

**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

(Continued next page)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL IN
RELATION TO CLAUSE 16(2) AMENDMENTS TO THE PROPOSED
SOUTHLAND WATER AND LAND PLAN
12 February 2020**

Judicial Officer: Judge Borthwick

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WYNNWILLIAMS

(ENV-2018-CHC-30)

**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 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 Counsel advises the Court and the parties that the Council has made amendments to the pSWLP in accordance with clause 16(2) of Schedule 1 of the Resource Management Act 1991.
- 3 The amendments affect some provisions of the pSWLP that are under appeal, including both Topic A and Topic B provisions. The particular amendments are set out in the table in **Appendix A**. These amendments are either of minor effect or correct a minor error. Accordingly, they will have no substantive effect on the appeals.
- 4 The Council has prepared an updated "Decisions Version" of the pSWLP that incorporates all clause 16(2) amendments that have been made since the decision on 4 April 2018. The updated Decisions Version also shows which provisions are under appeal by shading those provisions and inserting footnotes to indicate which parties made those appeals. The Council intends to update the shading and footnotes in the updated Decisions Version as appeal points are resolved, to maintain an up-to-date version of the pSWLP.
- 5 The updated Decisions Version can be found on the Council's 'Proposed Southland Water and Land Plan' page on its website under the heading 'Appeals' (<https://www.es.govt.nz/about-us/plans-and-strategies/regional-plans/proposed-southland-water-and-land-plan>).

DATED this 12th day of February 2020



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P A C MAW / A M Langford
 Counsel for the Southland Regional Council

Appendix A – List of clause 16(2) amendments to pSWLP

Provision	Issue/error	Correction
Te Mana o te Wai – first paragraph	Te hauora o te taiao – ‘the’ missing from translation	Translation corrected.
Partnership between SRC and NT – paragraph 6	Typo	“... Rather, tangata whenua themes and issues have been integrated through this Plan to reinforce the Ngāi Tahu philosophy of ki uta ki tai (from mountains to sea).”
Physiographic zones - Gleyed	The words ‘and streams’ at the end of the second bullet point should have been deleted. Remove for consistency.	“ Overland flow (in some parts of the zone - (o) variant) – nitrogen, phosphorus, sediment and microbes to rivers and streams .”
Policy 22(1)	Cross referencing error between this policy and Appendix K.	Amend to read “...and salmon, <u>in accordance with Appendix K:</u> ”
Policy 46 – Identified FMUs	Inconsistent use of full FMU names.	Amend to include full FMU names throughout the Plan.
Rule 20(a)(iii)(1)	Unclear if it is 15% or 100ha	Amend to read “...whichever is the lesser <u>area</u> ”
Rule 20(a)(iii)(4)	Tense in the generic change from ‘surface waterbody’ to ‘lakes, rivers, artificial watercourses, modified watercourses and natural wetlands’ is incorrect. It should be in the singular tense. The list should start with ‘a’, not ‘any’ and there should be no ‘s’ on the end of the names of the waterbodies (should be singular).	“(4) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of any <u>a</u> lake, river (excluding ephemeral rivers where intensive winter grazing is permitted under Rule 20(aa))...”
Rule 20(b)(i)	Should be singular tense as per Rule 20 above.	“(i) from 1 May 2019, a vegetated strip is maintained in, and stock excluded from, the area between the outer edge of the bed of any <u>a</u> lake, river (excluding ephemeral rivers where intensive winter grazing is permitted...”
Rule 20(d)	Rule 20(a) requires the farm to be under 20ha, therefore no farm over 20ha can comply with Rule 20(d) and cannot obtain a Restricted Discretionary consent.	Amend to read “... all conditions of Rule 20(a) <u>other than (i), ...</u> ”
Rule 20(d)(ii)(1)	Inconsistent use of the word microbiological. Elsewhere in the Plan the word microbial has been used.	“...sediment and microbiological <u>microbial</u> contaminants discharged...”
Rule 20 matters of discretion	Inconsistent use of the word microbiological. Elsewhere in the Plan the word microbial has been used.	“...sediment and microbiological <u>microbial</u> contaminants to water...”
Rule 20(e)	Currently reads “The use of land for	The use of land for a farming activity

