic these parties consider the approach to ephemeral waterbodies in the farming provisions, should be added to.

Definitions of “wetland” and “natural wetland” and Appendix A

- 60 Ngā Rūnanga seek to include the definitions of “wetland” and “natural wetland” and Appendix A Regionally Significant Wetlands in the Topic A hearing.²⁶ The definitions of wetland and natural wetland are both relevant to a few policies and several rules. Appendix A is referred to in Policy 16 and Rules 20, 51 and 70.
- 61 As discussed above, the Council considers that this level of detail is more appropriately addressed in the Topic B hearings, to be considered in light of the Court’s interim decision on Topic A issues. Further, no other definitions are proposed to be included in the substance of the Topic A hearings, and it is submitted that there is no reason why these definitions should be included over other definitions used in the pSWLP.
- 62 Further, whilst Ngā Rūnanga has stated that it is an appellant and section 274 party in relation to the definitions of “wetland” and “natural wetland”, on reviewing Ngā Rūnanga’s Notice of Appeal, it appears that

²⁶ Memorandum of Counsel for Ngā Rūnanga regarding proposed content of Topic A and timetable dated 26 September 2018 at [10].

Ngā Rūnanga has not appealed the definitions of “wetland” and “natural wetland”.

- 63 Despite the Council’s position that these definitions and Appendix A should not be included in the Topic A Hearing, and pending further directions from the Court, for ease of reference, two new rows with the definitions of “wetland” and “natural wetland”, and Appendix A Regionally Significant Wetlands have been added to Table A, set out in tracking and shaded grey, with comments reflecting the above discussion.
- 64 On the basis of the above, further directions are sought by the Council as to the substance of the Topic A hearing (which are set out at paragraph [69] below).

Further directions in respect of the mediation schedule

- 65 In its Minute dated 19 October 2018, the Court outlined that the parties can assume that any mediation would be on the basis of an identified agenda of specific matters and occur some time later than evidence-in-chief is exchanged and before rebuttal is exchanged.²⁷
- 66 The Court directed the Council to propose a schedule for mediation to be circulated to parties for consideration and following any amendments the Council is to file the proposed schedule with the Court by Friday 2 November 2018.²⁸
- 67 Counsel is proposing to circulate proposed mediation dates to the parties in accordance with the date range indicated by the Court (i.e., after evidence-in-chief and before rebuttal, being in the period from 15 March 2019 to 18 April 2019). Counsel considers that any specific agenda for mediation can be directed by the relevant Commissioner once the evidence-in-chief for the Council and the Appellants has been filed, at which time there will be a better indication of the issues in contention.
- 68 In light of the further directions required from the Court in relation to the final substance of the Topic A hearing, Counsel considers that the filing

²⁷ Minute of Environment Court dated 19 October 2018 at [10].

²⁸ Minute of Environment Court dated 19 October 2018 at [14].

date (of 2 November 2018) for the proposed mediation schedule should be amended accordingly. This is on the basis that the proposed dates for mediation will, in part, depend on the final content of the Topic A hearings (particularly the inclusion, or not, of Policies 15A-C and Appendix E).

- 69 Counsel considers that a date of two weeks from the Court's directions on the final substance of the Topic A hearing to file a proposed mediation schedule would be appropriate.

Directions sought:

- 70 On the basis of the above, Counsel respectfully seeks the following directions from the Court:
- (a) That the following provisions should not be included in the substance of the Topic A hearing:
 - (i) Policy 14;
 - (ii) Policies 15A to C, the deletion of Policy 15 and Appendix E;
 - (iii) Policy 16;
 - (iv) Policy 17A;
 - (v) The approach to ephemeral waterbodies in the farming provisions; and
 - (vi) Definitions of "wetland" and "natural wetland" and Appendix A Regionally Significant Wetlands.
 - (b) That the date by which the Council is to file the proposed mediation schedule is within two weeks of the Court confirming the substance Topic A hearing.

DATED this 31st day of October 2018



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P A C Maw / 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	<p>Alliance Group Ltd</p> <p>Southland Fish & Game Council (Fish & Game)</p> <p>Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (Ngāi TahuNgā Rūnanga)</p>	<p>Royal Forest & Bird Protection Society of New Zealand Inc (Forest & Bird)</p> <p>Fonterra Co-Operative Group Ltd (Fonterra)</p> <p>Gore District Council, Southland District Council and Invercargill City Council (Territorial Authorities)</p> <p>Director General of Conservation</p> <p>Federated Farmers of New Zealand – Southland Province (Federated Farmers)</p> <p>Dairy NZ Ltd</p> <p>Fish & Game</p> <p>Aratiatia Livestock Ltd</p> <p>Ngāi Tahu</p> <p>Alliance Group Ltd</p>
	“Physiographic Zones” at pages 19-22)	<p>Ngāi TahuNgā Rūnanga</p> <p>Fish & Game</p>	<p>Dairy NZ Ltd</p> <p>Fonterra</p> <p>Dairy Holdings Ltd</p> <p>Horticulture New Zealand</p> <p>Alliance Group Ltd</p> <p>Territorial Authorities</p> <p>Meridian Energy Ltd</p> <p>Federated Farmers</p> <p>Royal Forest & Bird Protection Society of New Zealand Inc (Forest & Bird)</p>
A2 Objectives	Objective 2	Fish & Game	Forest & Bird

