

**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)

(Continued next page)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
REGARDING MEDIATION
3 February 2021**

Judicial Officer: Judge Borthwick

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WILKINS FARMING CO
(ENV-2018-CHC-30)

**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, KODANSHA
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND
PLANTATION FOREST COMPANY OF NEW ZEALAND**
(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 mediation of the appeals against the Council's decision on the proposed Southland Water and Land Plan.
- 2 On Tuesday 2 February 2021, Council staff and consultants met with Environment Commissioners Leijnen and Wilkinson to discuss resourcing and timetabling expectations for the upcoming mediations on the Southland Water and Land Plan.
- 3 At this meeting, three matters arose which would benefit from further clarification and direction from the Commissioners. These issues relate to:
 - (a) the 1 June 2021 deadline for mediations to be complete;
 - (b) the process for requesting the move of individual issues from one topic to another; and
 - (c) the directions regarding pre-mediation steps.

Deadline for completion of all mediations

- 4 The Court directed in its Minute dated 22 October 2020 that all mediations are to be completed no later than 1 June 2021. As was discussed during the meeting, this deadline may produce some scheduling issues. The Council seeks advice from the Commissioners as to whether 1 June 2021 is a hard deadline (i.e., after which all matters that remain unresolved must proceed to hearing) or whether there is some flexibility to complete mediations after this date if required.
- 5 Notwithstanding this, Council staff have prepared an indicative timetable for all mediations on the basis that they be completed prior to 1 June 2021. The Council considers that this timetable is tight, but achievable. A copy of this indicative timetable is attached in **Appendix A**.

Process for moving issues

- 6 Since the table of issues was prepared and filed with the Court on 25 September 2020, some parties have reflected and consider that some individual issues could be better dealt with in a different topic (i.e., at a different mediation). A Joint Memorandum was filed by Meridian Energy

Limited, DairyNZ Limited, and Fonterra Co-operative Group Limited on 9 December 2020 seeking the movement of two issues to other topics. The Council anticipates that, prior to and during the preparation for mediations, additional matters may be identified that the parties consider would be better dealt with during a different topic.

- 7 Counsel seek advice as to whether such requests should be directed to the Court or to the mediating Commissioner.

Directions for pre-mediation steps

- 8 During the course of the meeting, Commissioners Leijnen and Wilkinson discussed the types of pre-mediation steps that they might be best assisted by. Having reflected on those discussions with a view to ensuring that the pre-mediation steps are efficient and effective for all parties involved, the Council proposes to approach the pre-mediation steps as follows:

Step	Task
6 weeks prior to mediation	<p>(i) The Regional Council is to provide the parties with a statement in relation to the issues covered by that topic, addressing:</p> <p>(a) which parts of the National Policy Statement for Freshwater Management 2020 ("NPSFM 2020"), the Regional Council intends to implement in the pSWLP;</p> <p>(b) which appeal points the Regional Council considers provide scope to implement those parts of the NPSFM 2020 identified pursuant to (i) above;</p> <p>(c) prescriptive procedural requirements in the NPSFM 2020 that will require the Regional Council to revisit the relevant topic's appeal points;</p> <p>(d) whether any provisions in the topic are considered to duplicate or conflict with the National Environmental</p>

	<p>Standards for Freshwater ("Freshwater NES") or Stock Exclusion Regulations, or cover similar matters such that some appeal points may become moot;</p> <p>(e) whether any appeal points in the topic seek relief that is considered to duplicate or conflict with the Freshwater NES; and</p> <p>(f) whether any appeal points in the topic seek relief that is moot as a result of the Stock Exclusion Regulations.</p> <p>(ii) The Regional Council will circulate a table (the Table) setting out:</p> <p>(a) the relevant provisions, appellants, and issues; and</p> <p>(b) the background information relating to this issue which the Council considers relevant (for example, any relevant higher order documentation, scientific papers, or evidence which relates to the matter).</p>
4 weeks prior to mediation	<p>(i) The appellants will return a marked up copy of the Table to the Regional Council having completed the relevant fields of the Table, being the detailed relief sought, including the reasons for seeking change and any additional technical information relied upon (a reference to any such technical information to be inserted in the "Background Information" column). A full copy of any additional technical information will be provided to the Regional Council.</p> <p>If the planning witnesses or other expert witnesses for two or more parties have conferenced independently in accordance with the court's Practice Note and reached an agreed</p>

