

**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)*

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**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL  
29 June 2018**

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Judicial Officer: Judge Hassan

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**WYNN WILLIAMS  
LAWYERS  
CHRISTCHURCH**

Solicitor: P A C Maw  
(philip.maw@wynnwilliams.co.nz)

Respondent's Solicitor  
Level 5, Wynn Williams House,  
47 Hereford Street,  
P O Box 4341, DX WX11179,  
CHRISTCHURCH 8140  
Tel 0064 3 3797622  
Fax 0064 3 3792467

**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 Environment Court's Minute dated 24 May 2018, this Memorandum sets out the following matters:
  - (a) the appeals identified by topic;
  - (b) any preliminary or jurisdictional issues to be determined;
  - (c) whether, in the Council's opinion, it is appropriate to hear certain appeals separately or group appeals together by topics for mediations and/or hearings; and
  - (d) potential dates for mediation.

**Appeals identified by topic**

- 3 As directed by the Court, the Council has grouped together the appeals by topic. The proposed topics are as follows:
  - (a) general provisions;
  - (b) water takes;
  - (c) infrastructure;
  - (d) wetlands / indigenous biodiversity;
  - (e) water quality;
  - (f) discharges;
  - (g) cultural/other;
  - (h) bed disturbance;
  - (i) physiographic policies;
  - (j) farming; and
  - (k) wastewater / agricultural effluent.

- 4 Given that a large number of the appeals relate to multiple topics, the Council has identified which of the appeals are on the particular provisions (e.g. objectives, policies, rules etc) related to each topic.
- 5 Council Officers' have prepared a table containing this information, which is set out in **Appendix A**.

**Any preliminary or jurisdictional issues to be determined**

- 6 Counsel have considered the content of the appeals and do not consider that there are any preliminary or jurisdictional issues raised by the content of the appeals, which need to be dealt with ahead of mediation and/or the substantive hearings.
- 7 Counsel notes that some of the relief sought by some of the appellants appears to be beyond the scope of the submissions on the pSWLP. However, as the appellants may pursue refined relief, the Council has not raised these issues at this point in time, as counsel considers that these issues can be addressed at mediation and/or the substantive hearings, if necessary.
- 8 The Council Officers have reviewed the appeals and section 274 notices to identify whether the appellants and interested parties have standing to lodge an appeal and/or join as an interested party, respectively. Counsel has further considered any issues raised by the Council Officers.
- 9 Counsel consider that there is only one jurisdictional issue, and that relates to a section 274 party, being Mr Owen Buckingham.
- 10 Mr Buckingham has lodged a section 274 Notice in respect of Federated Farmers' appeal on the pSWLP. Under section 274 of the RMA, the following persons may be a party to any proceedings before the Environment Court (relevantly):

...

- (d) a person who has an interest in the proceedings that is greater than the interest that the general public has...

...

- (e) a person who made a submission to which the following apply:
- (i) it was made about the subject matter of the proceedings...

- 11 Mr Buckingham did not lodge a submission on the pSWLP. Although Mr Buckingham is a member of the Te Anau Rivers Liaison Committee, which was part of the Southland Rivers Liaison Committees submission, his section 274 Notice does not purport to be on behalf of the Te Anau Rivers Liaison Committee. Further the Southland Rivers Liaison Committee did not submit on any of the provisions that Mr Buckingham is now claiming an interest in.
- 12 Mr Buckingham is seeking to join Federated Farmers' appeal on the basis that he is a person who has an interest in the proceedings that is greater than the interest that the general public has. Mr Buckingham's section 274 Notice states that he has an interest greater than the general public because he is a ratepayer and resident in the upper Waiau River catchment.
- 13 Previously, the Court has held that the requirement to have a greater interest than the general public, was that the interest that qualifies a person to participate in a proceeding must be one of "some advantage or disadvantage, such as that arising from a right in property directly affected and which is not remote."<sup>1</sup> It has been clarified more recently that remoteness relates to legal remoteness rather than geographical remoteness.<sup>2</sup>
- 14 More recent decisions have confirmed that the circumstances providing an interest in proceedings greater than that of the public generally are not restricted solely to property rights, and it is not a closed or prescribed class.<sup>3</sup>
- 15 Despite this, the Environment Court has recently confirmed that the "mere fact of owning land in a district" is not sufficient. In *Federated Farmers v Hastings District Council*, the Environment Court relevantly stated:<sup>4</sup>

