

**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)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND FISH AND GAME
COUNCIL AND THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INC ON SEVENTH INTERIM DECISION**

18 May 2023

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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
(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. The Royal Forest and Bird Protection Society of New Zealand Inc (“Forest & Bird”) and Southland Fish and Game Council (“Fish & Game”) seek to clarify the meaning of part of the Court’s Fifth Interim Decision¹, in light of paragraph [8] of the Court’s Seventh Interim Decision.²

2. Paragraph [8] of the Court’s Seventh Interim Decision says:

[8] SRC has reported on the maps to be appended to Schedule X, however it has not explained why maps and layer plans for DIN and DRP are included. In context, the mapping of these values is inconsistent with paragraphs [62]-[65] and footnote 94 of the Fifth Interim Decision. If estuarine trophic status is correlated with TN and TP loads, should not TN and TP have been mapped? SRC is directed to respond, producing new maps and layer plans (if appropriate).

3. Forest & Bird and Fish & Game did not understand the Fifth Interim Decision to find that maps showing catchments that are degraded in terms of DIN and DRP should not be included. In particular, Counsel refers to paragraphs [77], [78], [84] and footnote 94 of the Fifth Interim Decision:

Findings on Schedule X

[77] Where water quality falls below the national bottom lines or minimum acceptable state, we find water quality in these water bodies is, or is highly likely to be, degraded by human activities and is to be improved (Objective 6).

[78] We are satisfied that for a range of attributes and minimum acceptable states, water quality in many of Southland’s water bodies is, or is highly likely to be, degraded and it is our judgement that Policy 16 should respond to this finding. Furthermore, Dr Snelder’s evidence satisfies us that there is an adequate evidential basis for inclusion of the identified catchments in Schedule X.

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Outcome

¹ *Aratiatia Livestock Ltd v Southland Regional Council* [2022] NZEnvC 265.

² *Aratiatia Livestock Ltd v Southland Regional Council* [2023] NZEnvC 87.

[84] We approve:

(a) the maps prepared by Dr Snelder⁹⁴ for inclusion in a new schedule, Schedule X;

(b) the title of Schedule X shall read 'Catchments of degraded waterbodies where improvement in water quality is required'. (Annexure 4).

⁹⁴ Individual maps for nitrogen, phosphorus, suspended sediments, MCI (<90) and *E.Coli* together with a single map for all attributes. Segments of degraded water quality are to be distinguished from upstream catchments contributing contaminants as he has shown.

4. The maps prepared by Dr Snelder included maps of DIN and DRP.
5. While the Court made findings at [62]-[65] regarding DIN and DRP, the Court went on to say that it preferred the evidence of Drs Canning, Snelder and J Kitson and Ms K McArthur over Dr Depree's evidence that MCI was suitable as a single attribute for riverine ecosystem health.³ The evidence of Drs Canning, Snelder, Kitson and Ms McArthur on this point was that nutrient attributes (nitrogen and phosphorus) were required, in addition to a MCI attribute, to determine ecosystem health.⁴
6. The Court was clear that it was beyond the scope of the plan to include target attribute states, instream concentrations or other nutrient criteria, and that this was not the purpose of mapping degraded catchments in Schedule X.⁵ Mapping was a method to implement the requirements of Policy 16.⁶

³ At [67].

⁴ Rebuttal evidence of Adam Canning dated 22 February 2022 at [12] [15] – [16], [27], [28], [29], [30], [33], [36]; Oral evidence of Adam Canning (NOE page 1082 line 10 – line 32) ; Rebuttal evidence of Kate McArthur dated 22 February 2022 at [11] – [15], [16]-[17], Oral evidence of Kate McArthur (NOE page 928 line 20 – page 929 line 32); Oral evidence of Antonius Snelder (NOE page 703 line 27 – page 704 line 31; page 723, lines 13 – 22); Section 274 party evidence of Jane Kitson dated 4 February 2022 at [9]; Oral evidence of Jane Kitson (NOE page 970 line 5 - page 971 line 10; page 972 line 2 – page 973 line 18).

⁵ At [73].

⁶ At [76].

7. The Court also found that it was satisfied by Dr Snelder's evidence that there was an adequate evidential basis for inclusion of "the identified catchments" in Schedule X.⁷ The identified catchments included catchments that were degraded in terms of DIN and DRP.

8. In light of:

- a. the Court's approval of "the maps prepared by Dr Snelder" including (per footnote 94) "individual maps for nitrogen, phosphorus ...";
- b. the findings preferring the evidence of Canning, Snelder, Kitson and McArthur over Dr Depree regarding suitability of MCI as a single attribute for riverine ecosystem health; and
- c. the Court's finding that there was an adequate evidential basis for inclusion of "the identified catchments" in Schedule X;

Forest & Bird and Fish & Game understood the Court to be approving the maps produced by Dr Snelder *including* the DIN and DRP maps.

9. In that context, Forest & Bird and Fish & Game understood paragraph [65] to mean that the Court's role was not to set DIN/DRP nutrient criteria (as further explained in paragraph [73]), not that the maps of degraded catchments (as a method to implement Policy 16 requirements) should not identify parts of the catchment that are degraded in terms of DIN and DRP.

10. Given paragraph [8] of the Court's Seventh Interim Decision, Forest & Bird and Fish & Game respectfully request clarification of the meaning of paragraphs [65], [67] and [84] and footnote 94 of the Court's Fifth Interim Decision.

⁷ At [78].

Sally Gepp

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Sally Gepp

Counsel for Southland Fish and Game Council

and the Royal Forest and Bird Protection Society of New Zealand Inc

Date: 17 May 2023