

**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, SOUTDWOOD
EXPORT LIMITED

(ENV-2018-CHC-46)

TE RŪNANGA O NGĀI TAHU, HOKONUI
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

**MINUTE OF THE ENVIRONMENT COURT
(25 July 2018)**

Introduction

[1] Various memoranda have been filed in response to the respondent's proposed topic groupings for mediations and hearings on the appeals. Some parties raise issues as to availability on various proposed dates for mediations. Those matters will be managed by the assigned Environment Commissioner who will, if need be, make associated directions.

[2] However, for the reasons I traverse in this Minute, the court considers that an appropriate first step is for a pre-hearing conference to be held at the earliest opportunity and for the purposes of assisting the fair and efficient conduct and disposition of proceedings. The parties should anticipate that the conference will be in Invercargill, rather than by teleconference. There will be further communication with the parties concerning the date and venue once those matters are arranged. Mediations will be scheduled following the conference.



'Initial Planning Statement' sought prior to mediation

[3] The respondent's further memorandum dated 17 July 2018 proposes some refinements to its originally proposed topic list and explains the respondent's intended approach to resourcing of mediation sessions. In particular, the court notes the respondent's intention that, depending on topics, sessions would be attended by staff, an expert planning consultant, a technical expert and legal counsel.

[4] The court appreciates the consideration that the respondent has given to these matters.

[5] The court observes that, while appeals do not challenge the entire proposed Southland Water and Land Plan ('pSWLP'), several challenge fundamental aspects of it and its underpinnings. Further, determination of the appeals in due course must be in accordance with the statutory framework of the Resource Management Act 1991 ('RMA'). That includes its specifications as to matters such as the relationships of:

- (a) the pSWLP to higher order documents (including national policy statements ('NPSs') and the Regional Policy Statement ('RPS');
- (b) pSWLP objectives to Part 2 RMA; and
- (c) pSWLP objectives to policies and rules and other provisions.

[6] Given those matters, the court considers that it would be of assistance if the respondent was able to provide an early explanation of the pSWLP's relevant underpinnings and design approach ('Initial Planning Statement'). It envisages this would be a first step, before mediations on particular topic areas get underway.

[7] While the s32 and s32AA reports and other material that informed the respondent's pSWLP decisions will elucidate these things to some extent, those reports are now outdated insofar as those decisions have changed the notified version. Therefore, the court sees value in a refreshed and comprehensive analysis being provided in advance of mediations. The court envisages this Initial Planning Statement being in the form of planning evidence by the respondent's lead planning witness, being a witness with appropriate understanding of these matters, supported by relevant reference material.



[8] Without seeking to limit what could be usefully addressed in this Initial Planning Statement, the court identifies the following questions as matters that could be usefully covered:

- (a) what NPSs are the pSWLP intended to give effect to? Is that qualified, in any relevant sense, for any of the relevant NPS (referring, for instance to the statement concerning the National Policy Statement for Freshwater Management 2014 ('NPSFM') that prefaces the region-wide objectives)?
- (b) are there any relevant national environmental standards?
- (c) is it the respondent's view that the Southland Regional Policy Statement 2017 is fully up-to-date in giving effect to relevant NPSs and, if not, how is this intended to be managed in the consideration of the pSWLP?
- (d) what is the relevant state-of-the-environment information underpinning the pSWLP, including in respect of the provisions on Physiographic Zones and the water quality of related water bodies?
- (e) what s30 RMA functions (particularly as pertaining to use of land, river beds, take and use of water and discharges) and pt 2 purpose and principles are intended to be addressed by the pSWLP's provisions?
- (f) what are the relevant linkages as between pSWLP including:
 - (i) objectives and related policies and rules?
 - (ii) appendices and related rules?
 - (iii) definitions and related provisions?
- (g) what rules specify relevant assessment matters, standards and controls for the determination of resource consent applications for:
 - (i) water take/use?
 - (ii) land uses?
 - (iii) discharges?
- (h) pending the processes intended for provision of Freshwater Management Units ('FMUs'), under existing rules, can related policies be achieved or are there any gaps in being able to do so?
- (i) does the pSWLP seek to regulate over-allocation both in terms of water quantity and quality or just water quantity (noting the reference to 'quality' in Policy P16.1(b)(ii))? If it seeks to regulate over allocation in a quality sense, which rules do so?



[9] The court also signals that, purely from the perspective of drafting quality, there are some vagaries that would be ideally addressed at some stage (leaving aside any views as to the merits or otherwise of provisions under appeal). These include uncertainties and inconsistencies in regard to words and phrases such as:

- (a) 'avoid, where practicable, otherwise remedy or mitigate', 'avoid, in preference', 'minimise' and 'avoid significant' adverse effects' (including in terms of the directions intended by relevant policy and the relationship of policies to objectives);
- (b) 'implementing' 'good management practice' (and whether 'implementing' means 'complying with' or something else);
- (c) 'farming activity, 'landholding' and 'dairy platform'.