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<sup>1</sup> *Purification Technologies Limited v Taupo District Council* [1995] NZ RMA 197 at 204, more recently stated in *Wallace Group Limited v Auckland Council* [2017] NZEnvC 106 at [23].

<sup>2</sup> *Powerco Limited v Thames-Coromandel District Council* [2017] NZEnvC 67, at [28].

<sup>3</sup> *Meadow 3 Limited v Queenstown Lakes District Council* EnvC C001/08, 15 January 2008.

<sup>4</sup> *Federated Farmers of New Zealand Hawkes Bay Province v Hastings District Council* [2016] NZEnvC 141, at [17]. See also *The HB Protection Society Incorporated v Hastings District Council* W021/2009.

For the same reasons that allowing any ratepayer to claim an interest greater than the interest that the general public has is flawed reasoning, I simply cannot see that the mere fact of owning land in a district is sufficient interest to give a landowner the right to join an Environment Court proceeding under s274(1)(d).

- 16 This is further supported by the case of *Wallace Group Limited v Auckland Council*.<sup>5</sup> This case stated clarified that:<sup>6</sup>

It is the relationship between the interest and the consequent effect of the proceedings on the interest, rather than the actual interest itself, which is important. Picking up once again on the key theme of "some advantage or disadvantage": such must be direct and not just emotional or intellectual.

- 17 In line with the above caselaw, on the face of his section 274 notice, Mr Buckingham does not appear to meet the test to join Federated Farmers' appeal, as set out in section 274 of the RMA.
- 18 Accordingly, the issue of Mr Buckingham's standing should be addressed prior to the commencement of mediation on the appeals that he has sought to join.
- 19 Counsel also notes that some section 274 notices are yet to be served, or have only just be served on the Council, and in the light of Forest & Bird's waiver request there may also be section 274 notices seeking to join that appeal. Accordingly, other section 274 notices may have issues in relation to standing or raise other jurisdictional issues, that have not been addressed in this Memorandum. Counsel will file a memorandum if any subsequent issues are identified.

### **Separate or grouped hearings**

- 20 The Council considers that it would be appropriate for the appeals to be heard on a topic-by-topic basis, rather than sequentially by appellant, on the basis that:
- (a) there are a considerable number of appeals that deal with similar issues, which could be heard together; and
  - (b) given the similarity, overlap and volume of the appeals, it would be a more efficient use of the Court and parties' resources to have joint hearings.

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<sup>5</sup> *Wallace Group Limited v Auckland Council* [2017] NZEnvC 106 at [24].

<sup>6</sup> *Wallace Group Limited v Auckland Council* [2017] NZEnvC 106 at [25], citing *Remarkables Park Ltd v Queenstown-Lakes District Council* EnvC C26/2005.

- 21 On the above basis, in the opinion of the Council, it would be appropriate to group appeals together by topics for mediations and hearings.
- 22 Council Officers have ordered the appeal topics in the order in which it considers is most appropriate for the topics to be dealt with. In determining the order, the Council has considered that the resolution of some topics may be required before other topics can be dealt with. Accordingly, the proposed order commences with the topic addressing general provisions (e.g. inclusion of ephemeral waterways and provisions addressing historic heritage), and then on a topic-by-topic basis, in an order that recognises that some topics will need to be dealt with before others (e.g. because they deal with overarching objectives and policies).
- 23 The proposed grouping and order of the appeals is set out in **Appendix A**.