	<p>position on relief, their Joint Witness Statement will be provided to the Regional Council; and</p> <p>(ii) The Regional Council, having received the information in (i)(a) above, will confer with the section 274 parties to confirm whether they support, oppose, or are neutral in relation to the appellants' relief sought.</p> <p>(iii) Parties are to indicate whether there is any change in relief (including the withdrawal of any part of any appeal) in light of the requirements of the NPSFM 2020, Freshwater NES and Stock Exclusion Regulations.</p>
<p>1 week prior to mediation</p>	<p>The Regional Council will circulate a final version of the Table which will:</p> <p>(i) constitute an options paper which identifies the relief proposed by the parties together with any of the amendments proposed in any Joint Witness Statement (if different from the instructing party(ies));</p> <p>(ii) an indication, without prejudice, as to the Regional Council's position on the issue, including whether it will:</p> <ul style="list-style-type: none"> • consider adopting with or without amendment the relief sought by another party or propose an alternative relief, and evaluate each (that is, all relief proposed by the parties as opposed to evaluating the Regional Council's preferred relief) in line with s 32; <p>or</p> <ul style="list-style-type: none"> • support the Decision Version of the pSWLP (without amendment). <p>(iii) may have attached to it, copies of any technical information relied upon by the parties,</p>

	and any technical joint witness statements produced during the course of the pre-mediation steps, as required.
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- 9 These steps would culminate in the preparation and filing of a table that captures the information from these pre-mediation steps. An example of the final version of the table is attached as **Appendix B**. For the avoidance of doubt, the example table attached as **Appendix B** contains a fictitious example.
- 10 The Council recognises that the above pre-mediation steps constitute a further a refinement of the pre-mediation steps set out in the Court's Minute dated 1 December 2020. However, following the discussion with the Commissioners, the Council considers that these steps will best assist all parties involved in mediation and therefore seeks directions from the Commissioners' accordingly.

Directions sought

- 11 Counsel respectfully seeks the following directions from the Commissioners:
- (a) That the timetable attached as Appendix A to this memorandum (or an alternative suitable to the Commissioners) be confirmed; and
 - (b) that the pre-mediation steps set out in the Court's Minute dated 1 December 2020 be replaced by the steps set out at paragraph 8 above.

DATED this 5th day of February 2021

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P A C Maw / A M Langford
 Counsel for the Southland Regional Council

Proposed Mediation Timeline

Order and Grouping of Topics	Duration Estimate	Week Commencing																	
		FEB			MARCH					APRIL				MAY					
		8	15	22	1	8	15	22	29	5	12	19	26	3	10	17	24	31	
B7: Other (Heritage, Burning, Consents) (<1 day)	3.25 days								Ascot	short week post Easter									
B1: Water Takes (1 days)									Ascot										
B2: Water Quality/Discharge (2 days)									Ascot										
B5: Farming (6 days across two weeks - 3 days each week)	6 days																		
B4: Bed Disturbance (2-3 days with B3)	2-3 days																		
B3: Wetlands/Indigenous Biodiversity (2-3 days with B4)																			
B6: Infrastructure (TBC) (1-2 days)	1-2 days																		
Total	5 x 1 week blocks																		

Primary Venue - Ascot
 Secondary Venue - Transport World
 (other options - Working Men's Club; ILT)

29 March to 1 April (Monday to Thursday)	20 April to 27 April to 23 April 30 April (Tuesday to Friday) to Friday)	11 May to 14 May (Tuesday to Friday)	25 May to 28 May (Tuesday to Friday)
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KEY
1. NPS and NES Analysis, and first cut of mediation table shared with parties
2. Confer with parties on interests and reasons for relief
3. SRC circulate final version of table including all relief sought, SRC position and s32 analysis
MEDIATION