[10] The scope of appeals may impede the extent to which drafting infelicity issues are able to be addressed, except to the extent s293 RMA may be employed. Any s293 RMA direction is to be after hearing related appeals (s293(1)). However, there may be benefit in allowing the Initial Planning Statement to also traverse drafting infelicity issues that could be usefully addressed at some stage (perhaps using tracking to identify any drafting updates that the respondent proposes).

[11] To be clear, the Initial Planning Statement would be in addition to the evidence the respondent would subsequently file on topics to be heard. As such, any evidence offered in reply by appellants would be reserved until such time as sequential evidence exchange for topic hearings is directed.

Respondent's proposed topics

[12] The court has some reservations about the logic of the respondent's proposed topic list and sequence.

[13] One is a general one, namely that it would be preferable for the consideration of appeals on a planning instrument such as this to follow the general sequence indicated in s32 RMA, whereby objectives are considered and determined before related policies, rules and other provisions. Under that approach, overarching objectives and related issues (and the underpinning state-of-the-environment information) would be heard at the outset. Mediations do not necessarily have to follow the same sequence but, as a



general rule, it is desirable that they do. Also, the court is mindful that mediation is not always an effective first stage, particularly where it concerns fundamental issues concerning the philosophical direction of the planning instrument.

[14] According to that logic, ideally, most pSWLP Issues and Objectives and the underpinning state-of-the environment information, would be dealt with at the outset. In essence, that would be for the purposes of providing an initial 'horizontal' consideration of the pEMP before the later topic-by-topic 'vertical' consideration. If need be, that could be on the basis that allowed for any necessary further scrutiny of particular objectives in the context of later topic hearings (such as through the mechanism of an initial interim decision). In the context of the pSWLP, the court's present thinking is that this first hearing could also address the policies that pertain to the Physiographic Zones, FMUs and Ngāi Tahu matters.

[15] Possibly, those Objectives that are sufficiently confined and discrete could be left aside for later topic-specific consideration. For instance, that may be appropriate for Objective 10 (on hydro-electric schemes) and Objective 17 (on wetlands).

[16] Furthermore, it is not immediately obvious why wastewater and agricultural effluent are dealt with towards the end whilst the apparently related topics of water quality and discharges are dealt with towards the beginning of the proposed sequence of topics.

[17] Considering all of that, the court offers the following possible alternative sequence of topics/topic groupings (with a view to both hearings and related mediations):

- (a) Topic A: Horizontal consideration of pSWLP's issues, objectives and specified policies:
 - (i) Issues (including state-of-the environment matters),
 - (ii) Physiographic Zones;
 - (iii) Objectives (possibly except for 10 and 17);
 - (iv) Ngāi Tahu Policies 1 – 3, Physiographic Policies 4 – 12A and FMU Policies 44 – 47;



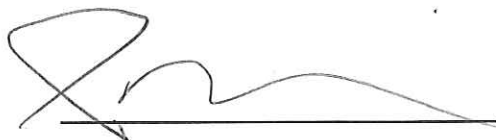
- (b) Topics B1 – B7 Vertical consideration of remaining objectives, policies, rules and other provisions pertaining to:
- B1 Water Take;
 - B2 Water Quality/Discharge [possibly in conjunction with or immediately prior to Wastewater and Agricultural Effluent];
 - B3 Wetlands/Indigenous Biodiversity (including Objective 17);
 - B4 Bed Disturbance;
 - B5 Farming [possibly in conjunction with or immediately prior to Cultivation];
 - B6 Infrastructure (including Objective 10);
 - B7 Other (remaining provisions).
- (c) Any s293 directions.

[18] Potentially, under such a sequence, a full court could be convened for Topic A. This would potentially enable separate divisions to hear subsequent topic clusters so as to achieve a quicker determination overall of all appeals.

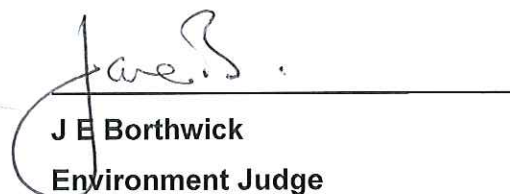
[19] However, the first pre-hearing conference will provide opportunity for parties to express any views on these matters including proposed topic groupings. Also, it can be anticipated that directions that follow would reserve capacity for the assigned Environment Commissioner to make further directions as are seen appropriate for the fair and efficient conduct of mediations.

Confirmation of pre-hearing conference arrangements

[20] The Hearing Manager, Ms McKee, will further communicate on and confirm date and venue arrangements for the pre-hearing conference. The parties should pencil in Friday 17 August 2018, as inquiries are presently being made as to an available venue on that date.



J J M Hassan
Environment Judge



J E Borthwick
Environment Judge

Issued: **25 JUL 2018**