		Ngā Tahu Ngā Rūnanga	Fonterra Ballance Agri-Nutrients Limited (Ballance) Horticulture New Zealand Aratiatia Livestock Ltd Federated Farmers Fish & Game
	Objective 6	Fish & Game Ngā Tahu Ngā Rūnanga 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 <u>Ngā Rūnanga</u>
	Objective 9	Fish & Game Heritage New Zealand Pouhere Taonga Forest & Bird Ngā Rūnanga 	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 <u>Ngā Rūnanga</u>
	Objective 9A	Ngāi Tahu <u>Ngā Rūnanga</u> Forest & Bird	Horticulture NZ DairyNZ Ltd Territorial Authorities Meridian Energy Ltd

			Director-General of Conservation Federated Farmers Fish & Game
	Objective 9B	Fish & Game Federated Farmers Ngāi Tahu Ngā Rūnanga Forest & Bird	Forest & Bird 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
	Objective 10	Aratiatia Livestock Ltd Federated Farmers Meridian Energy Ltd Ngāi Tahu Ngā Rūnanga	Dairy Holdings Ltd Aratiatia Livestock Ltd Cockburn, G & R Buckingham, O ¹ Waiau River Liaison Committee ² Waiau Rivercare Group ³

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.

			Meridian Energy Ltd Director-General of Conservation Federated Farmers English, H Fish & Game <u>Ngāi Tahu Ngā Rūnanga</u>
	Objective 11	Alliance Group Ltd	Fonterra Horticulture NZ Territorial Authorities Director-General of Conservation Federated Farmers H W Richardson Group Ltd <u>Ngāi Tahu Ngā Rūnanga</u> <u>Fish & Game</u>
	Objective 13	Fish & Game Alliance Group Ltd Heritage New Zealand Pouhere Taonga <u>Ngāi Tahu Ngā Rūnanga</u> 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 <u>Ngā Rūnanga</u> <u>Federated Farmers</u>
	Objective 13A	Fish & Game Alliance Group Ltd Forest & Bird <u>Ngā Rūnanga</u>	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 <u>Meridian</u>

	Objective 13B	Alliance Group Ltd Fish & Game Forest & Bird <u>Ngā Rūnanga</u>	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 <u>Meridian</u>
	Objective 14	Forest & Bird	Director-General of Conservation Federated Farmers <u>Ngā Tahu</u> <u>Ngā Rūnanga</u> <u>Fish & Game</u>
	Objective 15	Fish & Game	Forest & Bird Territorial Authorities Federated Farmers <u>Ngā Tahu</u> <u>Ngā Rūnanga</u>

	<u>Objective 16</u>	<u>Ngā Rūnanga</u>	<u>Peter Chartres</u> <u>Federated Farmers</u> <u>Territorial Authorities</u> <u>Meridian Energy Ltd</u> <u>Fish & Game</u> <u>Aratiatia Livestock Ltd</u> <u>Dairy Holdings Ltd</u>
	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 Ngā Tahu <u>Ngā Rūnanga</u>	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 Ngā Rūnanga Waiau Rivercare Group ⁴ Waiau River Liaison Committee ⁵
A3 Ngāi Tahu Policies	Policy 1	Federated Farmers	Ngāi Tahu Ngā Rūnanga
	Policy 3	Fish & Game	Forest & Bird Federated Farmers Ngāi Tahu Ngā Rūnanga
A4 Physiographic Policies	Policy 4	Alliance Group Ltd Director-General of Conservation Federated Farmers Fish & Game Forest & Bird Ngāi Tahu Ngā Rūnanga Wilkins Farming Co	Forest & Bird Fonterra Ballance Dairy Holdings Ltd DairyNZ Ltd Aratiatia Livestock Ltd Ravensdown Ltd Director-General of Conservation Federated Farmers

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.

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

			Ngāi Tahu Ngā Rūnanga
	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 Ngā Rūnanga 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 Ngā Rūnanga
	Policy 10	Alliance Group Ltd Federated Farmers	Forest & Bird Fonterra