#### **Potential dates for mediation**

- 24 Counsel for the Respondent has consulted with the Appellants to ascertain any availability issues for mediation. The majority of the Appellants either did not raise any issues or have confirmed that they have no issues with the proposed dates for mediation.
- 25 The table in **Appendix B** sets out potential dates for mediation (by way of one-week windows), taking into account the dates on which the Respondent or Appellants have stated they are unavailable. Any particular availability issues raised by particular Appellants is also set out in **Appendix B**.
- 26 Depending on the time required for each mediation topic, there is the potential to mediate several topics in the same week. However, Counsel is mindful that finding clear one-week windows for all relevant Appellants and section 274 parties is likely to be difficult.



27 Given the number of section 274 parties, Counsel for the Respondent has not consulted with the section 274 parties in relation to their availability for mediation.

**DATED** this 29<sup>th</sup> day of June 2018

A handwritten signature in blue ink, appearing to read "P. Maw".

.....

**P A C Maw / K J Wyss**

Counsel for the Southland Regional Council

## Appendix A

GENERAL PROVISIONS					
General	Appellant	Objectives	Appellants	Policies	Appellants
Inclusion of ephemeral rivers	Ngāi Tahu				
Historic heritage <sup>1</sup>	Heritage NZ				
		2	Fish & Game Ngāi Tahu		
		13	Fish & Game Alliance Heritage NZ Ngāi Tahu Forest & Bird		
		13A	Fish & Game Alliance Forest & Bird		
		13B	Alliance Forest & Bird Fish & Game		
		18	Fish & Game Alliance Ngāi Tahu		
				13	Fish & Game Ngāi Tahu Forest & Bird
				39	Fish & Game Federated Farmers Forest & Bird
				39A	Ngāi Tahu Forest & Bird Horticulture NZ

<sup>1</sup> Heritage NZ have also appealed the headings of several sections which have not been explicitly included in this list

WATER TAKE/USE								
Objective	Appellant	Policies	Appellants	Rules	Appellants	Appendices	Appellants	
9	Heritage NZ Forest & Bird Fish & Game							
9A	Fish & Game Forest & Bird Heritage NZ							
11	Alliance							
		20	Ngāi Tahu Forest & Bird Fish & Game Heritage NZ Alliance					
		24	Heritage NZ					
		25	Ngāi Tahu					
		42	Alliance Fish & Game Wilkins Farming					
				50	Alliance			
				51	Forest & Bird			
				54	Wilkins Farming Fonterra			
						L.5	Wilkins Farming Director-General of Conservation	
						J	Alliance	
						K	Fish & Game	

WETLANDS / INDIGENOUS BIODIVERSITY									
Objectives	Appellants	Policies	Appellants	Rules	Appellants	Appendices	Appellants	Definitions	Appellants
14	Forest & Bird								
17	Forest & Bird								
		32	Forest & Bird						
		74	Fish & Game Ngāi Tahu						
				74(ab)	Ngāi Tahu				
		A	Fish & Game Federated Farmers Chartres Ngāi Tahu						
				Q	Ngāi Tahu				
								Natural Wetland	Horticulture NZ
						Wetland	Horticulture NZ		

INFRASTRUCTURE									
Objective	Appellant	Policies	Appellants	Rules	Appellants	Appendices	Appellants		
9B	Fish & Game Forest & Bird Federated Farmers Ngāi Tahu								
10	Aratiatia Federated Farmers Meridian Energy Ngāi Tahu								
New x	Meridian Energy								
		26	Aratiatia Federated Farmers Ngāi Tahu Meridian Energy						
		26A	Transpower Fish & Game Forest & Bird Ngāi Tahu						
						52	Aratiatia Meridian Energy Forest & Bird		
						52A	Aratiatia Meridian Energy Federated Farmers		
						49	Meridian Energy Alliance Federated Farmers		
						New 52B	Meridian Energy		
								E	Fish & Game Aratiatia Alliance Ngāi Tahu

