

**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)

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**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
REGARDING MEDIATION
15 September 2021**

Judicial Officer: Judge Borthwick

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WILKINS FARMING CO
(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 COMMISSIONER

- 1 This Memorandum of Counsel is filed on behalf of the Southland Regional Council (**Council**) in respect of mediation of the appeals against the Council's decision on the proposed Southland Water and Land Plan (**pSWLP**).
- 2 This purpose of this Memorandum is to provide a report to the Commissioner on the outcome of a series of meetings that were held between the Council and various appellants and section 274 parties in advance of mediation commencing on 30 August 2021. It also seeks a direction from the Commissioner that the Council file a Reporting Memorandum with the Court requesting that the unresolved issues under appeal be set down for hearing.

Background

- 3 Due to the rescheduling of the final pSWLP mediation session, in relation to the farming provisions (Topic B5), from the week of 21 June to the week of 30 August, the Council sought to use the additional time available before mediation to meet with some of the parties and explore whether their appeals could be narrowed or resolved ahead of mediation.
- 4 Given that the number of appeal points in Topic B5 equate to more than all the other subtopics combined, and that mediation time is limited, the Council also sought to identify areas where resolution of appeal points through mediation was highly unlikely. In particular, Council was interested in whether parties had any appetite for movement from their pre-circulated positions in relation to the most fundamental issues. The Council considered that early identification of issues which are unlikely to be resolved through mediation would be of most assistance to the parties and the Court.
- 5 In order to ensure that these meetings remained an efficient use of time, as opposed to a substitute for Court assisted mediation, Council staff organised meetings with a subset of the appellants and section 274 parties with interests in Topic B5. The parties approached to participate in these pre-mediation meetings were those with the most appeal points in Topic B5.

Meetings

- 6 Three meetings were held between the Council and various parties.
- 7 The first meeting involved Federated Farmers of New Zealand (**Federated Farmers**), Southland Fish and Game Council (**Fish & Game**), Beef and Lamb New Zealand (**Beef & Lamb**), Royal Forest and Bird Protection Society of New Zealand (**Forest & Bird**), Aratiatia Livestock Limited (**Aratiatia**), Ngā Rūnanga, and Council. For the second and third meetings, the invitation was also extended to representatives from Fonterra Co-operative Group and DairyNZ Limited. Due to individual availability, not all of these parties were represented at all three meetings.
- 8 The meetings were held on a without prejudice basis, however the parties agreed that the Council would report the main topics of conversation and the outcomes of the meetings to the Commissioner and parties who were not involved in the meetings. Counsel for the Council circulated this Memorandum in draft to the parties who participated in the meetings and asked that they confirm that it accurately records the topics discussed and the outcomes of the meetings. Minor amendments were requested and made as a result of this consultation.
- 9 The main topics of conversation related to:
 - (a) The possible use of Freshwater Farm Plans, noting the challenges with timing of national regulations for Freshwater Farm Plans, the possible changes to the Resource Management (National Environmental Standards for Freshwater Management) Regulations 2020, and the future 'limit-setting' plan change to the pSWLP (due for notification end of 2023).
 - (b) Whether any resolution would involve adjustments to the existing Rule 20 or whether it is in need of a re-write.
 - (c) Whether there was a possibility of parties agreeing to minimum standards for farming, with or without a farm plan.
 - (d) Whether resolution of the appeals on the intensive winter grazing rule may be possible.

- (e) The difference between “ephemeral rivers” and critical source areas – and whether the differences of view reflected practical (i.e. physical) differences or were simply differences in preferred wording.

Outcome of meetings

- 10 Overall, agreement was not reached on either the fundamental issues for the Topic B5 mediation or any specific issues. Nor was it possible to narrow the issues under appeal. During these meetings it became clear that there was little prospect of agreement being reached on any of the fundamental issues.

Feedback from parties on this memorandum

- 11 Following these meetings and the pre-circulation of this memorandum (in draft) to the parties involved, Forest & Bird, Fish & Game, and Ngā Rūnanga have indicated that they no longer wish to participate in mediation given the fundamental difference in position that remain. The Council shares those parties’ views that there is insufficient prospect of settlement of any fundamental issues in Topic B5 to warrant a return to mediation.
- 12 Federated Farmers, Aratiatia, and Beef & Lamb do not agree. They consider that there is utility in rescheduling a week of mediation for Topic B5. In particular, Federated Farmers noted that they consider many issues can be resolved which would reduce costs for all and reduce the number of issues/provisions under appeal that would require a hearing. Further, they consider that the proposed changes to the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 in relation to intensive winter grazing, and the Resource Management (Stock Exclusion) Regulations 2020 are likely to resolve some of the Topic B5 issues.
- 13 For completeness, the Council, Forest & Bird, Fish & Game, and Ngā Rūnanga all indicate their openness to continue direct negotiations on the Topic B5 issues in advance of a hearing, in particular to explore whether any of the peripheral issues could potentially be resolved.

Directions sought

- 14 The rescheduled mediation of Topic B5, due to begin on 30 August 2021, was vacated due to the current COVID-19 situation. It has not yet been rescheduled.
- 15 In light of the above, in particular the seemingly entrenched positions of many parties on the fundamental issues, the Council, along with Forest & Bird, Fish & Game, and Ngā Rūnanga, consider that the most efficient course of action is to proceed directly to hearing on all unresolved issues, noting that direct discussions between the parties can continue in parallel with preparation for a hearing.
- 16 Accordingly, Counsel for the Council respectfully requests that the Commissioner issue directions that:
- (a) mediation of Topic B5 is cancelled; and
 - (b) Counsel for the Council file a Reporting Memorandum with the Court by **5pm Friday 24 September 2021** seeking that all unresolved issues be set down for hearing.

DATED this 15th day of September 2021



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