

**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)

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**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL -  
REPORTING MEMORANDUM  
29 May 2020**

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Judicial Officer: Judge Borthwick

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**WYNNWILLIAMS**

**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 In its Record of Pre-Hearing Conference dated 14 February 2020, and subsequent Minutes dated 6 April 2020 and 18 May 2020, the Court directed the Council to, having conferred with the other parties, file a memorandum identifying any issues as between the parties in respect of which a determination is required and seek further case management directions. The Council was also directed to advise whether the parties wish to be heard in person, whether the parties wish to examine any witnesses, and the estimated hearing length.

**Issues as between the parties requiring determination**

- 3 On Monday 25 May 2020, the Council sought the views of the parties as to whether there were any issues as between the parties which require a determination.
- 4 The parties identified the following issues as requiring determination by the Court:
  - (a) The scope issues raised in the Notice of Motion filed on 22 May 2020 by Ballance Agri-Nutrients Limited, Federated Farmers of New Zealand (Southland), Horticulture New Zealand, and Ravensdown Limited;
  - (b) Whether the appropriate ambit and order of considerations for the Court at the hearing on 15-17 June 2020 is as set out at paragraph [8] of the Joint Memorandum filed on behalf of Ballance Agri-Nutrients Limited, Federated Farmers of New Zealand (Southland), Horticulture New Zealand, and Ravensdown Limited dated 22 May 2020.
  - (c) Whether the Topic A provisions appropriately implement Te Mana o te Wai and Ki Uta Ki Tai, and give effect to the NPSFM.
  - (d) The nature / appropriate role and status of the “korowai objectives”, as per the alternative interpretations set out in the planning evidence of Jane Whyte and adopted in the rebuttal

evidence of Matthew McCallum-Clark. Put another way, whether Objectives 1 and 3 do, or should, have some status different from the other Objectives, and if so, what status should that be?

- (e) How should the National Policy Statement for Freshwater Management 2014 (as amended 2017) (**NPSFM**) and National Policy Statement for Renewable Electricity Generation 2011 be reconciled and what are the implications of that reconciliation for the role and status of korowai objectives?
  - (f) What are the implications of the New Zealand Coastal Policy Statement for the role and status of korowai objectives?
  - (g) What are the implications of the Southland Regional Policy Statement for the role and status of the korowai objectives?
  - (h) Is Part 2 of the Resource Management Act 1991 relevant, and if so, what are the implications of Part 2 for the role and status of the korowai objectives?
  - (i) What wording is appropriate to communicate the role and status of the korowai objectives to Plan users?
  - (j) If amendments are to be made to Objectives 1 & 3, particularly if they are to operate as a hierarchy, are changes to other pSWLP provisions (particularly the remaining Objectives) necessary?
  - (k) Depending on the answer to the above (paragraphs 4(d) to 4(j)), what scope exists to amend the pSWLP to address these matters?
  - (l) If the Court determines that a section 293 process would be needed to consider some of the changes to the pSWLP being promoted by Ngā Rūnanga's planning witness, should such a process be embarked upon given the interim nature of the pSWLP; the impending Freshwater Management Unit processes; the prospect of a new NPSFM that will need to be given effect to; and the need to put in place a planning framework in a timely manner to address water quality and land use in Southland?
- 5 Counsel for the Council notes that some of the issues listed above appear to be beyond the scope of what was understood the hearing on 15-17 June 2020 was to address. Accordingly, Counsel seeks directions

from the Court as to which of the issues listed in paragraph 4 above are to be determined at the hearing on 15-17 June 2020.

**How the parties wish to be heard**

- 6 The following parties wish to be heard in person:
- (a) Southland Regional Council, represented by Philip Maw and Alyssa Langford;
  - (b) Federated Farmers of New Zealand (Southland), represented by Clare Lenihan;
  - (c) Horticulture New Zealand, represented by Mark Christensen as agent;
  - (d) Ballance Agri-Nutrients, represented by Mark Christensen as agent;
  - (e) Ravensdown Limited, represented by Mark Christensen;
  - (f) Gore District Council, Southland District Council & Invercargill City Council, represented by Michael Garbett;
  - (g) Director-General of Conservation, represented by Dean van Mierlo;
  - (h) Ngā Rūnanga, represented by James Winchester; and
  - (i) Meridian Energy Limited, represented by Stephen Christensen and Humphrey Tapper.
- 7 The following parties wish to be heard via audio visual link:
- (a) Director-General of Conservation, represented by Pene Williams;
  - (b) Waiau Rivercare Group, represented by Riki Donnelly; and
  - (c) Aratiatia Livestock Limited, represented by Douglas Allan.
- 8 As previously indicated in a Memorandum of Counsel dated 15 May 2020, Counsel for Southland Fish and Game Council and Royal Forest and Bird Protection Society of New Zealand Inc has a pre-existing High Court hearing on 15-17 June and sought leave to be excused from attending the hearing. The Court granted this leave in its Minute dated 18 May 2020. Mr Farrell's evidence is to be called by Counsel for the Director-General of Conservation.