WATER QUALITY					
General	Appellant	Objectives	Appellants	Policies	Appellants
Measure to 2010 not 2016 standard	Ngāi Tahu				
		6	Fish & Game Ngāi Tahu Forest & Bird		
		7	Fish & Game		
				15	Ngāi Tahu Forest & Bird
				15A	Fish & Game Forest & Bird Alliance Ngāi Tahu
				15B	Fish & Game Forest & Bird Alliance Ngāi Tahu
				15C	Fish & Game Forest & Bird Alliance Ngāi Tahu

**DISCHARGES**

Objective	Appellant	Policies	Appellants	Rules	Appellants	Appendices	Appellants
		14	Alliance				
		16A	Fonterra Director-General of Conservation Fish & Game Forest & Bird Ngāi Tahu				
				5	Director-General of Conservation Alliance Fish & Game Ngāi Tahu		
				6	Alliance		
				9	Director-General of Conservation		
				13	Fish & Game Forest & Bird Federated Farmers		
				14	Horticulture NZ Forest & Bird Fish & Game		
				15	Ngāi Tahu Territorial Authorities Fish & Game Forest & Bird		
						G	Alliance





BED DISTURBANCE					
Policies	Appellants	Rules	Appellants	Definitions	Appellants
28	Forest & Bird Heritage NZ				
29	Director-General of Conservation Heritage NZ Forest & Bird Ngāi Tahu HW Richardson				
30	Fish & Game				
		59	Transpower Heritage NZ		
		73	Federated Farmers Heritage NZ Fish & Game		
		78	Director-General of Conservation Heritage NZ Forest & Bird Fish & Game Ngai Tahu		
				gravel	Fish & Game
				Sediment	Fish & Game

<b>PHYSIOGRAPHIC POLICIES</b>	
<b>Policies</b>	<b>Appellants</b>
4	Wilkins Farming Director-General of Conservation Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
5	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
6	Wilkins Farming Alliance Fish & Game Forest & Bird
7	Wilkins Farming Alliance Forest & Bird
8	Wilkins Farming Alliance Forest & Bird
9	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
10	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
11	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
12	Wilkins Farming Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird
12A	Alliance Ngāi Tahu Wilkins Farming Fish & Game Forest & Bird Federated Farmers

**FARMING**

<b>Policies</b>	<b>Appellants</b>	<b>Rules</b>	<b>Appellants</b>	<b>Appendices</b>	<b>Appellants</b>	<b>Definitions</b>	<b>Appellants</b>
16	Fonterra Director-General of Conservation Forest & Bird Fish & Game Ngāi Tahu						
18	Beef & Lamb Federated Farmers Fish & Game Forest & Bird						
		20	Robert Grant Fonterra Aratiatia Wilkins Farming Dairy NZ Beef & Lamb Fish & Game Federated Farmers Stoney Creek Station The Terraces Campbells Block Chartres Ngāi Tahu Forest & Bird				
		24	Fish & Game Forest & Bird				
		35A	Federated Farmers Dairy NZ Ngāi Tahu				
		70	Beef & Lamb Fish & Game Forest & Bird Chartres				
				N	Heritage NZ Fish & Game Ngāi Tahu		
						Intensive Winter Grazing	Fish & Game Stoney Creek Station
						Significant de-vegetation	Fish & Game
						Feedlot/feedpad	Federated Farmers

CULTIVATION			
Rules	Appellants	Definitions	Appellants
25	Robert Grant Horticulture NZ Fish & Game Federated Farmers Stoney Creek Station Campbells Block Southwood Ngāi Tahu Forest & Bird		
		Spray and pray	Stoney Creek Station
		Sloping ground	Fish and Game
		cultivation	Horticulture NZ Rayonier Southwood