Provision	Issue/error	Correction
	a farming activity that is not specified as a permitted, restricted discretionary or prohibited activity under Rule 20(d) is a discretionary activity. This was amended under Clause 16(2) in April 2018 in error.	that is not specified as a permitted, restricted discretionary or prohibited activity under Rule 20(d) is a discretionary activity.
Rule 24(b)	The word 'or' is missing and the word 'and' should be deleted.	"...the discharge of nitrogen, phosphorus, sediment and <u>or</u> microbial contaminants onto or into land..."
Rule 25(a)(ii)	Semi colon missing from end of sentence	"... is permitted under Rule 20(aa)) artificial watercourse, modified watercourse or wetland; and..."
Rule 25 <i>The Southland Regional Council will restrict the exercise of its discretion to the following matters: – bullet 1.</i>	The words 'critical source areas in' should be deleted.	"1. potential adverse effects of discharges of sediment and other contaminants from critical source areas in the area being cultivated on water quality and biodiversity..."
Rule 25 (a)(ii)	Inconsistent use of 'natural wetland'	Amend '... a distance of 5 metres frommodified watercourse or <u>natural wetland</u> ;'
Rule 26(d)(vii)	Should be singular tense as per Rule 20 above.	"(vii) the discharge onto or into land does not occur at a location where overland flow will result in contaminants reaching <u>a</u> lakes, rivers, artificial watercourses, modified watercourses, natural wetlands or the coastal marine area; and..."
Rule 27(b)	The word 'that' needs to be added to sentence	"(b) The discharge of contaminants from a pit toilet onto or into land, in circumstances where a contaminant may enter water <u>that</u> does not meet the conditions of Rule 27(a) is a discretionary activity."
Rule 28(a)(v)(1)	Should be singular tense as per Rule 20 above.	"(1) 20 metres of any <u>a</u> lakes, rivers, artificial watercourses, modified watercourses, or natural wetlands; or..."
Rule 29(b)	The word 'the' needs to be deleted	"(b) The discharge of aerobically composted human excreta onto or into land, in circumstances where a contaminant may enter water that

Provision	Issue/error	Correction
		does not meet the one or more of the conditions of Rule 29(a) is a discretionary activity...”
Rule 32B(a) 32B(b) 32B(c) 32B(d)	Amendments made to the definition of ‘agricultural effluent storage’ resulted in pond drop tests being required for ancillary effluent storage structures such as weeping walls. The Panel’s Recommendation Report noted that pond drop tests were to apply to ponds only.	Amend ‘...effluent directly onto or into land from that facility which is, <u>where relevant</u> , within the normal operating parameters of a leak detection system
Rule 32B(a)(iii)	Should be singular tense as per Rule 20 above.	“... (iii) the agricultural effluent storage facility is not within 50 metres of any <u>a</u> lakes, rivers, artificial watercourses, modified watercourses, natural wetlands or the coastal marine area; and...”
Rule 32C(a)(ii)	Should be singular tense as per Rule 20 above.	“(ii) the effluent storage facility is not within 50 metres of any <u>a</u> lakes, rivers, artificial watercourses, modified watercourses, natural wetlands or the coastal marine area; and...”
Rule 32C(c)	Incorrectly refers to incidental discharge of agricultural effluent, when the rule is on non-agricultural effluent storage.	“...and any incidental discharge of agricultural effluent directly onto or into land from that facility...”
Rule 32D(a) Rule 32D(a)(ii)(2) Rule 32D(b)	Amendments made to the definition of ‘agricultural effluent storage’ resulted in pond drop tests being required for ancillary effluent storage structures such as weeping walls. The Panel’s Recommendations Report noted that pond drop tests are to apply to ponds only. Reference to Appendix P in sub clause (a)(ii)(2) is unnecessary	Amend ‘... directly onto or into land from that storage facility which is, <u>where relevant</u> , within the normal operating parameters of a leak detection system or the pond drop test criteria set out in Appendix P, is a permitted activity provided that following conditions are met: (i) (ii) (2) certified by a Suitably Qualified Person in accordance with Appendix P within the last three years
Rule 40(b)	The word ‘to’ needs to be deleted.	“...activity provided to the following conditions are...”
Rule 45(a)	Spelling error – landill	landill landfill
Rule 46(a)(ii)(3) Rule 49(b)(iii) Rule 54(ca)(x) Rule 56(c) Rule 57(d)	Should be singular tense as per Rule 20 above.	“ to any <u>a</u> lakes, rivers, artificial watercourses, modified watercourses, natural wetlands, the coastal marine area, ...”

Provision	Issue/error	Correction
Rule 58(d) Rule 63A(c) and (d)		
Rule 59(a)(viii)	The word 'be' should be deleted	"(viii) fill over any culvert is not be greater than 4 metres (the vertical distance measured from the crest of the fill to the natural bed at the downstream invert of the structure)..."
Rule 61(b)(vi)	The word 'have' needs to be deleted.	"(vi) the concrete has not have been used in direct contact with chemicals that are toxic to aquatic life; and..."
Rule 61(c)	The word 'that' should be deleted	"(c) ...discharge resulting from the carrying out of the activity, that does not that meet one or more of the conditions listed in Rule 61(a) or Rule 61(b) is a discretionary activity.
Financial Contributions – Determination of Amount – 2 nd bullet point	Typo	Fund the works required to protect, restore or enhance the beds <u>fo</u> lakes, rivers...
Definition of Domestic Wastewater	For the purposes of this rule, domestic wastewater is limited toWording carried over from a rule	For the purposes of this rule, d Domestic wastewater is limited to effluent...
Definition of Dump station	Term 'wastewater' was to be removed but still remains in definition.	Amend to read "...designed to receive effluent wastewater from ..."
Glossary – National Park	Refers to 'Acts' instead of 'Act'	"National Park As defined by the National Parks Acts 1980"
Jacobs River Estuary	Typo	"Jacobs River Estaury Estuary"
Appendix A - Inconsistent use of capitals	Capitalise consistently throughout all of Appendix A. Also ensuring consistent use of singular Wetland not plural.	Blue Lake W wetland Gow Lake W wetland Scott Lake W wetland Haldane Estuary and R eservoir Mount Tennyson S tring B og Waimatuku W wetland Waterloo B urn wetlands (Aparima River)
Appendix E(b)	Typo	"(b) due to the effects of the operation of the Manapōuri hydro-electric generation scheme..."
Appendix E – Surface waterbodies classified as	Typo	"the daily maximum ambient water temperature shall not be increased by more than 3°C when the natural or existing water temperature is 16°C..."