Proposed Southland Water and Land Plan Appeals – Topic B – Mediation Summary Table

Topic: B5 – Farming

Sub-topic: Stock Exclusion

Example Row of Table (all names and appeal point are fictitious):

Ref.	Provision, Appellant and Issue	Detailed Relief Sought, including reasons and technical information (to be completed by appellant)	S274 Parties	Background Information	Council Position	Updated Appellant Position	S32 Analysis
5.14	<p>Provision: Policy 18 – Stock exclusion from waterbodies</p> <p>Issue: Should riparian vegetation be encouraged to be indigenous vegetation?</p> <p>Appellant: Joseph Bloggs</p> <p>Section 274 parties: Aparima Catchment Supporters (oppose) Trees Plus Inc (Support)</p> <p>Related appeal points: Nil</p>	<p>Policy 18 – Stock exclusion from waterbodies</p> <p><i>Reduce sedimentation and microbial contamination of water bodies and improve river (excluding ephemeral rivers) and riparian ecosystems and habitats by:</i></p> <ol style="list-style-type: none"> 1. <i>requiring progressive exclusion of all stock, except sheep, from lakes, rivers (excluding ephemeral rivers), natural wetlands, artificial watercourses, and modified watercourses on land with a slope of less than 15 degrees by 2030; and</i> 2a. <i>requiring the management of sheep in critical source areas and in those catchments where E.coli levels could preclude contact recreation; and</i> 3. <i>encouraging the establishment and enhancement of healthy vegetative cover in riparian areas, particularly through use of indigenous vegetation; and</i> 4. <i>ensuring that stock access to lakes, rivers (excluding ephemeral rivers), natural wetlands, artificial watercourses and modified watercourses is managed in a manner that avoids significant adverse effects on water quality, bed and bank integrity and stability, mahinga kai, and river and riparian ecosystems and habitats.</i> <p>Reasons:</p> <ul style="list-style-type: none"> • Shading of waterbodies is important and non-indigenous species are often best for that • Non-indigenous species are often better for flood protection 	<p>Updated positions of Section 274 parties (to be completed by the parties)</p> <p>Aparima Catchment Supporters (remain opposed) Trees Plus Inc (Withdrawn)</p>	<p>Stock Exclusion Regulations 2020 (appeal point not specifically affected by the SE Regs or NES, as vegetation types are not included in the SE Regs).</p> <p>pSWLP Topic A – Objective 14</p> <p>Paras 4.5-4.7 of Council Decision report and paras 23.2-23.7 of Section 42A report.</p> <p>Joseph Bloggs Notice of Appeal.</p>	<p>Council does not support this change.</p> <p>Council recognises that both indigenous and non-indigenous species can be valuable for a range of habitat creation, flood management and shading purposes. However, given the wider policy support for indigenous biodiversity and the importance of riparian margins as habitat, Council prefers encouragement of indigenous plantings.</p> <p>Council remains of the view that this is a measured and reasonable response to this issue, as it does not preclude non-indigenous species or planting.</p>	<p>No further update ahead of mediation.</p>	<p>Council does not support this change, particularly given the reduced likelihood of achieving Objective 14: <i>The range and diversity of indigenous ecosystems and habitats within rivers, estuaries, wetlands and lakes, including their margins, and their life supporting capacity are maintained or enhanced.</i></p> <p>Council’s preliminary analysis is that this change is less effective and efficient at achieving the objectives of the pSWLP. The appellant has not furnished further information to support a s32 analysis that might support the change sought, but that may be forthcoming through mediation.</p>

Sequence/how the table works:

1. Council completes the Provision, Appellant and Issue column, and starts the Background Information column, and sends this to the appellant.
2. The appellant completes the Detail Relief Sought with Reasons column and adds to the background Information column and returns this to the Council.
3. The Council confers with the s274 parties and completes that column.
4. Council considers and inserts its position and returns that to the appellant.
5. The appellant may choose to update its relief sought
6. The Council circulates the final table to all parties ahead of the mediation.