WASTEWATER			
Policies	Appellants	Rules	Appellants
17A	Ngāi Tahu Federated Farmers Fish & Game Forest & Bird		
		26	Ngāi Tahu
		28	Ngāi Tahu
		29	Ngāi Tahu
		33	Territorial Authorities
		33A	Territorial Authorities
		35	Federated Farmers

AGRICULTURAL EFFLUENT			
Policies	Appellant	Rules	Appellants
17	Fonterra Fish & Game Forest & Bird Ngāi Tahu		
		32B	Federated Farmers Fonterra Heritage NZ
		32D	Fonterra

## Appendix B – Proposed Mediation Dates

Order	Topic	Appellants	Proposed dates and availability issues
1.	General provisions	Ngāi Tahu Heritage NZ Fish & Game Alliance Forest & Bird Federated Farmers Horticulture NZ	Monday 13 August to Friday 17 August <ul style="list-style-type: none"> <li>• Forest &amp; Bird is unavailable Monday 13 August</li> <li>• Horticulture NZ is unavailable Friday 17 August</li> </ul>
2.	Water Take / Use	Heritage NZ Forest & Bird Fish & Game Alliance Ngāi Tahu Wilkins Farming Fonterra Director-General of Conservation	Monday 20 August to Friday 24 August <ul style="list-style-type: none"> <li>• Forest &amp; Bird is unavailable Wednesday 22 August to Friday 24 August</li> </ul>
3.	Wetlands / Indigenous Biodiversity	Forest & Bird Fish & Game Ngāi Tahu Federated Farmers Chartres Horticulture NZ	Monday 27 August to Friday 31 August
4.	Infrastructure	Fish & Game Forest & Bird Federated Farmers Ngāi Tahu Aratiatia Meridian Energy Transpower Alliance	Monday 24 September to Friday 28 September

5.	Water Quality	Ngāi Tahu Fish & Game Forest & Bird Heritage NZ Alliance	Monday 15 October to Friday 19 October
6.	Discharges	Alliance Forest & Bird Fish & Game Fonterra Director-General of Conservation Ngāi Tahu Federated Farmers Horticulture NZ Territorial Authorities	Tuesday 23 October to Friday 26 October
7.	Cultural / FMUs / Other	Fish & Game Federated Farmers Forest & Bird Heritage NZ Federated Farmers	Monday 29 October to Friday 2 November <ul style="list-style-type: none"><li>• Forest &amp; Bird is unavailable this entire week</li></ul>
8.	Bed Disturbance	Forest & Bird Heritage NZ Director-General of Conservation Ngāi Tahu H W Richardson Fish & Game Transpower Federated Farmers	Monday 5 November to Friday 9 November



9.	Physiographic Policies	Wilkins Farming Director-General of Conservation Fish & Game Alliance Federated Farmers Ngāi Tahu Forest & Bird	Monday 12 November to Friday 16 November
10.	Farming	Fonterra Director-General of Conservation Forest & Bird Fish & Game Ngāi Tahu Beef & Lamb Federated Farmers Robert Grant Aratiatia Wilkins Farming Dairy NZ Stoney Creek Station The Terraces Campbells Block Chartres Heritage NZ	Monday 19 November to Friday 23 November <ul style="list-style-type: none"> <li>• Beef &amp; Lamb is unavailable Monday 19 November</li> </ul>
11.	Cultivation	Robert Grant Horticulture NZ Fish & Game Federated Farmers Stoney Creek Station Campbells Block Southwood Ngāi Tahu	Monday 26 November to Friday 30 November

		Forest & Bird Rayonier	
12.	Wastewater	Ngāi Tahu Federated Farmers Fish & Game Forest & Bird Territorial Authorities	Monday 3 December to Friday 7 December
13.	Agricultural Effluent	Fonterra Fish & Game Forest & Bird Ngāi Tahu Federated Farmers Heritage NZ	Monday 10 December to Friday 16 December