Provision	Issue/error	Correction
"Mountain" 3 rd bullet point		
Appendix G	Reads Mataura River at Mataura River Bridge. Bridge is called Mataura Bridge	Mataura River at Mataura River Bridge
Appendix K – Methodology, first paragraph (ii)	Should be singular tense as per Rule 20 above.	"(ii) in the case of <u>a</u> lakes, rivers, artificial watercourses, modified watercourses or natural wetlands where flow is lost to groundwater along the length of the lakes, rivers, artificial watercourses, modified watercourses or natural wetlands, ..."
Primary and secondary allocation, first paragraph, (i)	Should be singular tense as per Rule 20 above.	"(i) for any <u>a</u> lakes, rivers, artificial watercourses, modified watercourses or natural wetlands outside the Waiau catchment..."
Primary and secondary allocation, first paragraph (iii)	Should be singular tense as per Rule 20 above.	"(iii) for any <u>a</u> lakes, rivers, modified watercourses or natural wetlands subject to a Water Conservation Order..."
Primary and secondary allocation, second paragraph (i)	Should be singular tense as per Rule 20 above.	"(i) for any <u>a</u> lakes, rivers, artificial watercourses, modified watercourses or natural wetlands, outside the Waiau catchment..."
Primary and secondary allocation, second paragraph (i)(1)	Should be singular tense as per Rule 20 above.	"(1) the total surface water allocation does not exceed a volume of 10 percent of the relevant seasonal flow cut-off flow in the <u>a</u> lakes, rivers, artificial watercourses, modified watercourses or natural wetlands at the time of take..."
Primary and secondary allocation, second paragraph (ii)	Should be singular tense as per Rule 20 above.	"(ii) in the Waiau catchment and for any <u>a</u> lakes, rivers, modified watercourses or natural wetlands subject to a Water Conservation Order..."
Appendix L.2 – bullet point 6	Appendix L.2 refers to Table Y.2 in error	Bullet point 6 "... hydraulic connection and managed following the criteria outlined in Table Y.2-L.2 ."
Appendix R – last paragraph (Note)	Word should be 'abstracting' not 'abstraction'	" Note: Submerged galleries (abstracting water vertically) and galleries in the river banks (abstraction <u>abstracting</u> water horizontally), or behavioural barriers and devices..."
Appendix S – 3 rd bullet point	Refers to 'Council' and not 'the Southland Regional Council'	" Known or suspected archaeological sites The following resources may assist in determining if an archaeological site is or may be present:

Provision	Issue/error	Correction
		<ul style="list-style-type: none"> Historic and cultural heritage scheduled in a district or regional plan. Sites listed by the New Zealand Archaeological Association's Archaeological Site Recording Scheme (latest information is on the New Zealand Archaeological Association website). <u>The Southland Regional Council</u> GIS information that highlights known sites and areas where there is a higher risk..."
Appendix S – Archaeological discovery without an authority (Protocol), (d) and (e)	Refers to 'Council' and not 'the Southland Regional Council'	<p>“... inform the relevant iwi authority;</p> <p>(c) inform Heritage New Zealand and apply for the appropriate authority, if required;</p> <p>(d) inform the <u>Southland Regional Council</u> and apply for the appropriate resource consent, if required;</p> <p>(e) take appropriate action, after discussing with Heritage New Zealand, <u>the Southland Regional Council</u> and relevant iwi authority to remedy damage and/or restore the site.</p>
Water body, water bodies	In some instances this is one word and others two words.	Two words throughout plan for consistency.
The Southland Regional Council will restrict its discretion...	Amend for consistency throughout the Plan	<p>The SRC will restrict its discretion (for restricted discretionary activities)</p> <p>The SRC will reserve its control (for controlled activities)</p>
Bed of an artificial watercourse	Defined but not used in the Plan	Delete
Fractured rock aquifer	Defined but not used in the Plan	Delete
Periphyton	Defined but not used in the Plan	Delete
Stock crossing	Defined but not used in the Plan	Delete
Toxicity	Defined but not used in the Plan	Delete
Untreated animal effluent	Defined but not used in the Plan	Delete