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

	Policy 12	Alliance Group Ltd Federated Farmers Fish & Game Forest & Bird Ngāi Tahu Ngā Rūnanga 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 Ngā Rūnanga
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 Ngā Tahu Ngā Rūnanga
	Policy 47	Fish & Game	Forest & Bird Fonterra Horticulture NZ DairyNZ Ltd Meridian Energy Ltd Director-General of Conservation Ravensdown Ltd
<u>Proposed by Ngā Rūnanga</u>	<u>Policy 14</u>	<u>Ngā Rūnanga</u> <u>Alliance</u>	<u>Fish & Game</u> <u>Ngā Rūnanga</u> <u>Federated Farmers</u> <u>Department of Conservation</u> <u>Combined Councils</u> <u>Forest & Bird</u> <u>Fonterra</u>
<u>Proposed to be included by Fish & Game, Forest & Bird and Ngā Rūnanga</u>	<u>Policies 15A-15C (deletion of Policy 15)</u>	<u>Fish & Game</u> <u>Forest & Bird</u> <u>Ngā Rūnanga</u>	<u>Ravensdown</u> <u>Ngā Rūnanga</u> <u>Fish & Game</u> <u>Federated Farmers</u> <u>Transpower</u> <u>Meridian</u>

Commented [WW1]: Ngā Rūnanga does not appear to have appealed Policy 14.

Commented [WW2]: Meridian agree with ES that these policies should not be considered as part of Topic A, and should be considered as part of Topic B. Horticulture NZ agree with ES that these policies should not be considered as part of Topic A, and should be considered as part of Topic B. DoC agrees with the table as filed by the Council.

			Combined Councils Alliance Horticulture NZ Dairy Holdings Limited Dairy NZ Forest & Bird Fonterra Ballance
Proposed by Fish & Game, Forest & Bird and Ngā Rūnanga	Appendix E	Fish & Game Forest & Bird Ngā Rūnanga	Forest & Bird Fonterra Robert Kempthorne Horticulture NZ Alliance Cockburn Waiau Liaison Committee Waiau Rivercare Group Combined Councils
		Aratiatia Alliance	Meridian Department of Conservation Federated Farmers Hamish English Fish & Game Ngā Rūnanga

Commented [WW3]: **Meridian** agree with ES that Appendix E should be not be considered as part of Topic A, and should be considered as part of Topic B. **Horticulture NZ** agree with ES that Appendix E should not be consider as part of Topic A, and should be considered as part of Topic B. **DoC** agrees with the table as filed by the Council.

<p><u>Proposed by Fish & Game and Forest & Bird</u></p>	<p><u>Policy 16 (or at the very least Policy 16(1))</u></p>	<p><u>Fish & Game</u> <u>Forest & Bird</u></p> <p><u>Fonterra</u></p> <p><u>Department of Conservation</u></p> <p><u>Ngā Rūnanga</u></p>	<p><u>Ravensdown</u></p> <p><u>Dairy NZ</u></p> <p><u>Forest & Bird</u></p> <p><u>Fonterra</u></p> <p><u>Balance</u></p> <p><u>Mt Linton Station</u></p> <p><u>Dairy Holdings Limited</u></p> <p><u>Horticulture NZ</u></p> <p><u>Aratiatia</u></p> <p><u>Meridian</u></p> <p><u>Department of Conservation</u></p> <p><u>Federated Farmers</u></p> <p><u>Fish & Game</u></p> <p><u>Peter Chartres</u></p>
<p><u>Proposed by Ngā Rūnanga</u></p>	<p><u>Policy 17A</u></p>	<p><u>Ngā Rūnanga</u></p> <p><u>Fish & Game</u></p> <p><u>Federated Farmers</u></p> <p><u>Forest & Bird</u></p>	<p><u>Forest & Bird</u></p> <p><u>Combined Councils</u></p> <p><u>Federated Farmers</u></p> <p><u>Department of Conservation</u></p> <p><u>Fish & Game</u></p>
<p><u>Proposed by Fish & Game, Forest & Bird and Ngā Rūnanga</u></p>	<p><u>Ephemeral waterbodies – farming provisions</u></p>	<p><u>Fish & Game</u></p> <p><u>Forest & Bird</u></p>	<p><u>Dairy Holdings Limited</u></p> <p><u>Fairlight Station Limited</u></p> <p><u>Ballance</u></p>

		Ngā Rūnanga	Campbells Block Dairy NZ Fonterra Robert Grant Ravensdown Mt Linton Station The Terraces Limited Stoney Creek Station Aratiatia Livestock Limited Territorial Authorities Meridian Energy Limited DR & JAE Pullar Limited Federated Farmers Fish & Game Peter Chartres Department of Conservation
Proposed by Ngā Rūnanga	Definitions of “wetland” and “natural wetland” and	Ngā Rūnanga Horticulture NZ	Ngā Rūnanga Federated Farmers Ravensdown Forest & Bird Department of Conservation
Proposed by Ngā Rūnanga	Appendix A Regionally Significant Wetlands	Ngā Rūnanga	Ngā Rūnanga Forest & Bird

Commented [WW4]: Ngā Rūnanga does not appear to have appealed the definitions of wetland and natural wetland.

		<u>Fish & Game</u> <u>Federated Farmers</u> <u>Peter Chartres</u>	<u>Aratiatia</u> <u>Meridian</u> <u>Department of Conservation</u> <u>Federated Farmers</u> <u>Fish & Game</u> <u>Peter Chartres</u>
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