

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

IN THE MATTER of the Resource Management Act 1991

AND 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 LIMITED  
(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)

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

DAIRYNZ LIMITED  
(ENV-2018-CHC-32)

H W RICHARDSON GROUP LIMITED  
(ENV-2018-CHC-33)

BEEF + LAMB NEW ZEALAND  
(ENV-2018-CHC-34 & 35)

DIRECTOR-GENERAL OF CONSERVATION  
(ENV-2018-CHC-36)



SOUTHLAND FISH & 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 POHERE  
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 RŪNANGA O NGĀI TAHU, HOKONU  
RŪNAKA, WAIHOPAI RŪNAKA, TE  
RŪNANGA O AWARUA & TE RŪNANGA  
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 NZ INC

(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

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**MINUTE OF THE ENVIRONMENT COURT  
(5 November 2018)**

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**Introduction**

[1] This Minute is prepared for the purpose of case management.

[2] As directed, the Southland Regional Council filed a memorandum reporting on the topics to be set down for the Topic A hearing to commence May 2019 and the scheduling of mediation.

**Background**

[3] The Minute dated 19 October 2018 records that all parties have had the opportunity to consider the sub-topics for the hearing and, aside from minor suggested amendments, none take issue with the same. On that basis, the Regional Council was directed to file an amended table incorporating the changes sought.

[4] It is now clear that the Regional Council does not agree to all the amendments sought by the parties, in particular Ngā Rūnanga, Forest & Bird and Fish & Game who share many of the same concerns.



[5] The Regional Council has filed an amended table incorporating additional changes on the matters not agreed and in relation to which the court's direction is sought.

### **Definitions**

[6] Ngā Rūnanga seek that the definitions of "wetland" and "natural wetland" be included in the Topic A hearing. This is opposed by the Regional Council which submits the definitions are outside the scope of Ngā Rūnanga's appeal.

[7] We accept the definition of "wetland" and "natural wetland" is integral to an understanding of the state of the environment and to the strategic direction and overarching objectives of the pSWLP. These water bodies are part of the natural environment that is the subject matter of the Ngā Rūnanga appeal, and on this basis there appears to be scope to consider the definitions of "wetland" and "natural wetland" even though Ngā Rūnanga has not pleaded relief amending the same.

[8] We will direct Ngā Rūnanga to file and serve a memorandum clarifying whether it is proposing to amend the definitions.

[9] We will further direct the Regional Council, or any other party who says there is no scope for the court to consider amending the definitions, is to state a case for a procedural hearing.

### **Ephemeral rivers**

[10] While we understand the grounds for the Ngā Rūnanga appeal in relation to ephemeral rivers, we are uncertain which provisions the Regional Council is referring to at paragraph [69] when it talks about not including "The approach to ephemeral waterbodies in the farming provisions" in Topic A.

### **Appendix A**

[11] Ngā Rūnanga seeks to expand the list of regionally significant wetlands contained in Appendix A. The court is unfamiliar with Appendix A and whether it contains criteria



for inclusion which are under challenge. That said, we are not satisfied that the list of regionally significant wetlands needs finalising at this higher order hearing.

### **Objective 16**

[12] While all parties agree to the inclusion of objective 16 in the Topic A hearing, we decline to do the same. Acknowledging Ngā Rūnanga's concern with the general exclusion of ephemeral rivers from the provisions and methods of the plan, objective 16 addresses public access to waterbodies and lies outside the court's purpose for this initial hearing. Put another way, we are not satisfied determination of the public access objective will assist in an accurate understanding of the environment.

### **Policies 14 and 17A**

[13] While we further acknowledge the importance of the matters raised by Ngā Rūnanga in relation to policies 14 and 17A, the reason for inclusion (providing direction in future mediation) is outside the purpose of this hearing. The court is amenable to the parties seeking a discrete hearing on the relevant provisions prior to mediation.

### **Freshwater Management Plan process policies – policies 15A-C and Appendix E, policy 16 and policies 45-46**

[14] At the pre-hearing conference we left open for the parties to discuss the inclusion of policies 15A-C and Appendix E and policy 16 and how these interface with the FMU policies 45-46. The parties are divided on whether or not they should be included. Forest & Bird and Fish & Game submit that if they are not, this will impact on the conduct of their appeal.

[15] As previously indicated, following the Topic A hearing it is likely that the court will issue an interim decision. If there is substance in the parties' concerns it is open to the court to decline to make any findings and to direct the matters<sup>1</sup> be heard in a separate hearing. As matters stand, it is unclear to us which objectives the matters in contention are said to give effect to. In short, we have insufficient information to reach a view that

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<sup>1</sup> That is, policies 15A-C and Appendix E, policy 16 and policies 45-46.



the matters are part of the over-arching provisions of the pSWLP and important to setting the high-level direction.

[16] Further directions will issue if the parties want to pursue the matter in a preliminary hearing. The parties will be aware of the potential impact this may have on the evidence timetable, but this seems unavoidable given the lack of agreement.

### Outcome

[17] We direct the Topic A hearing will include the following additional matter:

- (i) the definitions of “wetland” and “natural wetland”, but not Appendix A.

[18] We decline to hear the appeals on the following provisions in the Topic A hearing:

- (i) objective 16;
- (ii) policy 14;
- (iii) policies 15A-C;
- (iv) policy 16;
- (v) policy 17A;
- (vi) Appendix A; and
- (vii) Appendix E.

### Directions

[19] We direct:

- (a) by **9 November 2018** Ngā Rūnanga is to file and serve a memorandum clarifying whether it proposes amendments to the definition of a “wetland” and “natural wetland” and if so, setting out the proposed amendments;
- (b) any party opposing the inclusion of the definitions on the grounds that it is beyond the scope of an appeal, are to file a memorandum by **15 November 2018** seeking a procedural determination, with any replies (in opposition or support) to be filed by **23 November 2018**. Further directions will then issue;



- (c) by **15 November 2018** any party seeking a preliminary hearing (i.e. prior to the substantive hearing in May 2019) to determine the inclusion of policies 15A-C and Appendix E, policy 16 and policies 45-46 is to file and serve a memorandum with any replies (in opposition or support) to be filed by **23 November 2018**. Further directions will then issue;
- (d) the timetable direction for reporting on the agenda for mediation is enlarged. The agenda will be filed **within 14 days** of the court finalising the Topic A hearing.



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**J J M Hassan**  
**Environment Judge**

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**J E Borthwick**  
**Environment Judge**

Issued: **05 NOV 2018**