

**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)

**MEMORANDUM OF COUNSEL FOR SOUTHLAND REGIONAL COUNCIL
SEEKING EXTENSION OF TIME TO COMPLETE S 32AA REVIEW
21 August 2020**

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 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 Minute dated 17 August 2020, the Court directed the Council to file an affidavit by Monday 24 August 2020 that, among other things, includes a further report pursuant to s 32AA RMA on the Topic A provisions.¹
- 3 Mr McCallum-Clark, for the Council, has prepared an affidavit setting out the information requested at paragraphs [4] through [6] of the Court's Minute dated 17 August 2020. However, given the amount of work required, Mr McCallum-Clark has been unable to complete a review of the relevant objectives and policies (including those amended by the Court) pursuant to s 32AA RMA within the time allowed by the Court.²
- 4 Furthermore, Counsel notes that Mr McCallum-Clark in his capacity as an independent expert witness may not be able to undertake a complete review of all (relevant) objectives in accordance with s 32AA. In particular, Counsel notes that Mr McCallum-Clark has previously filed evidence stating that, in his opinion, his recommended objectives would be the most appropriate way to achieve the purpose of the RMA. Mr McCallum-Clark's professional integrity might be compromised if he was to now provide evidence with a further s 32AA assessment that expressed an opinion that is different from the one he has previously given.
- 5 In order to best assist the Court with respect to further s 32AA evaluation, Counsel proposes that instead of Mr McCallum-Clark preparing affidavit evidence in relation to the s 32AA evaluation, Council planning staff and Mr McCallum-Clark jointly produce a s 32AA evaluation report. Such a report would not be produced as Mr McCallum-Clark's evidence. Rather, it would instead be provided as a report by the Council in order to assist the Court in complying with its

¹ Minute of the Environment Court dated 17 August 2020, at [8(a)].

² Minute of the Environment Court dated 17 August 2020, at [7] and [8(a)].

duty to complete a s 32AA evaluation.³ In essence, this report would be provided in the same way as the Initial Planning Statement/updated section 32 evaluation report was provided to the Court.

Extension of time requested

- 6 Counsel respectfully seeks an extension of time for the Council and Mr McCallum-Clark to complete the requested s 32AA evaluation. As Mr McCallum-Clark is on long-planned annual leave the week beginning 24 August 2020, Counsel seeks that the date for filing this s 32AA evaluation be extended to Friday 4 September 2020.
- 7 Should the Court be willing to grant this extension, a consequential amendment to the date for which any other party's affidavit in reply is due may be required. Counsel sought the parties' views as to a consequential extension of time for the filing of any affidavits in reply. No party opposed there being such an extension. Accordingly, Counsel suggests that the due date for these affidavits could be extended to Friday 11 September 2020.

Content of s 32AA evaluation

- 8 In relation to the content of the s 32AA evaluation, Counsel considers that Objectives 2, 3, 6, 7, 9/9A, 10, 13/13A/13B, 14, 17, and 18 require review, due to them being amended since the Council decision.
- 9 While the Court has sought a review of the policies as well as the objectives, Counsel does not consider that a review of the policies in accordance with s 32AA is possible until the remaining provisions of the pSWLP have been considered in Topic B. It is not possible to consider whether individual policies, in isolation of the rule framework, are the most appropriate way to achieve the objectives.
- 10 Accordingly, Counsel seeks that the Court's directions be amended so that the Council and Mr McCallum-Clark are only required to complete a s 32AA evaluation of the objectives set out at paragraph [8] above.

³ Pursuant to ss 290(1) and 32AA.

Directions sought

- 11 For the reasons set out above, Counsel respectfully seeks that the Court's directions at paragraph [8(a)] of its Minute dated 17 August 2020 be amended as follows:
- (a) The Regional Council, having conferred with the other parties, is to file an affidavit by **Monday 24 August 2020** in response to the matters raised by the court in the first Interim Decision dated 20 December 2019 and again in its Minute dated 29 June 2020;
 - (b) Regional Council staff and Mr McCallum-Clark are to jointly produce a s 32AA evaluation report on the following objectives:
 - (i) Objective 2;
 - (ii) Objective 3;
 - (iii) Objective 6;
 - (iv) Objective 7;
 - (v) Objective 9/9A;
 - (vi) Objective 10;
 - (vii) Objective 13/13A/13B;
 - (viii) Objective 14;
 - (ix) Objective 17; and
 - (x) Objective 18.

This report is to be filed by **Friday 4 September 2020**; and

- (c) Any party who wishes to do so, may file an affidavit in reply by **Friday 11 September 2020**.

DATED this 21st day of August 2020



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