

**BEFORE THE ENVIRONMENT COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY**

**I MUA I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUUTAHI**

**ENV-2018-CHC-0040**

**UNDER**

the Resource Management Act 1991

**AND**

**IN THE MATTER OF**

on an appeal under clause 14 of  
Schedule 1 of the RMA in relation  
to Decisions on the Proposed  
Southland Water and Land Plan

**BETWEEN**

SOUTHLAND FISH AND  
GAME COUNCIL

**Appellant**

**AND**

ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF  
NEW ZEALAND INC

**Appellant**

**AND**

SOUTHLAND REGIONAL  
COUNCIL

**Respondent**

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**MEMORANDUM OF COUNSEL ON BEHALF OF SOUTHLAND FISH  
AND GAME COUNCIL AND THE ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW ZEALAND INC**

**Dated 13 October 2021**

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## May it please the Court

1. This memorandum is filed in response to the memorandum of Southland Regional Council dated 24 September 2021 and the Court's Minute dated 4 October 2021.

## Timetable

2. Forest & Bird and Fish & Game propose changes to the timetable put forward by the Council. The reasons for the proposed changes are set out below, followed by a proposed alternative timetable.

### *Changes to Topic B to implement Topic A*

3. The normal sequence of evidence exchange is for the Council to provide evidence first. The timetable provides for appellants to circulate their evidence in advance of the Council, which is a reversal of the normal approach. Forest & Bird and Fish & Game accept that there may be merit in appellants and s 274 parties providing detailed evidence on the provisions that they seek in advance of Council responding, but with two provisos based on fairness and distribution of effort:

- a. The Council is the repository of the most up to date "state of the environment" information for the region. Rather than each party having to address this in their will say statements and evidence, it is appropriate for the Council to provide this evidence at the outset.
- b. Forest & Bird and Fish & Game committed heavily to the Topic A hearing process, in order to demonstrate that a significant change of direction for the pSWLP was required. The Environment Court held that the pSWLP must provide for improvement in water quality in advance of the FMU process.<sup>1</sup> The Court held that:

[119] If there is to be improvement in degraded waterbodies ahead of the FMU process then our preliminary view is that it is essential the narrative and numeric attributes for degraded water are known and that land management of individual properties address the linkages between those attributes and the contaminant pathways.

It is clear that substantial changes will be required to the Topic B provisions in order to meet the direction that the Court has indicated is necessary. In those circumstances, it is reasonable for the Council to identify the changes that it considers appropriate (within the scope of appeals) first, and for the parties to identify any further or different changes they consider are required.

### *Sequential will say statements*

4. Council's proposed timetable involves sequential exchange of will say statements. It is submitted that this is not necessary. Simultaneous exchange of will say statements allows the due date for the appellants' will say

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<sup>1</sup> [111] and [287]

statements to be extended which is necessary from Forest & Bird and Fish & Game’s perspective given witness unavailability during October and early November.

*Expert witness conferencing*

5. The Court’s Minute provides that the Court will facilitate expert conferencing and Commissioners are available between 22 November and 10 December 2021 as proposed by the Regional Council. Witnesses for Forest & Bird and Fish & Game are available on 22, 24, 25, 26, 27 and 29 November 2021 but have limited availability during 30 November – 10 December 2021 due to their involvement in a hearing on the Greater Wellington Regional Plan that has been set down during the latter dates.
6. Forest & Bird and Fish & Game propose that expert conferencing could occur earlier (17 November to 27 November) subject to Commissioner availability. This would also enable an adjustment to the due dates for evidence, to avoid significant evidence preparation being required in January (as discussed below).

*Evidence preparation during January*

7. This has been an exceptional year for counsel and witnesses. Most have been extremely busy while also managing the additional pressures brought by Covid-related lockdowns and disruptions. In those circumstances, it is respectfully submitted that the need to prepare evidence during January should be avoided as far as possible, to allow people to spend time with family and recharge their batteries. This can be achieved by bringing forward the due date for appellant evidence to pre-Christmas and extending the due date for s 274 party evidence by one week.

*Availability for hearing*

8. Forest & Bird and Fish & Game’s planning witness will be unavailable from 25 April 2022 due to cultural harvest. This will not affect a 4 – 6 week hearing that commences on 14 March 2022.

*Proposed alternative timetable*

9. A proposed alternative timetable is set out below.

Step	Due (assuming 14 March hearing)	Date
Topic B Overview Evidence from Council outlining key findings from Topic A Interim Decisions, updates to superior planning documents (e.g. NPSFM 2020) outline of other new regulations, outline of ES’s freshwater planning process, outline of fundamental issues raised in Topic B appeals, <b>updated “state of the environment” evidence and outline of</b>	19 weeks prior to hearing	29 October 2021

<b>changes that Council proposes to Topic B to implement the Topic A findings</b> <i>[items in bold are new]</i>		
Will say statements <b>from all parties</b> including marked up changes to provisions <i>[Council's timetable has sequential exchange of will says]</i>	17 weeks prior to hearing	12 November 2021
Expert witness conferencing of technical witnesses and planners	16.5 to 15 weeks prior to hearing	17 – 27 November 2021  <b>OR</b> 22 November – 10 December 2021 but availability limited after 30 November 2021
Joint witness statements of technical witnesses and planners to be filed	14.5 weeks prior to hearing	1 December 2021
Appellants' evidence in chief filed and served	12 weeks prior to hearing	20 December 2022
Section 274 party evidence in chief filed and served	5 weeks prior to hearing	4 February 2022
Council evidence on matters not already covered in Overview Evidence filed and served	3.5 weeks prior to hearing	16 February 2022
Rebuttal evidence for appellants and s 274 parties on matters not already covered to be filed and served	1 week prior to hearing	4 March 2022
All parties to file a memorandum setting out changes to provisions being pursued	1 week prior to hearing	4 March 2021
Council to file tabbed, indexed and paginated hard copies of all evidence with the Court	1 week prior to hearing	7 March 2021
Topic B hearing commences		14 March 2021

### **Other matters to be addressed prior to pre-hearing conference**

*Issues of fact and opinion to be resolved and legal issues to be decided*

10. Forest & Bird and Fish & Game agree with the issues of fact and opinion to be resolved and legal issues to be decided as set out in Appendix B of Council's memorandum dated 24 September 2021. However, both

appellants will continue to work towards resolution of outstanding points in advance of the hearing.

*Witnesses and availability*

11. Forest & Bird and Fish & Game intend to call:
  - a. Kate McArthur (water quality)
  - b. Ben Farrell (planning)
12. Those witnesses are available between 22 November and 10 December as follows:
  - a. Available 22, 24, 25, 26, 29 November.
  - b. Limited availability 30 November – 10 December.
  - c. Also available 17 – 21 November (if the Court wishes to facilitate conferencing earlier in light of limited availability on later dates).



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Sally Gepp

Counsel for the Royal Forest and Bird Protection Society Inc and the Southland Fish & Game Council