

BEFORE THE ENVIRONMENT COURT

I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of 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
(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 ARATIATIA LIVESTOCK LIMITED
SEEKING LEAVE NOT TO ATTEND THE FULL DURATION OF THE TOPIC
A HEARING**

22 MAY 2019

**ELLIS GOULD
LAWYERS
AUCKLAND**

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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 Act 1991
(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 AND
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. The Court's minute of 5 March 2019 directed that counsel wishing to be excused from attending the full duration of the Topic A hearings seek leave of the Court.
2. Due to Court-scheduling conflicts and to reflect the limited resources it has available to it for engagement in the Court process, Aratiatia Livestock Limited ("**Aratiatia**") respectfully seeks leave for its counsel not to attend the full duration of the hearing and for Aratiatia's involvement in the hearing to be on the basis set out in para 3 below.
3. Aratiatia respectfully seeks the Court's leave:
 - (a) For counsel to be excused from attending the hearing on **5 and 6 June 2019** given a conflict with a two-day High Court appeal hearing in Dunedin.
 - (b) For counsel to be excused from attending the opening day of the hearing on **4 June 2019** on the basis that the 10-minute summary of Aratiatia's case will be prepared by counsel but delivered by Aratiatia's witness, Claire Jordan.
 - (c) For counsel **otherwise** to be excused from attending those parts of the hearing not directly related to Aratiatia's case (to the effect that counsel will attend to present Aratiatia's case and to cross examine Meridian witnesses).

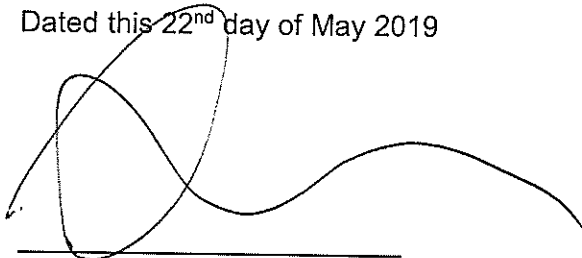
Grounds for Application

4. By way of its minute dated 30 April 2019, the Court gave directions as to the timing and duration of opening and closing addresses. Each party was directed to give a maximum 10 minute "*overview of key issues for determination*" on the first day of the hearing (4 June 2019), with an ability to present a five minute "*update*" to its evidence being called and closing submissions at the end of the evidence.
5. Based on the early draft proposed hearing schedule prepared by the Regional Council, Aratiatia's involvement in the case is likely to be as follows:
 - (a) Presentation of its **10-minute** opening on 4 June 2019.

- (b) Presentation of Aratiatia's case including evidence and legal submissions during week 2.
 - (c) Cross examination (during week 2) of:
 - (i) Margaret Jane Whyte (Meridian) for a maximum of **20 minutes**.
 - (ii) Andrew Conrad Feierabend (Meridian) for a maximum of **20 minutes**.
6. Aratiatia is cognisant of the Court's general expectation that counsel will attend for the duration of the hearing, as set out in the Court's minute of 5 March 2019. Aratiatia acknowledges that the Court cannot be expected to keep track of the comings and goings of counsel, and that if a party is not present in Court when a matter arises that is of interest to it then that party risks losing the opportunity to participate in that issue. That may affect the Court's consideration of that issue and could be prejudicial to the party's case.
7. With regard to **5 and 6 June 2019**, counsel for Aratiatia is involved in a High Court appeal hearing concerning the Otago Regional Policy Statement in Dunedin on those days (being the same case in which Ms Gepp is involved). While the scheduling conflict is unfortunate, counsel is required to give the High Court proceeding priority.
8. With regard to the other orders sought:
- (a) Aratiatia is a small, family-held farming company, which has an interest in only a narrow part of the subject matter of the Topic A hearing (being the content of Objective 10) and limited resources to invest in its participation in the hearings on the proposed Regional Plan.
 - (b) The content of Objective 10 forms only a small part of the range of matters before the Court in Topic A and Aratiatia therefore wishes to apply its time and resources to the proceedings, subject to the Court's leave, in a targeted way to ensure that its participation is constructive and beneficial to itself, other parties and the Court.

- (c) Aratiatia's intention is that an Aratiatia representative, (i.e.: counsel or at least one of Aratiatia's' witnesses, being Paul Marshall and Claire Jordan) will be present at the hearing on all hearing days, to ensure that it and its counsel are kept abreast of progress of the hearing.
- (d) If the Court is minded to grant Aratiatia leave not to attend Court on 5 and 6 June, counsel (who is based in Auckland) would be required to travel between Auckland, Invercargill and Dunedin on a number of occasions during the first week of the hearing. Given the limited extent of Aratiatia's contribution to the hearing on day 1 (essentially limited to the ten-minute overview submission) Aratiatia considers that it would be inefficient and disproportionately costly for counsel to appear, compared to the limited benefit that the Court is likely to gain from counsel's presence at that stage of the hearing. Aratiatia submits that the Court would be sufficiently assisted if counsel were to prepare the ten-minute overview submission, which would then be read to the Court by Ms Jordan on the first day of the hearing. Any legal issues arising, or questions from the Court of that nature, can be clarified by counsel when providing the maximum five minute "update" submission prior to calling its evidence and in closing submissions.
9. Counsel acknowledges that Aratiatia's request amounts to a substantial relaxation of the Court's general expectation. It respectfully asks that the Court exercise its discretion to grant leave, as this would be a fair and efficient outcome in the circumstances.

Dated this 22nd day of May 2019



D A Allan

Counsel for Aratiatia Livestock Limited