- 9 For completeness, the following parties advised that they do not wish to be heard / will not be appearing:
- (a) Heritage New Zealand Pouhere Taonga;<sup>1</sup>
  - (b) DairyNZ Limited;
  - (c) Fonterra Co-operative Group;
  - (d) Invercargill City Council Water Manager; and
  - (e) Alliance Group Limited.
- 10 A number of parties have enquired as to the ability for representatives of their client organisations to attend the hearing, either in person or remotely. Accordingly, Counsel seeks an indication from the Court as to whether it intends to make provision for observers (in addition to counsel and witnesses) to attend the hearing, both in person and remotely.

#### **Witnesses required for examination**

- 11 A table setting out which parties wish to examine which witnesses is included as **Appendix A** to this Memorandum.
- 12 Counsel notes that some parties indicated that they may wish to examine further witnesses, depending on how the Court resolves the scope issues raised in the Notice of Motion filed on Friday 22 May 2020.
- 13 Counsel for each of the witnesses have confirmed that their witnesses will be attending the hearing in person.

#### **Estimated hearing length**

- 14 On Monday 25 May 2020, the Council also sought an indication from the parties as to the estimated length of hearing. Many parties provided an estimate of the time they require for cross-examination of witnesses (as set out in **Appendix A**) and their estimated time for presentation of legal submissions.
- 15 Based on these responses, Counsel for the Council estimates that three full hearing days will be required.

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<sup>1</sup> Counsel for Heritage New Zealand, Camilla Owen, has advised that she will be appearing, but that she does not wish to be heard.

**How is the hearing to proceed as between the scope issue and the scheme of the plan and Treaty of Waitangi issues?**

- 16 Some parties noted in their responses to Counsel for the Council that they consider it would be helpful to resolve the Notice of Motion scope issues ahead of, or at the commencement of, the hearing set down for 15-17 June 2020.
- 17 Contrary to this position, Ngā Rūnanga has indicated that it intends to make submissions that a determination on scope is premature and unnecessary given the Court's existing directions. Ngā Rūnanga reserves the right to respond to those issues, either prior to or at the hearing scheduled for 15 June.
- 18 Counsel for the Council notes that since those responses were received from counsel, the Court has issued a Minute directing any party that wishes to be heard on the Notice of Motion to file and serve a notice of person's wish to be heard by 2 June 2020. Further, by 5 June 2020, the Council is to propose directions for the setting down of the Notice of Motion for hearing recording the parties' position on whether Ngā Rūnanga's evidence may be provisionally admitted and secondly, for the application to be heard at the same time as the related matters already set down for a hearing commencing 5 June 2020.
- 19 Counsel for the Council will confirm the parties' positions as directed on 5 June 2020.

**Typographical error in Notice of Motion dated 22 May 2020**

- 20 Counsel for Ravensdown Limited has advised that there is a typographical error in the Memorandum of Counsel filed with the Notice of Motion, both dated 22 May 2020.
- 21 The error is in clause 8(b)(ii). The reference to "question (a)" is incorrect and should refer to "question (b)(i)", so clause 8)(b)(ii) should read:

(ii) If, having heard the evidence, the Court is of the view that the answer to question ~~(a)~~(b)(i) is no, then should the Court exercise its discretion under s293 in some way? That should include consideration of which formulation of the Objectives would best be in accordance with the NPS.



**Directions sought**

22 Counsel seeks directions from the Court as to which of the issues listed in paragraph 4 above are to be determined at the hearing on 15-17 June 2020.

**DATED** this 29<sup>th</sup> day of May 2020



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

## Appendix A

| Witness required for examination | Party  | Estimated time required |
|----------------------------------|--|-------------------------|
| Ailsa Cain                       | Southland Regional Council   | 15 minutes              |
|                                  | Director-General of Conservation ( <b>Director-General</b> )   | 10 minutes              |
| Treena Davidson                  | Southland Regional Council   | 25 minutes              |
|                                  | Federated Farmers of New Zealand (Southland), Horticulture New Zealand, Ballance Agri-Nutrients & Ravensdown Limited ( <b>Primary Sector Parties</b> ) | 45 minutes              |
|                                  | Director-General   | 15 minutes              |
| Andrew Feierabend                | Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively <b>Ngā Rūnanga</b> )        | 10 minutes              |
| Jane Whyte                       | Southland Regional Council   | 15 minutes              |
|                                  | Director-General   | 20 minutes              |
|                                  | Ngā Rūnanga  | 10 minutes              |
| Janan Dunning                    | Southland Regional Council   | 15 minutes              |
|                                  | Director-General   | 10 minutes              |
|                                  | Ngā Rūnanga  | 10 minutes              |
| Ben Farrell                      | Southland Regional Council   | 15 minutes              |
|                                  | Primary Sector Parties   | 20 minutes              |
|                                  | Ngā Rūnanga  | 10 minutes              |
| Susan Ruston                     | Southland Regional Council   | 15 minutes              |

|                        |   |            |
|------------------------|---|------------|
|                        | Director-General  | 20 minutes |
|                        | Ngā Rūnanga   | 10 minutes |
| Linda Kirk             | Southland Regional Council  | 20 minutes |
|                        | Primary Sector Parties  | 20 minutes |
|                        | Ngā Rūnanga   | 10 minutes |
| Matthew McCallum-Clark | Primary Sector Parties  | 30 minutes |
|                        | Gore District Council, Southland District Council & Invercargill City Council | 15 minutes |
|                        | Director-General  | 15 minutes |
|                        | Ngā Rūnanga   | 10 minutes |
|                        | Meridian Energy Limited   | 10 minutes |