

**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)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
REGARDING THE PROPOSED HEARING SCHEDULE
26 April 2019**

Judicial Officer: Judge Borthwick and Judge Hassan

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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, 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 This Memorandum addresses the Court's Minute dated 5 April 2019 in relation to the proposed hearing schedule and the conduct of the hearing, including:
 - (a) the order of parties and schedule of witnesses;
 - (b) legal submissions;
 - (c) cross-examination; and
 - (d) length of the hearing.

Order of parties and schedule of witnesses

- 3 In its Minute dated 5 April 2019, the Court indicated that it is comfortable with the proposed order of parties as set out in the Memorandum of Counsel for the Council dated 2 April 2019.
- 4 However, the Court queried whether the Council should have a further opportunity at the end of the evidence to respond to any matters arising during the hearing.
- 5 The Council is open to having a further opportunity at the end of the evidence to respond to any matters arising during the hearing, if this would assist the Court. Counsel would be grateful to receive any further directions as to what the Court envisages this would comprise (e.g. further evidence and/or legal submissions).
- 6 Counsel has conferred with the parties and confirms the order of parties and schedule of witnesses as set out in Counsel's Memorandum dated 2 April 2019, with the exception of the Oil Companies' (Z Energy Ltd, BP Oil NZ Ltd, and Mobil Oil NZ Ltd) place in the schedule.
- 7 Counsel acknowledges the Memorandum filed by Counsel for the Oil Companies dated 4 April 2019 seeking that the Oil Companies be removed from the schedule, and accordingly seeks that the Court remove the Oil Companies from the proposed schedule attached to the Memorandum of Counsel for the Council dated 2 April 2019.

Legal submissions

- 8 In its Minute dated 5 April 2019, the Court suggested, in relation to opening legal submissions, that at the commencement of the hearing the Council presents a full opening, with the other parties (including those parties not calling evidence) then providing a brief opening (10 minutes maximum each) that sets out an overview of the key issues for determination.
- 9 The Court also suggested that if Counsel wish to revisit what they said in their openings, prior to hearing the evidence called in support of their clients, Counsel could have the opportunity to provide a 5 minute overview at that time.
- 10 The Court directed that all parties present full closings, in Court, once all of the evidence has been heard.
- 11 The Court sought the parties' views on whether the above approach suggested by the Court was appropriate (or whether parties wished to provide a full opening and closing).
- 12 On the basis of the responses received, all parties consider the approach suggested by the Court (as set out in paragraphs 8 to 10 above) is appropriate such that all parties will provide a brief opening (aside from the Council which will present a full opening) and full closing legal submissions.

Cross-examination

- 13 In its Minute dated 5 April 2019, the Court suggested that cross-examination be limited to 20 minutes per witness per counsel.
- 14 The Court directed the Council, having conferred with the other parties, to report to the Court confirming the parties' views as to the suggested limitation of cross-examination, and if any adjustments were proposed, to advise how such adjustments would not create a timing risk.
- 15 Counsel sought the parties views on the suggested limitation on cross-examination. Based on the responses received, no parties are opposed to a "default" limit of 20 minutes per witness per counsel for cross-examination.
- 16 However, many parties consider that leave should be reserved for parties to apply to extend the 20 minute time limit (at the

commencement of the hearing or at another point during the course of the hearing). Many parties consider that 20 minutes will not be sufficient time to cross-examine some witnesses, especially planning witnesses that cover a large range of topics in their evidence.

- 17 Accordingly, the parties seek that a “default” limit on cross-examination is set at 20 minutes, with leave reserved for parties to apply to extend this time for particular witnesses, where required. Parties will need to address any timing implications when seeking leave.
- 18 Counsel for the Council notes that it is to file a Memorandum on Friday 24 May 2019 setting out the witnesses required for cross-examination (noting the party / counsel seeking to cross-examine).¹ Counsel proposes to seek an indication from each party, when conferring as to which of the witnesses are required for cross-examination, as to whether parties are likely to seek an extension to the 20 minute limit for cross-examination of any particular witness. Counsel will include any such indications in its Memorandum on Friday 24 May 2019 (noting that parties will still be required to seek leave from the Court).

Length of hearing

- 19 The Court has asked parties to alert the Court as soon as possible, if they become concerned that two weeks is insufficient for the hearing.
- 20 The parties currently consider that two weeks is sufficient.
- 21 If any party should subsequently become concerned as to timing, Counsel for the Council consider that that party should file a memorandum with the Court addressing their concerns.

DATED this 26th day of April 2019



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P A C Maw / K J Wyss
 Counsel for the Southland Regional Council

¹ As directed by the Court in its Minute dated 5 April 2019 at [10(c)].